Shashi Puri, New Delhi vs Department Of Income Tax on 23 January, 2015

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
I.T.A.No. 3378/Del/2011
(Assessment Year 2007-08)

ACIT, CC-13, New Delhi	Vs.	Smt Shashi Puri, A-1/36, Panchsheel Enclave, New Delhi.

I.T.A.No. 3379/Del/2011
(Assessment Year 2007-08)

ACIT, CC-13, New Delhi	Vs.	Smt. Shashi Puri, L/H of Late Sh. Vinay Puri, A-1/36, Panchsheel Enclave, New Delhi PAN: AFWPP8805K

Department by: Sh. Ramesh Chandra, CIT DR,
Assessee by: Sh. V.K. Aggarwal, Adv.
Date of hearing : 17.12.2014
Date of Order :

ORDER

PER T.S. KAPOOR, AM:

These are two appeals filed by Revenue against separate orders of Ld. CIT(A) both dated 06.04.2011. I.T.A. No. 23273/Del/2011 is filed by Revenue against Smt. Shashi Puri whereas I.T.A. No. 3379/Del/2011 is against Smt. Shashi Puri as legal heir of her deceased husband Shri Vikrant Puri. The common issue involved in the present appeals is that assessee and her husband had received certain gifts from their son Mr. Mohit Puri who had sent these gifts from Dubai. The A.O. made additions holding that genuineness and creditworthiness of gifts was not proved whereas Ld. CIT(A) allowed relief to the assessee and during appellate proceedings also, accepted additional evidence. The husband of assessee in the meanwhile had expired, therefore, both of assessment stage and at appellate stage the assessee was made a party as legal heir of her deceased husband. In view of the above in both appeals assessee is a respondent one in her individual capacity and other as a legal heir. Both these appeals were heard together and, therefore, a common and consolidated order is being passed. There are two common grounds of appeal; Ground No.1 relates to merits of the case and Ground No.2 relates to violation of provisions of Rule 46A. Vide interim Tribunal order dated 28.11.2014 ground No.2 of appeal has already been disposed off which relates to violation of Rule 46A. The said ground of appeal has been decided against revenue and the appeal on merits was finally heard on 17.12.2014.

2. At the outset, Ld. D.R. submitted that in the interim order passed on 28.11.2014, the Hon'ble Tribunal has ignored the submissions filed by Revenue and in this respect, he filed a single page note on the arguments made originally. In the note, Ld. D.R. submitted that as per Hon'ble Jurisdictional High Court in the case of Manish Buildwell Pvt. Lt., Ld. CIT(A) was required to afford two opportunities to the A.O. i.e. one at the time of acceptance of additional evidence by inviting his objections for accepting the additional evidence and the second, after CIT(A) admits the same for his comments on merits of such additional evidence. It was further submitted that case laws relied by ITAT in the case of DDIT Vs Human Care Charitable Trust, was not applicable as it was given prior to the judgement of Hon'ble Jurisdictional High Court and hence, was to be ignored. Therefore, in view of the above, Ld. D.R. made a request to take into account these facts while passing final order. It was also submitted that passing of such final order will not amount to review of earlier order.

3. Ld. D.R. arguing upon the merits of the case raised many objections regarding genuineness of the gifts and creditworthiness of donor. The crux of arguments advanced by Ld. D.R. are summarized as under: It was submitted that identity, genuineness and creditworthiness of donor was not proved and further submitted that mischief on the part of donor can be judged from the fact that he was living in Delhi and had filed returns in Kolkatta. Reliance in this respect was placed on the following case laws:

`i) 264 ITR 434 in the case of Sajan Dass & Sons Vs CIT

ii) 208 ITR 465 in the case of CIT Vs Precision Finance (P) Ltd

iii) 290 ITR 306 In the case of Jaspal Singh Vs CIT

iv) 108 ITD 560 In the case of ACIT Vs Rajeev Tandon 3.1 It was further submitted that there was no occasion to make gifts therefore, the genuineness of gifts was not proved. Reliance in this respect was placed on the following case laws:

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i)     Rajeev Tandon 294 ITR 488 (Del.)
ii)    Chainsukh Rathi aVs CIT 270 ITR 368 (Raj.)
iii)   Lal Chand Kalra 22 CTR 125 (Punjab & Haryana)
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4. It was submitted that mere receipt of amount by cheques was not sufficient to establish genuineness of gift. It was submitted that the gifts were made in the form of cheques of Rs.5 lacs each and the cheque numbers issued by the donor were in continuity instead of issuing a consolidated cehque and donor had issued cheques for an amount of Rs.5 lacs each probably to avoid scrutiny of officials by avoiding issue of a consolidated cheque of total amount. The behavior of donor in issuing cheques of Rs.5 lacs each establishes that something was wrong. It was submitted that Hon'ble Delhi High Court in its judgement in the case of International Taxation Vs Alcatel USA Inc. The Hon'ble Court has quoted in Esthusi Aswathah Vs CIT 66 ITR 478 (S.C.) and has said that in income tax proceedings, conclusive proof was not required

and tribunal may act upon probabilities or presumptions and therefore, it was submitted that on the face of it amounts sent by Mr. Mohit Puri was not a gift as the genuineness was not established as there were many inconsistencies in the documents in support of gifts. Ld. D.R. took us to page 1 of the paper book and submitted that it was undated and there was no mention that the same was filed before the A.O. and the copy was not a true copy. As regards paper book page 2 and 3 which was a copy of memorandum of gift, Ld. D.R. argued that it was not reliable as the signatures of donor Mohit Puri was at a variance with the signatures on the passport of donor which was placed at paper book page 37. It was further submitted that it appears that deed was signed by some other person other than donor as impression of signature of left hand side was not matching with the signatures in the copy available on record of A.O. Referring to page 5 of the paper book, Ld. D.R. submitted that date mentioned as 08.12.2009 is not there in the copy available in the record.

Similarly page 14 was referred and it was submitted that the document does not seem to be true copy of as in the copy available in the assessment record there are signatures whereas signatures are not there in the copy available in the paper book. Similarly, paper book pages 6 to 23, were referred and it was submitted that signatures on employment agreement were also varying with the signatures as found in the passport a copy of which was placed at paper book 37. Similarly, it was submitted that paper book pages 31-36 showing copy of corporate agreement with Smart Impression need to be rejected as signatures of Mohit Puri on this document are at variance with signatures on the passport. Regarding paper book pages 26-28 it was submitted that these need to be ignored as these relate to Mr. Vikrant Puri and not to assessee. Further arguing Ld. D.R. submitted that in fact the gifts were received by assessee who had advanced amounts to Mr. Vikrant Puri another son of Mrs. Shashi Puri who was engaged in the Hawala Racket. Ld. D.R. submitted that in fact Mr. Vikrant Puri must have first transferred his ill gotten money abroad and then through chain of transactions had received back the same from Dubai in the form of gift by his brother to mother and then to himself as loans. It was submitted that all these circumstances point out that the gifts were not genuine. Further arguing Ld. D.R. submitted that gift deeds were neither registered nor witnessed. It was also submitted that creditworthiness of donor was also not proved as he had just gone to Dubai and has claimed to have earned a huge amount for which there was no proper evidence. It was submitted that in the copy of employment agreement of Mr. Mohit Puri donor, there are many mistakes which have already been pointed out including mismatching of signatures of Mohit Puri on the employment agreement and therefore, the same cannot be relied upon. Therefore, creditworthiness cannot be accepted on the basis of such documents. Therefore, it was submitted that considering the peculiar circumstances of the case, it would be logical for the tribunal to infer that the impugned amount does not represent genuine gifts. Reliance in this respect was placed on the case law of Simati Dayal 214 ITR 801 for the proposition that to decide a matter surrounding circumstances and human probabilities should be kept in mind. It was submitted that the case law relied by Ld. CIT(A) of Suresh Kakkar, is not applicable as in that case, Hon' High Court had dismissed the appeal of Revenue holding that no question of law arise and such decisions cannot have precedential value as held by Hon'ble Supreme Court in the case of State of Punjab Vs Surinder Kumar 194 ITR 434.

4.1 As regards reliance of Ld. CIT(A) on the case law of Suresh Kumar Kakkar, Ld. D.R. argued that reliance has been wrongly placed as the appeal of revenue was dismissed as Hon'ble Court had held that no substantial question of law arises and therefore, it had no precedential value as held by Hon'ble Supreme Court in the case of State of Punjab Vs Surinder Kumar 194 ITR 434.

5. As regards the issue of violation of Rue 46A, Ld. D.R. basically relied upon the judgement of Hon'ble Delhi High Court in the case of Manish Buildweell Pvt. Ltd. 204 Taxman 106 and argued that as per this statement which was squarely applicable on the assessee, Ld. CIT(A) was required to give two opportunities to the A.O. which was not given in the present case and, therefore, the case needs to be readjudicated by Ld. CIT(A) who should readjudicate after affording reasonable opportunity to the A.O. It was further argued that once remand had been made, Ld. CIT(A) had no choice but to decide the appeal on receipt of remand report only but in the present case, Ld. CIT(A) had passed order without waiting for remand report.

6. On the other hand, Ld. A.R. filed synopsis of his submissions and argued after reading from the synopsis. Ld. A.R. submitted that ground No.2 has already been decided and it cannot be regarded as interim order as regards ground NO.2 as ground No.2 has been decided and since one ground out of two was decided and that is why it was termed as interim order but as far as ground No.2 is concerned it has finally been decided and any change on this ground will amount to review of its own judgement which is not permissible. Ld. A.R. however, reiterated his submissions for ground No.2. Regarding merits the Crux of arguments of Ld. A.R. as extracted from his written submissions dated 17.12.2014 which can be summarized as under:

> i) The genuineness of gift was established by the fact that Shri Mohit Puri has confirmed the facts of gift in his statement recorded u/s 132(4) of the Act. As regards identity of the donor, it was established from the address on passport and PAN. The Ld. A.R. submitted that donor had come to India on vacation otherwise he was a resident of Dubai. It was submitted that memorandum of gift was filed before A.O. which clearly stated that the gifts were received through proper banking channel and therefore, the genuineness of gift was fully established. As regards creditworthiness, the same was proved from the copy of employment agreement with Friends General Trading Dubai indicating payment to donor of 40,000 DH per month equivalent to Rs.4,96,400/- per month and besides above salary, donor was paid commission amounting to Rs.54,54,545 DH equivalent to Rs.6,76,90,903/- in 9 months from April 2006 to Dec. 2006. Therefore, the total funds available were Rs.7,21,58,503/-. It was submitted that besides above sources, assessee had received 26,89,550 DH equivalent to Rs.3,33,77,316/- from a real estate brokerage, therefore, total funds available with the donor were Rs.10,55,35,819/-. In view of above facts, it was submitted that assessee cannot be asked to explain source of the source and reliance was placed on the following judgements:
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> i) CIT Vs Diamond Products Ltd. 21 DTR (Del.) 9
> ii) Moongipa Investments Ltd. Vs ITO 70 DTR (Del.) (Trib.)132
> iii) Jaikishan Dadlani Vs ITO 4 SOT 138 (Mum.)
> iv) Tolaram Daga Vs CIT 59 ITR 632 (Assam)

7. As regards the arguments of Ld. D.R. that there was no occasion to make gift, Ld. A.R. submitted that gifts were made out of natural love and affection for the parents and it was judicially settled that no occasion was required for making gift out of love and affection. In this respect, reliance was placed on the following case laws:

i) CIT Vs Suressh Kumar Kakar, 2010-TIOL-294-Hon'ble High Court-Del-IT.

ii) CIT Vs Ms. Mayawati (2011) 338 ITR 563 (Del.).

8. As regards the arguments of Ld. D.R. that Mr. Vikrant Puri was a hawala operator, Ld. A.R. submitted that the observation of A.O. was purely based on surmises and conjectures without any material on record and it was further submitted that Mr. Vikrant Puri was neither the donor nor done therefore, no reference could be made to him. It was submitted that genuineness, identity and creditworthiness of donor was already established and use of own money by donor in her own right cannot be questioned to decide genuineness of gift. It was submitted that the A.O. had not found any fault with the documents filed by appellant which includes employment agreement with Friends General Trading, Dubai and he had not brought any material on record to prove that gift was bogus and has not pointed out any evidence to indicate that it was appellant's money which has been rooted as gift. Reliance in this respect was placed on the following case laws:

i) ACIT Vs Ujjagar Singh Oberoi 121 TTJ 228
ii) CIT Vs Padam Singh Chouhan 315 ITR 433 (Raj.)
iii) ACIT Vs Manoj Kumar Sekhri 86 TTJ 510 (Asr.)

9. Ld. A.R. further submitted that argument of Ld. D.R. that assessee had rooted its own money, is not substantiated by any material and onus is on the Revenue to establish the same. In the absence of establishment of any onus, the argument of A.O. and Ld. D.R. cannot stand on its feet.

Reliance was placed on the following case laws:

i) ITO Vs Smt. Bibi Rani Bansal 133 TTJ 394
ii) Aravali Trading Co. Vs ITO 220 CTR 622
iii) Orient Trading Co. Ltd. Vs CIT 49 ITR 723.

10. Ld. A.R. further submitted that the A.O. has relied upon various case laws without summarizing as to how they are applicable to the present case. It was submitted that in the case of Shyam Sunder Gupta Vs ITO 51 TTJ 436 relied upon by A.O., the assessee could not give address of the donor. Similarly, in the case of Lal Chand Kalra Vs CIT 22 CTR 135 addition was confirmed because it was held that donors were not men of means and one of them was a stranger. Similarly, in the case of

CIT Vs Precision Finance Pvt. Ltd. 208 ITR 465 even the identity of creditor was not established and in the case of Sajan Das & Sons Vs CIT 264 ITR 435 the donor had denied of having made any gift. Whereas, in the case of appellant these facts do not exist because donor is the son of assessee and had sufficient funds to gift to his parents. The A.O. had also recorded the statement of donor wherein he has confirmed having made gift to his parents. It was submitted that Ld. D.R. raised fresh issue which does not emanates from the assessment order. It was submitted that Ld. D.R. has no jurisdiction to go beyond the order passed by A.O. and reliance in this respect was placed on the following case laws:

i) Mahindra & Mahindra Ltd. Vs DCIT 122 TTJ 577

11. It was submitted that if the Ld. D.R. is allowed to take up a new contention de-horse the view taken by A.O., it would amount to DR of stepping into the shows of CIT to exercise jurisdiction u/s 263 therefore, DR should not be permitted to transgress the boundaries of his arguments. Reliance was placed on the case law of Kewal Pro Exports Vs ACIT 109 TTJ 869. Without prejudice to the above arguments, Ld. A.R. submitted that reliance placed by Ld. D.R. on the case law of Sumati Dayal 214 ITR 801, and Durga Das 82 ITR 540 to emphasize that human probabilities should be considered, Ld. A.R. submitted that there was no improbability in son giving gift to parents out of natural love and affection. Therefore giving gift by son to parents is within the four walls of human probabilities. As regards argument of Ld. D.R. that there must be some occasion to make gift, he had relied on the following case laws:

i) Rajeev Tandon 294 ITR 488
ii) Chainsukh Rathi Vs CIT 270 ITR 368 and
iii) Lal chand Kalra, 22 CTR 135

12. Ld. A.R. submitted that in the cases of Rajiv Tandon, and

Chainsukh Rathi, the gift was not between mother and son and in the case of Lal Chand Kalra, gift was from brother's wife of the done. It was submitted that all the factors are absent in the case of assessee which is squarely covered by the case law of CIT Vs Suresh Kakkar wherein it has been held that in the case of gift from mother there is no occasion required for making gift out of natural love and affection and which implies that no occasion is required for making gifts by a son to his parents. As regards the arguments of Ld. D.R. that gift deed was not registered and was not witnessed, Ld. A.R. submitted that the gift was of a movable property and delivery of property was sufficient evidence to prove existence of gift and moreover, the donor had confirmed the factum of gift in his statement recorded u/s 132(4) of the Act. As regards the difference in signatures on passport and memo of gift, Ld. A.R. submitted that passport was made in 1994 whereas gift was made in 2007 and the difference is because of fact that donor had changed his signatures between the intervening period. As regards the argument of Ld. D.R. that donor had filed return of income from Calcutta whereas he was living in Delhi, he submitted that at page 1 of assessment order itself it was written that case of assessee was transferred from Calcutta to Delhi and earlier he was residing in Calcutta and subsequently, he shifted to Delhi. As regards argument of Ld. D.R. that amounts had been transferred to another son, Ld. A.R. submitted that use of amount by donor in her own right cannot be questioned for examining genuineness of gift. Reliance in this respect was placed on the case law

of Padam Singh Chauhan 314 ITDR 433. As regards reliance placed by Ld. D.R. on the case law of State of Punjab Vs Surinder Kumar, 194 ITR 434 (S.C.), it was argued that reliance was totally misplaced because the case was not under I. T. Act, 1961 and secondly the case law was a writ matter whereas case of S K Kakkar was a matter of appeal u/s 260A.

13. After conclusion of arguments by Ld. A.R., Ld. D.R. requested that he be permitted to file written submissions relating to both the grounds of appeal to which Ld. A.R. objected and submitted that if Ld. D.R. is permitted now to file written submissions, then he should also be provided an opportunity to file written reply to such submissions. Ld. D.R. had no objection to the request of Ld. A.R., therefore, both the parties were permitted to file written submissions. Ld. D.R. filed written submissions on 12th Jan., 2015 and Ld. A.R. filed his reply to the same on 15th Jan., 2015. For completeness of this order, we deem it appropriate to reproduce written arguments of Ld. D.R. as well as Ld. A.R. A. Written arguments of Ld. D.R. are produced as under:

> 02. Issue of Rule 46A 2.1.1 In so far as the issue of compliance of Rule 46A is concerned it is seen that the Tribunal has dealt with this ground by way of passing an Interim Order on 28-11-2014 dismissing the Revenue's ground. When hearing took place after the Interim Order short submissions were filed as to what were Revenue's arguments and as to how the Tribunal dealt with them in the Interim Order and a prayer was made to the bench to consider these submissions while passing the final order.
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> 2.1.2 A doubt was raised whether re-visiting this issue while passing the final order would not amount to re-view of the Interim order. In this context, it is submitted that adjudication the Revenue's specific Ground about compliance of Rule 46A finally at the time of passing of the final order would not amount to 'review' by the Tribunal because firstly the conclusions arrived at the Interim stage are always tentative and not final and the Tribunal would be within its powers to vary or alter interim orders if so warranted on facts and law and in this connection reliance is placed on Calcutta High Court judgment in Susanta Kumar Nayak v. UoI (1990) 185 ITR 627 (Cal.) which has been relied heavily by the Delhi Bench of the Tribunal in its order dated 10th April, 2013 in its Interim Order in ITA No.5797/Del/2012 in the case of Motorola Solutions Ind.

Ltd. v. DCIT.

2.1.3 That apart, it is prayed to appreciate that while passing the Interim order full effect (especially the second stage opportunity to the AO to comment on the reliability of the evidence being introduced) of Delhi High Court judgment and Rule 46A has not been taken note of and hence finally adjudicating the issue in the final order instead of being 'review' would just be bringing the order in conformity with the binding writs of the jurisdictional High Court. Kindly appreciate that since second stage has not been taken care of by the Tribunal in its interim order it can be said that there was omission in Tribunal's order or the patent errors crept therein for which Tribunal is fully empowered to rectify and in fact is duty bound in law while working within the territorial

jurisdiction of Delhi High Court.

2.2 As mentioned, many of the vital arguments taken by the Revenue during the course of hearing in the context of Rule 46A which very obviously must have been taken note of by the Hon'ble Members in their Log Book have been left to be touched upon.

> (a) It was specifically argued that Rule 46A, as explained by Delhi High Court in its judgment in the case of Manish Buildwell Pvt. Ltd {204 Taxman 106 Del}, mandates the CIT(A) to afford AO two opportunities i.e. one at the time of introduction of the additional evidences inviting his objections for introduction; and second about the reliability/genuineness thereof at the time when CIT(A) finally decides to take them on record.

The failure of the CIT(A) in reference to this has not been dealt with by the Bench.

(b) About the decision of the ITAT in the case of DDIT v Human Care Medical Charitable Trust (ITA 2333/Del/2009) it was pointed out that this decision is firstly of the Tribunal and hence cannot be given preference over the High Court Order and secondly it was given prior to judgment of the jurisdictional High Court (in Manish Buildwell) and hence has to be ignored. Unfortunately, the Tribunal has not dealt with this argument at all.

(c) That apart attention is drawn to page 7 (part of para 7) of the Interim order where the Tribunal has observed as under;

> "....Ld. CIT(A) has accepted the additional evidences inspite of the fact that sufficient opportunities were provided to the assessee whereas from assessment order, we do not find any such opportunities. Therefore, the ground taken by the Revenue is factually in correct."

As a matter of records kindly appreciate that these evidences were not filed before the AO and were filed before the CIT(A) for the first time hence these were clearly of the nature of additional evidences and needed to be admitted only ensuring compliance of Rule 46A. Unfortunately, the argument of the CIT (DR) made to that respect has not been taken note of.

2.3 Further, it was argued that once 'remand' had been made which indicate that documents as available were not sufficient enough to come to any judicial decision CIT(A) had no choice but to hold on the appeal decision till the receipt of the Remand Report. Unfortunately this argument has skipped the indulgence of the bench.

2.4 For the sake of enthusing confidence in the litigant parties it is prayed to put these arguments on record and deal with them at the time of passing the final order.

2.5 Case laws relied by the assessee:

When the appeals were argued last time, it was prayed by the AR to consider certain decisions relied by him during the course of hearing earlier. In this connection, it is submitted that the judgments or the decisions relied by the AR are not applicable so as to be used for holding that compliance of Rule 46A was there. These decisions are distinguishable as shown below:

(a) CIT v. Text Hundred Pvt. Ltd. 2011 TIOL 55 HC-IT:This cannot be pressed into service because there the case was of inadvertent error or omission on the part of the assessee whereas in the case in hand there was no inadvertence and rather it was a case where the assessee failed to produce the evidence called by the assessee. Further, this judgment is prior to binding judgment of the Delhi High Court in Manish Build P. Ltd which Revenue is praying to press into service.

(b) CIT v. Mukta Metal Works (2011) 336 ITR 555(P&H): Firstly, it is of non-jurisdictional High Court whereas we have judgment of the jurisdictional Delhi High Court in Manish Build P. Ltd and secondly, that judgment is also distinguishable in the sense that unlike there in the case in hand by no way evidences being introduced could have been said to be authentic because the ld. CIT(A) failed to afford opportunity to the AO to that effect as mandated in Rule 46A as explained by Delhi High Court in Manish Buildwell P. Ltd.

(c) ACIT v. Shri Manoj Narain Aggarwal ITA 5524/Del/2012 dt. 30-

01-2014: This cannot be applied in view of the binding judgment of the Delhi High Court in Manish Buildwell P. Ltd which has to be given primacy over the Tribunal's above decision. Further, even otherwise, this decision is in not applicable in as much as there the CIT(A) had given opportunity of enquiry & investigation also whereas in the present assessee's case the CIT(A) had not given any 2nd stage opportunity to the AO which he was required to provide as explained by Delhi High Court.

(d) Rohtak Co-op Milk Producer Union Ltd. 2012-TIOL 425 Del: This decision has to be rejected because it is based on Mukta Metal Worlks judgment referred to earlier which has been demonstrated to be not holding the field for the purpose of the deciding the issue in hand.

(e) M/s AF Ferguson Associates TS-127 ITAT 2014-Mum: Kindly appreciate that this is the decision of the Tribunal that too of the non- jurisdictional Bench of the Tribunal. This cannot be applied in view of binding judgment of the Delhi High Court in Manish Buildwell P. Ltd which has to be given primacy over the Tribunal's above decision. Further in view of the facts narrated by the AO in the assessment order even otherwise the additional evidences admitted by the CIT(A) cannot be said to be reliable and clinching ones.

"03. Issue of Gift:

3.1 Before proceeding further it is considered necessary to bring to the notice of the Hon'ble Tribunal that the Paper Book as filed containing 44 pages in ITA No.3378

needs to be rejected for following reasons;

Page Reasons for rejection/discrepancies I undated & no evidence of it having been filed. Not a true copy.

2-3 Memorandum of Gift [or 2.05 crores - appears to be not true & reliable because the signature of the Donor Mohit Puri are at variance from his signature in Pass Port (Page 37). It appears that this Deed is signed by some person other than the Donor. Even otherwise it does not appear to be true copy because impress ions of signatures on the left hand side are not there in the copy available on record of the A.O. as produced before the Bench also during hearing.

5 Is not the true copy in as much as the date 08-12-09 is not there in the copy a available on assessment records.

14 Is not the true copy in as much as the while here there are no signatures whereas in the copy as available in assessment records signatures are there.

1-9 Employment Agreement (with Friend's General Trading FZCO seems to be concocted one & not reliable as the signatures on this of Mohit Puri are at variance from the signatures as found in the Pass Port (Paper Book Page No.37).

31-36	Co-operation Agreement with Smart Equipment LLC seems to	be	Inspection concocted one &	Industrial not

reliable as the signatures on this of Mohit Puri are at variance from the signatures as found in the Pass Port (Paper Book Page No.37 & 36) 26-28 To be rejected as these are the documents of Vikrant Puri and not of the assessee."

3.2 At the outset it is mentioned that not only this year, even in other years strangely the assessee has received gifts that too from abroad. Ready reference can be made of AY 04-05 wherein the assessee received huge gift of Rs.10.72 lacs from one Dikshant Sukhija (a Britisher) and in this year including this amount other members of the family received a total gift of about 57 lacs. Kindly appreciate that receipt of huge gifts by the assessee and her family was unnatural. The AO added gift received by the assessee of 10.72 lacs which has been confirmed by the CIT(A). If receipt of the gift amount in this year is kept in view we can appreciate that the receipt of repeated gifts from abroad was probably not genuine. Besides this, it would be relevant to take note of the following important aspects as emanating from the assessment order (for convenience sake AY 07-08 records are referred to) "(a) It may kindly be noted that in the case of assessee Group search took place on 28-02-2007 and by the time of search huge sums had been received from abroad starting from June/July, 2006 onwards and because of the search action the Donor as well as the Donee realized that their cases would any way be assessed u/s 153A or 153C or 143(3) and on scrutiny they would be questioned about the amounts received and on their failing to file acceptable explanation in every likelihood those sums would be taxed. Hence, to dodge the Revenue, all these parties camouflaged these transactions as Gifts and in that process they created Gift Deeds dated 31-03-2007. Thus,

drawing of Gift deed subsequent to receipt of gifts goes to show that the amounts were not received as gifts and only as an after thought to hide the true nature of the transactions, these have been termed as Gifts. This alone goes to show that the amounts were not received as 'gifts'.

(b) Statement of Mohit Puri recorded where he accepted to have given 'gifts' is also not of much relevance and this is also the result of afterthought. Their attempt to hide the true nature of transaction would also become clear from the fact that despite that the donor and donee are residents of Delhi they were filing returns at Kolkata knowing very well that their correct jurisdiction was at Delhi.

(c) Even the Employment Agreement of Mohit Puri is also the result of afterthought. Kindly appreciate that Employment Agreement with Friends General is dated 25-04-2006 (which falls in the AY relevant to the dates of gifts) which has been done to cover the date of remittances to India in the bank accounts of parents which were later on termed as Gifts. Absence of Agreements for earlier period or absence of bank accounts of the Donor also indicate their attempt to suppress the true nature of transactions. Is it not unnatural that the Son would gift his entire income to the parents that too without their being any occasion.

(d) After thought would also become clear from the important fact that

(i) In the Return filed there was no disclosure of receipt of any Gift and only during the course of search the factum of receipt of Gift came to the knowledge of Revenue.

(ii) In the Return the assessee has admitted to be involved in doing some business for which income is filed u/s 44AD.

(iii) AO had issued the assessee Notice u/s 143(2) which was not complied.

(iv) On 22-04-2009 assessee was issued detailed questionnaire soliciting information on 20 points relevant to assessment but this was not complied with.

(v) On 24-09-2009 one more notice u/s 143(2) was issued to attend on 13-10-2009 which was complied only in part. In regard to this it important to note the following;

(a) Vide Point No.11 (of compliance letter dated 13-10-2009) assessee said "In the absence of business activity, no debtors/creditors were outstanding as on balance sheet." which is absolutely false & contrary to return filed wherein admitting business income u/s 44AD is found shown.

(b) Apart from receiving Gift from Son Vikrant Puri strangely the Assessee has shown to have given him (Vikrant) Gift of 3.50 lacs.

(vi) About the receipt of Gift of 2.05 crores from her Son Mohit Puri, it is to be noted that;

(a) All the Gifts have been received by cheque issued in seriatum {(a) by 21 Cheques 650018 to 650038-ICICI Bank, Mumbai each of 5 lacs on 05-12-2006 & (b) by 20 Cheques 018303 to 018308 & 108312 to 018314 & 010712 to 010721-Catholic Syriyan Bank, New Delhi each of 5 lacs on 06-02-2007} as if the Bank Accounts were being maintained only for giving Gifts.

(b) Gift Deed is unsigned, unregistered, unwitnessed, not even notorized & place of execution of deed is also absent.

(vii) About the receipt by Shri Vinay Puri of Rs.3.45 crores from Mohit Puri, Son whom Smt. Shashi Puri is representing as Legal Heir, there is neither Paper Book from assessee's side nor any documents filed even during the course of hearing & hence it is not possible to comment as to about the compliance of Rule 46A & hence this being the major issue it is prayed that this appeal be delinked for which request was made earlier also when the case was taken up for hearing.

(viii) From the assessment order it would be noticed that

(a) Mohit Puri, the Donor became Non-Resident only in AY 06-07 and the donee , the assessee failed to prove the capacity of earning income by him in Dubai to make such huge gifts.

(b) In action u/s 132 the document found (Income Computation Sheet) showed negligible income of Mohit Puri. Strangely the Donor first became the donee (gifts received from International World) and then became Donor and applied the gift money in giving gifts to mother & father.

(c) Gifts received by Shashi Puri & Vinay Puri are found to have been given to Vikrant Puri another son against whom allegation of being involved in Hawala racket was there. Thus, clearly the circumstantial evidences as referred to would show that Hawala earned income of Vikrant Puri has been laundered first as Gifts to Donors and then to Donee (Shashi Puri & Vinay Puri) and then finally rests with him as Loans etc for being used in purchasing properties.

(d) Discussion made in para 3 of the Assessment Order shows that Vikrant Puri who was laundering the money was involved in Hawala operations and was assisting Sanjeev Nanda (son of Suresh Nanda against whom allegation of illegal income on arms deals was there) otherwise where was the need of his going to Mumbai or representing Sanjeev Nanda before Bipin Shah & Anand Shukla other associates of Suresh Nanda & Sanjeev Nanda.

(e) Humble attention is drawn to Delhi High Court judgment dated 07-11-2013 in DIT-I, International Taxation v. Alcatel Lucent USA, INC (copies already placed on records during hearing) where the Court quoted in extenso Esthuri Aswathiah v. CIT 66 ITR 478 SC and viewed that in income tax proceedings conclusive proof is not predicated and the Tribunal may act upon probabilities and presumptions. Considering the peculiar circumstances of the case narrated above, it would be but logical for the Tribunal (like the AO did), to infer that the impugned amounts do not represent genuine gifts.

3.3 On the basis of discussion and evidences AO concluded that

(i) Mohit Puri does not have ability/capacity to make donations;

(ii) In the garb of gifts unaccounted income has been introduced;

(iii) There is no specific reason/occasion to receive such gifts;

(iv) Vikrant Puri is a Hawala Operator.

While making addition the AO inter alia relied upon 5 decisions of the Tribunal/High Court including of the jurisdictional Delhi High Court.

3.4 Before discussing as to what specifically was held by the CIT(A) it would not be out of place to mention that under the Income Tax Act the CIT(A) has been conferred plenary powers meaning thereby that while adjudicating appeals he is duty bound to take care of the short-comings crept on the part of the AO because time limitation is not there on CIT(A) and when it is so it is natural to infer qua the interests of Revenue that because of the paucity of time full consideration would not have been there on the AO's part. In this context ready reference is drawn to K. Mohammed v. ITO 107 ITR 808 Ker where it was held that the CIT(A) is not only empowered but is also obliged to allow a further enquiry so as to find out the true state of affairs. While submitting that the CIT(A) forgot his role, it is seen that he has deleted the addition for the following reasons;

(a) He admitted (para 2 of order) additional evidences with the reasons that

(i) AO did not file remand report on the additional evidences;

(ii) AO framed order after a lapse of 23 days of the last hearing;

and relied on ITAT Jaipur Bench decision in Electra (Jaipur) P. Ltd. 23 ITD 236 which held that where the evidence is genuine, reliable, proves the case of the assessee additional evidence need to be admitted.

(b) He in para 2 considered AO's order, AR submissions, Remand Report & AR's rejoinder to AO's remand report.

(c) He viewed the Gift Deed filed before the AO explaining the Gift to be out of love and affection and placing reliance on Delhi High Court judgment in Suresh Kakar's case { 324 ITR 321} held that there need not be any occasion for Gift to be out of natural love and affection.

(d) Qua the 'genuineness' CIT(A) said that

(i) AO had not given any reasons for doubts in his mind & held that addition cannot be made on the basis of doubts and for that reliance was placed on ITAT, Mumbai Bench decision in Guruprerna Enterprises.

(ii) He also noted that the Donor is the son of the Donee and he had admitted factum of making gift in his statement recorded u/s 132(4) and that AO failed to bring forth any material on record to prove that the gift is bogus and that he had also failed to find fault with the additional evidences filed before him.

(iii) He also held irrelevant AO's observations qua Vikrant Puri, her another son to be Hawala Operator that too when no evidence is brought on record especially when he (Vikrant Puri) was not even the donor/done.

With this CIT(A) held the Gift to be 'genuine' and also that AO cannot investigate source of the source.

(e) On the basis of confirmation from Employer (page 5 of paper book filed before him) he also held the AO to have arrived at hasty conclusion. He with that has admitted documents filed by the assessee in appeal u/r 46A of the Act.

(f) About the decisions relied/referred by the AO in his order, the CIT(A) held them to be distinguishable and inapplicable because;

(i) In Shyam Sunder Gupta {51 TTJ 436 Jpr} donor failed to give donor's address;

(ii) In Lal Chand Kalra { 22 CTR 135 P&H} donors were men of no means;

(iii) In Precision Finance {208 ITR 465 Cal} even identity was not established;

(iv) In Sajan Das & Sons case {264 ITR 435 Del} donor had denied making any gift.

3.5 Why order of the CIT(A) cannot be sustained:

> (i) In so far as admission of additional evidences are concerned for the reasons mentioned above, the decision of the CIT(A) needs to be reversed as it is not only against the requirement of Rule 46A but also against the judgment of the Delhi High Court in Manish Buildwell P. Ltd.{ 204 Taxman 106 Del}.

In regard to CIT(A) finding where he held the 'Gifts' to be genuine it is submitted that he while adjudicating the appeal failed to take note of the binding judgments of the Supreme Court. As a matter of fact when seen dispassionately Bench would notice that the order of the CIT(A) is in disregard of the judgment of the Supreme Court in Sumati Dayal v. CIT{ 214 ITR 801 SC} where referring its own judgment in Durga Prasad More {82 ITR 540 SC} it was laid down that taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. Receipt of repeated amounts by the assessee as well as her husband from the Donor (Son) that too without there being occasion; filing of return at Kolkata despite actually being residents of Delhi; non- disclosure of gift in the Return; first receiving money and then drawing gift deed etc. are clearly against the human

probabilities in which any genuine gift transaction is made. In the facts and circumstances narrated by the AO it was clear that the transactions camouflaged as gifts were really not of the nature of gift. Had the CIT(A) pressed (which he was duty bound to do so) into service the test of 'human probabilities' as laid by the Supreme Court in its above judgments as also reiterated by Delhi High Court in its recent judgment dated 07-11-2013 in Alcatel Lucent Ltd. supra he would have very easily come to conclusion that the transaction was clearly not of genuine Gift.

(ii) In so far reliance of the CIT(A) on Delhi High Court judgment in Suresh Kumar Kakar (324 ITR 321) is concerned it is submitted that this decision has been wrongly relied upon by the CIT(A) as this is a judgment wherein Revenue's appeal has been dismissed holding that 'no substantial question of law arises' and hence this did not have any precedential value because to call any judgment to be having any precedential value there must be a question of law and to say so ready reliance is placed on Supreme Court judgments in State of Punjab 194 ITR 434 SC & State of UP v. Synthetics and Chemicals Ltd.{(1991 4 SCC 139 SC}.

That apart, even otherwise fact situation in that case was different from the case in hand in the sense that there the gift was between the parents & the son which is a quite normal incidence (parents giving gifts to their sons/daughters) of Indian life whereas in the present case strangely it is given by the Son to the mother. Further, in Suresh Kumar's case there was no doubt about the capacity of the donor whereas in the present case AO was not satisfied about the capacity of the donor.

(iii) In so far as attempt of the CIT(A) in rejecting the AO's reliance on Shyam Sunder Gupta case; Lal Chand Kalra; Precision Finance; and Sajan Das & Sons case is concerned it is pointed out instead of going by the spirit of the these decisions the CIT(A) has discarded them by just hair splitting. That apart, it is submitted that even otherwise the decision of the CIT(A) is contrary to following judgments of jurisdictional Delhi High Court;

(a) Rajeev Tandon v. ACIT { 294 ITR 488 Del} where Tribunal's action in sustaining addition made by the AO taking into account the surrounding circumstances was endorsed. Fact situation of this case fits into the case in hand in as much as for holding Gift to be not genuine, the AO has made a detailed discussion in the order to come to the conclusion that the transaction was clearly not of a 'genuine gift'.

(b) Sajjan Dass and Sons { 264 ITR 435 Del} where Tribunal's action--in sustaining addition made by the AO of Gift and holding that just receipt of gift by cheque or mere identification of donor by themselves are not enough to hold a transaction of genuine 'gift-- was endorsed. Like that case, in the present case also though gift is received by cheque and donor is identified but unfortunately circumstances narrated in the order were clearing casting doubt on the capacity of the donor and in turn on the genuineness of transaction as a gift.

(c) CIT v. Anil Kumar { 292 ITR 552 Del} where action of the AO was ultimately endorsed because like the case in hand the donoee assessee had failed to prove the creditworthiness of the donor. Kindly note that in the case in hand in the assessment no documents were filed proving the capacity of the donor. On the contrary the circumstances as narrated by the AO were clearing showing that

the donor apparently did not have any genuine capacity to give such huge amounts as gifts that too to own mother that too without there being any occasion.

3.6 In support of Revenue's stand further reliance is placed on

(d) Jaspal Singh v. CIT { 290 ITR 306 P&H} where it was held that if donee fails to prove that the donor had means and that it was a genuine gift addition can be made. Like that in the case in hand also it would be noticed that the donee assessee had failed to bring on records before the AO supporting evidences to prove the genuine capacity of the donor considering the repeated making of gifts by the donor on about 41 occasions that too by cheques in seriatum.

(e) Chainsukh Rathi v. CIT { 270 ITR 368 Raj} where the fact situation was identical (gift between father & son) addition was sustained because gift was without there being any occasion. In the case in hand also gifts are received (repeatedly) from the son but without any specific occasion. Thus, going by this judgment, absence of occasion was rightly considered by the AO a relevant factor to treat the gift to be not a genuine transaction of gift.

3.7 During the course of hearing the AR argued that the manner in which arguments have been made amounts to making out a new case by the DR at the appellate stage which Revenue cannot do. In this connection, it is submitted that attempt on Revenue's part does not amount to making out entirely a new case different from that of the AO. It needs to be appreciated that before the AO the Assessee did not comply with many of the vital details and there was failure on the part of the CIT(A) in making compliance of statutory provisions (e.g. Rule 46A). Kindly appreciate that whatever arguments are made they are made on the basis of the evidences filed by the assessee and the assessment order framed by the AO. AR must appreciate that the Tribunal cannot throw away vital arguments touching upon the certain aspects of the case which, when touched upon, will ensure substantial justice and on this ready reference is made of the Supreme Court judgment in Killick Nixen & Co., {66 ITR 719 SC} where it was held that the Tribunal being the final authority on facts is bound to consider all the evidence and the arguments made by the parties. .

In view of this it is prayed that Hon'ble Tribunal may kindly deal with each and every contention being raised now in the submissions as well as raised at the time of oral arguments.

3.8 Rebuttal to Written Note filed by AR at the conclusion of hearing:

> While submitting that all the points raised in the above Written submissions need to be rejected in view of the present submissions of the Revenue it is further submitted that;
>
> (a) When the law is that assessee has to establish the creditworthiness it is but natural that AO before getting satisfied can enquire into the source of the source and this is what has been held by the High Courts in various case laws referred by the Revenue both in the oral and written arguments.

(b) In so far as the reliance of the assessee on Delhi High Court judgment in the case of Ms. Mayawati {338 ITR 563 Del }is concerned it is submitted that this order also does not carry precendetial value because the High Court instead of framing the question of law dismissed the Revenue's appeal by saying that in its opinion substantial question of law does not arise so as to invoke the jurisdiction of the High Court u/s 260A of the Act.

(c) In so far as arguments qua Vikrant Puri are concerned the assessee does not appreciate that in the facts and circumstances of the case (as brought out in the assessment order as well as in the present submissions) the inferences/conclusions drawn by the Revenue were very reasonable & logical. Further, the defence that Mr. BB Shah had given the statement to save his skin is just an imagination; and without appreciating as to why Mr. BB Shah who was based in Bombay will implicate Mr. Vikrant Puri unless he was really known or associated with him or with Mr. Sanjeev Nanda who were basically based in Delhi.

(d) On the argument that DR has made a new case as already pointed out, it needs to be appreciated that DR has not made a new case at all and has just invited the attention of the Hon'ble bench about the core issue of genuineness of gifts in regard to certain crucial aspects of the case that too based upon the documents filed by the assessee before the Tribunal. Bench is prayed to appreciate that to hoodwink the AO, there was virtually no effective compliance(as indicated in these submissions too) nor the CIT(A) had directed AO to investigate the matter further by passing specific remand order and because of this AO did not get any reasonable opportunity to highlight very clearly certain crucial aspect of the case.

(e) On reply to Revenue's reliance on Supreme Court judgment in State of Punjab v. Surinder Kumar {194 ITR 434 } & State v.Mahadev Shetty {(2003) SC 4172} it is pointed that the assessee has not appreciated that a ratio of a case cannot be discarded especially when coming from the Supreme Court with the flimsy argument that those cases were not under the Income Tax Act. The assessee should appreciate that what is binding in a judgment is the 'ratio decidendi' and that ratio cannot be discarded by just saying that decision in that case was under a different law that too without showing as to how those decisions cannot be applied under the Income Tax Act."

B. The written arguments of Ld. A.R. are reproduced as under:

"1. (a) Before the arguments of the Ld. D. R. are taken up, kind attention of the Hon'ble bench is drawn to the ground no. 3 of the deptt which is extracted below:-

"Whether the Ld. CIT (A) has erred in deleting the addition of Rs. 2,05,00,000/- received as gift as vital facts have been ignored by the CIT (A)".

(b) The only ground is that CIT (A) has ignored the vital facts while deleting the addition. The Ld. DR has not pointed out any vital fact which has been ignored by the Ld. CIT(A). A perusal of the CIT(A)'s order clearly indicates that all the facts mentioned in the assessment order have been duly considered. Therefore, the appeal of the revenue can be dismissed on this ground only.

2. As regards rule 46A (Para 2 of DR's submission), interim order is w.r.t the appeal filed by the revenue. It is not an interim order on the issue u/r 46A, i.e., ground no. 2. This ground has been finally decided against the revenue vide para 10 of the interim order dt. 28/1112004. There is nothing interim w.r.t. ground no. 2 as is clear from the order itself.

Therefore, the decision regarding rule 46A being final, in my humble opinion, cannot be reviewed now as it is a closed matter.

3. The Ld. DR has made a request for rejecting the paper book (Para 3.1 of DR's submission) on various grounds which are based on surmises and conjectures. The correct facts are stated as under:-

> i) Page 1 of paper book: - This is already certified as true copy. During the course of hearing before the AO, papers are filed across the table and no acknowledgment is taken. Moreover, DR himself confirmed filing of this sheet from the assessment records during the course of final hearing on 17112/2014 before the Hon'ble Bench.
>
> ii) Page 2 and 3 of paper book:- Kindly see para 10(iii) & (iv) of synopsis of submissions filed by me on 17112/2014 during the course of hearing before the Hon'ble Bench. As regards some impressions on the left side, it is because of some error during photocopy.
>
> iii) Page 5 of paper book: - During the course of last hearing, the Ld. DR confirmed from the asst. records that this letter was filed on 08112/2009.
>
> iv) Page 14 of PB: - This page is the translation of the agreement as mentioned on the top and is duly signed by the translator. The agreement is on page 23 where it is duly signed by the employer, the employee, i.e., the donor and the witness as seen by the Ld. DR himself in the asst. records. This is just misleading the Hon'ble Bench by twisting the facts.
>
> v) Page 1 to 9 PB: - Pages are wrongly mentioned.
>
> Employment agreement is not on page 1 to 9 but on page 15 to 25.

Difference in signature is already explained in para 10(iv) of the synopsis of submissions filed by me during the course oflast hearing. The Ld. DR has conveniently ignored the same.

vi) Page 31 to 36 PB: - Difference in signature is already explained in para 10(iv) of the synopsis of submissions filed by me during the course of last hearing.

vii) Page 26 to 28 PB: - He has not read the papers. They don't relate to Shri Vikrant Puri but to Shri Mohit Puri, the donor. During the search proceedings, the status of Shri Mohit Puri was explained to the DDI vide this letter.

4. i) The Ld. DR has mentioned that the employment agreement and the cooperation agreement seem to be concocted once. The use of word "seems" clearly indicates that he is not sure what he wants to convey. It is only a doubt in his mind on the basis of surmises and conjectures only. No addition can be based on doubts as explained in para 5(ii) of my synopsis of submissions by relying upon the decision of Hon'ble IT AT Mumbai in the case of Guruprerna Enterprises.

ii) Further there is a latest judgment from Hon'ble Delhi High Court in the case of Globus Infocom Ltd. vs. CIT, (2014) 108 DTR (Del) 363, wherein it has been held that the use of word "possible" means no finding but only surmises and conjectures. Relevant extract if reproduced hereunder:-

> "Commissioner, instead of commenting upon or giving a final finding whether aforesaid apportionment was acceptable or not, observed that it was possible that there was an attempt to inflate expenses on trading activity and an attempt might have been made to reduce actual expenses of the exempt unit-Use of word "possible" would indicate that there was no finding and adjudication by Commissioner and his observations were based on mere suspicion and certainly uncertain-Commissioner was unsure whether or not bifurcation was right.. .. "

iii) In fact it is Revenue's appeal and it was the duty of the Revenue to file the Paper Book if it was serious to defend the AO's order. But the Ld. DR did not do so and wanted the assessee's paper book to be rejected on flimsy grounds and non existing facts.

5. In para 3.2 (a), the Ld. DR has discussed A. Y. 2004-05 which is not relevant here and in fact the appeal against the order of Ld. CIT (A) is pending before the Hon'ble ITAT. In all fairness, the Ld. DR should have pointed out that the assessee did not receive any gift during A. Y. 2005- 06 and 2006-07 in between A. Y. 2004-04 and 2007-08.

6. i) The Ld. DR (para 3.2 (b)) has stated that gift deed is an afterthought. Search was conducted on 28/02/2007. Gifts were given in Dee, 2006 and Feb, 2007. During the course of search, statement of Shri Mohit Puri, donor, was recorded wherein he clearly stated that he has given the gifts to his parents. Therefore, how can the factum of gift can be an afterthought because the search action was sudden act and Shri Mohit Puri was in Delhi on holiday. It could be an afterthought, if the department had given a notice of search before the action taken which is never the case. Therefore, the concept of afterthought is only an imagination.

ii) Earlier, Puris were living in Kolkatta and filed the returns there by stating the then address of Kolkatta. The objections of Ld. DR could be valid if the Deptt. at Kolkatta had been different than

Deptt. in Delhi. (Para 3.2 (b))

iii) The Ld. DR says (para 3.2 (c)) that employment agreement date of 25/04/2006 is for explaining the gifts as there is no agreement prior to this date. It is a fact on record that Shri Mohit Puri left India for employment in Dubai on 09/04/2006 (Page 5, PB). Copy of passport is in possession of DDI (Inv) (Page 28, PB). Since he was in India upto 08-04-2006, how could there be any agreement for employment in Dubai prior to April, 2006. Agreement for this year was filed as the Ld. AO has asked for the creditworthiness of the donor.

iv) The Ld. DR has stated (Para 3.2 (c)) that the son giving gifts to parents and that too without any occasion is unnatural. In this regard kindly see Para 10(i) and 5 (iii) of my synopsis filed during last hearing.

v) The Ld. DR says (Para 3.2 (d)(i)) that gift is not declared in the return. In fact search was conducted during the F. Y. of the gifts itself. By that time, return had not become due. Even the previous year concerning the gift did not end at the time of search. Moreover, during search, .factum of gifts was clearly admitted by the donor. Further, there is no column in the return of income for A. Y. 2007-08 to mention the gifts.

vi) The Ld. DR says (para 3.2 (d) (ii), (iii) and (iv)) that the questionnaire issued by the Ld. AO was not complied with. This is against the facts on record. The Ld. AO has admitted on the first page of the asst. order itself that Shri Aditya Purwar, CA, attended the proceedings from time to time, filed necessary detailsl clarifications and the case was discussed with him. Therefore, it is very clear that all the details were filed. Since the AO was satisfied, he did not make any addition except on gift. It appears that the CIT (DR) is stepping into the shoes of the CIT and is reviewing the asst. order u/s 263 which is not within the jurisdiction of the DR as mentioned in para 9 of synopsis of submissions filed during last hearing.

vii) Para 3.2 (d)(v): - The assessee has not received any gift from Shri Vikrant Puri.) one donor is Shri Mohit Puri.

7. Para 3.2 (d)(vi)(a): - As regards gift of Rs. 2.05 crore, the basic ingredients have been explained in para 3 of my synopsis of submissions and the Ld. DR has not found any fault on the contents thereof.

8. As regards Late Shri Vinay Puri, Ld. DR says (Para 3.2 (d)(vii) that no paper book was filed. He has again misrepresent the facts because paper book was duly receipted in his office as well as in the office of Hon'ble IT AT on 26/08/2011. In fact the office of ITAT accepts the paper book only after seeing the receipt of Ld. DR. moreover, even in the case of late Shri Vinay Puri, it is the appeal of department and therefore, Ld. DR should have filed the paper book.

9. Para 3.2 (d) (viii) (a):- As regards capacity of donor, kindly see para 3 (e), (f) and 6 of my synopsis of submissions filed during the course of last hearing.

10. Para 3.2 (d) (viii) (b): - During search, computation sheet found was for A. Y. 2004-05 when he was resident in India and did not have any income from abroad. This fact is irrelevant as far as the gift in question is concerned. The source of gift has already been explained in para 3 (e) of my synopsis of submissions filed during the course of last hearing.

11. a) The Ld. DR says (Para 3.2 (d)(viii)(c» that Shri Moit Puri applied the gift received to give gift to parents which is again against the facts on record. Gift amount is out of his earning in Dubai for which sufficient evidence had been filed before the Ld. AO himself (Page 5 PB).

b) The Ld. DR says that it is Vikrant Puri's income which has been given to the donor and then to the done and ultimately to Vikrant Puri. It is only his imagination because he has not led any evidence to prove the same. Interestingly, the Ld. DR admits that money does 01 belong to Sashi Puri and Vinay Puri. Therefore, by Ld. DR's own admission, no addition can be made in the hands of assessee.

c) Ld. DR has also referred to the use of money by the donee and activities of Shri Vikrant Puri. In this regard, para 5 (iv) of my synopsis of submissions filed during the course of last hearing may kindly be seen.

12. Para 3.2 (d)(viii)(d): - The Ld. DR is referring to the visit ofShri Vikrant Puri to Mumbai for representing Shri Sanjeev Nanda. There is no such material on record and is based only on his imagination. Kindly also see para 5 (iv) of my synopsis of submissions filed during the course of last hearing.

13. Para 3.2 (d)(viii)(e): - the Ld. DR says that probabilities and presumptions should be considered. Surprisingly when there are clear evidences regarding identity, genuineness and creditworthiness which have not been disputed by the Ld. AO, where is the scope for probabilities and presumptions. Kindly see para 3,4,5 and 6 of my synopsis of submissions filed during the course of last hearing.

14. Para 3.3: - In this regard kindly see para 4,5,6,7 & 8 of my synopsis of submissions filed during the course of last hearing

15. Para 3.4: - The Ld. DR says that CIT (A) is duty bound to plug the loopholes in the asst. order because AO has time limitation for completing the assessment while CIT (A) does not. If this argument is accepted, it will make section 153, providing time limit for completion of assessment, redundant. The Ld. DR emphasizes that CIT (A) must strengthen the weakness in the asst. order by compulsorily conducting further investigation which was not done by the AO. But the IT Act does not say so. Section 250 lays down the procedure in appeal before CIT (A). Section 250 (4) clearly says that CIT (A) "may" make further enquiry. The legislature in its wisdom has not use the word "shall". Therefore, CIT (A) is not duty bound to make further enquiry. He can make further enquiry only when he thinks it to be necessary. In fact CIT (A) gave second chance to the AO to verify the submissions of the assessee vide letter dated 04/03/2011. The Ld. AD did not send any adverse comment even for a month. Therefore, after waiting for a month, CIT (A) has decided the appeal on merits. Moreover, even after appeal was filed, the AO was given the first chance to represent the case

before CIT (A) but he did not attend the hearing. All these facts clearly lead to the only legal inference that AO had nothing to say in the matter and agrees with the arguments of the assessee.

16. Para 3.5 (i): - In this para Ld. DR refers to the judgment in the case of Sumati Dayal. In this regard, kindly see para 10(i) of my synopsis of submissions filed during the course of last hearing.

17. Para 3.5 (ii): - In this Ld. DR has objected to the case law of Shri Suresh Kumar Kakkar by relying on some case laws. In this regard, kindly see para 10(viii) of my synopsis of submissions filed during the course of last hearing. Further, a perusal of the Delhi High Court judgment in the case of Shri Suresh Kumar Kakkar clearly shows that the Hon'ble Court has applied its mind on merits also as is clear from the extract below: -

> "2. We have heard the counsel for the parties. At the outset, we may state that we have not gone into the issue of the validity of the proceedings under s. 147 of the said Act in as much as we find that the Tribunal has come to a correct conclusion on the merits of the matter. On merits, we find that the points in issue are gifts totaling to Rs. 24.77 lakhs made by the mother of the assessee in favour of the assessee during the financial year 1999-2000. The AD rejected the contention of the assessee that these were gifts made by the mother and held the same to be unaccounted income of the assessee and made an addition of Rs. 24.77 lakhs under s. 68 of the said Act. The CIT(A) examined the matter and agreed with the findings of the AD with regard to the genuineness of the gifts. According to the CIT(A), the gifts were not genuine. One of the reasons, and strangely so, was that gifts are normally given on the eve of some occasion and since these gifts were not given in relation to any occasion, the same were doubtful. We fail to understand the logic adopted by the CIT(A). We must keep in mind that this is a case of gifts made by a mother to a son. Such gifts do not require any occasion and the mother can make a gift to her son at any time."

18. Para 3.5 (iii) and 3.6:- a) The Ld. DR has referred to certain case laws relied upon by him and AO. In this regard, Para 8 and 10(ii) of my synopsis of submissions filed during last hearing may kindly be seen. Moreover, in the case of Sajjan Das & Sons, the only claim was receipt of gift by cheque and in the case of Shri Anil Kumar and Shri Jaspal Singh, the creditworthiness of donor was not proved while in the case of assessee, his statement was recorded confirming the gift and source of funds was fully proved beyond any shadow of doubt as explained in para 3 (e) of my synopsis of submissions. Therefore, none of the case laws referred to by the AD 1 Ld. DR is applicable to the present case.

b) In fact, there is no relevance of income w.r.t. the quantum of gift. This view is further confirmed by the judgment of Hon'ble ITAT Agra in the case of Shri Avnish Kumar Singh vs. ITO, 2009-TIOL-768-1TAT-AGRA-TM, the relevant extract from which is reproduced hereunder: -

> " j) source of the gift is the receipt through a cheque of Rs.2,46,000 received by the donor from the Balaji Trading Corporation, Delhi, and a cash amount of Rs.3500. The adverse facts as pointed out by the Accountant Member i) that the assessee or his

> family had never made any gift of any amount to anybody; ii) that the gift was not on any occasion or function; iii) that the donor visited his house one or two times though, never beyond the drawing room; iv) that the donor is the person of low financial status having monthly income of less than Rs.5,000/- and has shown withdrawals from his capital account less than Rs.3000/-

per month; v) that the donor has no house no telephone number, no fixed deposit and not any other immoveable assets; or that the original deposit by the donor of Rs.1,25,000 with Balaji Trading Corp. was not proved are not so material to hold the gift not a genuine one or sources thereof unsatisfactory .

ORDER Per: I C Sudhir:

> Due to difference of opinion between the Members of the Bench, the matter was referred to the Third Member. The ld. Third member has agreed with the view taken by the ld. Judicial Member. Thus, keeping in mind the majority view, the appeal preferred by the assessee is allowed.
>
> 2. In the result, the appeal is allowed."

19. Para 3.7: - The Ld. DR insists that he has a right to present the case in any manner if there is failure on the part of AO I CIT (A). Ld. DR is forgetting that he is not functioning u/s 263. Ld. DR cannot take up a new contention dehors the view taken by the AO. According to him, AO, CIT (A) and DR, all are supposed to continue to frame assessment. Limitations of DR is discussed in para 9 of my synopsis of submissions filed during last hearing. He has not stated as to why the judgment of IT A T Special Bench in the case of Mahindra & Mahindra should not be followed.

20. Para 3.8 (a): - As regards source of source, kindly see para 3

(t) of my synopsis of submissions filed during last hearing. DR has not found any fault with these case laws which means that they are applicable to the present case. Further, reliance can also be placed on the judgment of Hon'ble ITAT Delhi in the case of Moongipa Investment Ltd. vs. ITO, (2012) 70 DTR (Del)(Trib) 132. Relevant extract is reproduced hereunder: -

> "Held: -:
>
> Since the assessee has proved the identity and also creditworthiness of these lenders, the assessee cannot be asked to prove the source of the source of the creditors. There is no evidence on the record which could show that the deposits made in the books of account of the creditors were from the money belonging to the assessee itself. Similarly, the explanation about the source of deposit in the creditors account, if not found to be acceptable, then also the addition cannot be made in the hands of the assessee. It may be subjective to the proceedings for inclusion of the amount as income of the depositors from the undisclosed sources or if they are found benami

then the real owner can be brought to the tax."

21. Para 3.8(b): - Ld. DR has objected to the judgment of Hon'ble Delhi High Court in the case of Ms. Mayawati. In fact, the merits of the case were also discussed by the Hon'ble High Court as is clear from para 5(iii) of my synopsis of submissions already filed.

22. Para 3.8(c): - Again, here Ld. DR refers to Shri Vikrant Puri, Shri B. B. Shah and Shri Sanjeev Nanda. They are neither donor nor donee. In fact, they are alien to the gift under question. Moreover, such a reference has already been explained in para 5(iv) of my synopsis of submissions already filed. The Ld. DR has not found any fault with these submissions.

23. Para 3.8 (d): - Ld. DR says that assessee did not make any compliance before the Ld. AO and Ld. CIT (A) did not give any opportunity to the AO. These contentions are totally baseless as discussed in para 6 (vi) above.

24. Para 3.8 (e): - The judgment in the case of Shri Surinder Kumar has already been discussed in para lO(viii) of my synopsis of submissions already filed.

25. In the case of gift, the assessee has to establish the identity, genuineness and creditworthiness of the donor which has been done as explained in para 3 of my synopsis of submissions already filed. Reliance is also placed on the case laws in para 6 of my synopsis of submissions already filed."

6. We have heard rival parties and have gone through the material placed on record. First of all, we must state that we are not convinced with the argument of Ld. D.R. that case law of Manish Buildwell has not been considered while deciding ground No.2 and therefore, it was requested that the same may be considered while passing final order. In this respect, it is to be noted that ground No.2 has already been decided vide order dated 28.11.2014. If the Revenue was not satisfied with this order, the revenue should have filed ma for rectification of mistake if any. The Tribunal order dated 28.11.2014 is a final order so far as ground NO.2 is concerned and Ld.D.R. while raising certain objections with respect to that order has probably not read out that order in its right perspective. Though, we are not obliged to clarify our understanding of the law, yet for the sake of completeness of order, we would like to state that requirement of law for acceptance of additional evidence as per judgement in the case of Manish Buildwell as decided by Hon'ble Delhi High Court was very much followed in the appeals under consideration. As per the case law of Manish Buildwell, the Ld. CIT(A) is obliged to provide opportunity to A.O. twice i.e. one before accepting the additional evidence and secondly after admission of additional evidence.

7. Now, let us examine as to whether these requirements were met or not in the present cases. In I.T.A .No. 3378/Del/2011, Ld. CIT(A) has noted at para 2 that application of additional evidence was forwarded to A.O. vide letter dated 20.01.2010 (2010 should be read as 2011). The Ld. CIT(A) further mentions that no remand report was received till the passing of order i.e. till 06.04.2011. Thereafter, after waiting for remand report, he admitted the same in the concluding lines of para 2 of his order. Para 2 of his order is exhaustive and self explanatory. After admission of additional evidence, the written submissions of assessee dated 10.02.2011 as placed in paper book pages 40-44

which included the merits of additional evidence were forwarded to A.O. vide letter dated 04.03.2011. Ld. CIT(A) noted that A.O. did not offer his comments on merits also therefore, after waiting for the reply, he decided the issue on merits. These facts are noted in para 3 of his order.

8. Similar is the position in I.T.A.No. 2279/Del/2011 where application filed under Rule 46A was forwarded to A.O. on 20.01.2011 and after not receiving remand report on additional evidence those were admitted and after admitting the same written submissions, including merits of additional evidence placed in paper book pages 29-33 were forwarded to A.O. for his comments. In this appeal even reminder was sent on 24.02.2011 but A.O. did not bother to reply. These facts are noted in para 3& 4 of his order.

9. From the above noted facts, it is apparent that law laid down by Hon'ble Delhi High Court In the case of Manish Buildwell was duly followed by Ld. CIT(A) and A.O. was given opportunity on two occasions i.e. one before accepting the additional evidence and another after accepting the additional evidence. This argument of Ld. D.R. that additional evidences were accepted in violation of judgement of Hon'ble Jurisdictional High Court, is misplaced.

10. Now under such circumstances, when the A.O. does not reply to Ld. CIT(A) what Ld. CIT(A) can do. Ld. CIT(A) cannot hold appellate proceedings for a long period and that too for the fault of A.O. The answer to tackle such a situation has been given by Hon'ble Tribunal in the case of DDIT Vs Human Care Charitable Trust, which was relied upon by Ld. A.R. Under these facts and circumstances, ground No.2 was decided against Revenue. For the sake of convenience, the findings of the Tribunal in respect of Ground No.2 in its order dated 28.11.2014 is reproduced below:

> "5. We have heard rival parties and have gone through the material placed on record. Without commenting upon merits of the appeals, the issue of violation of Rule 46A is being decided through this interim order. We note that the facts in both the appeals are similar wherein gifts were sent by one Mr. Mohit Puri to his parents Mr. Vinay Puri & Mrs. Shashi Puri. Mr.Vinay Puri has since expired, Smt. Puri is now assessee in both these appeals one in her individual capacity and one as legal heir. We observe that the A.O. originally issued notice u/s 142(1) on 22.04.2009 and then again after a period of 5 months the A.O. again issued detailed questionnaire on 23.09.2009 and has passed order on 29.12.2009. The A.O. at page 2 of his order has mentioned that no details were furnished by the assessee whereas page 5 is a letter dated 08.12.2009 written to A.O. and received by his office wherein the assessee had submitted certain evidences to prove the creditworthiness of Mohit Puri. In the same letter, the assessee had submitted that another evidence of income of Mr. Puri was not yet available but will be furnished shortly.
>
> 6. For the sake of convenience, contents of this letter are reproduced below:
>
> "In respect of above said matter, under instructions of the assessee, it is bring to your kind notice that Mr. Mohit Puri left India for the purpose of employment with Mis. Friend's General Trading FZCO, Dubai on 09.04.2006. A copy of his employment

> agreement is enclosed. Confirmation from the said employer regarding payment of reimbursements and commission during the period April 2006 to December, 2006 are enclosed. Additionally, the assessee was engaged in the business of real estate brokerage abroad with M/s. Smart Inspection Industrial Equipments LLC, Dubai. A copy of confirmation for the same is awaited and will be furnished shortly."

7. The A.O. without commenting upon this letter held that no details were furnished by the assessee. We further note that the assessee was in fact prevented by sufficient and reasonable cause for not submitting the additional evidence before the A.O. as assessee was asked to furnish supporting evidence on 23.09.2009 and assessment was completed within a short period on 29.12.2009. The high handedness of the A.O. can be judged from the fact that letter dated 08.12.2009 written by assessee in support of gift does not find mention in the assessment order. Moreover we further note that Ld. CIT(A) had duly forwarded the copy of additional evidence under Rule 46A on 20.01.2011 in both the cases which was followed by reminder dated 10.02.2011 and 24.02.2011 in LT.A.No. 3379/De1l2011. We further observe that Ld. CIT(A) had forwarded copy of written submissions on 04.03.2011 and 10.02.2011 in LT.A. No. 3378/De1l2011 and 3379IDe1l2011 respectively to which A.O. did not reply. Therefore, Ld. CIT(A) has passed the order after taking into account the additional evidences on merits. Therefore, these are not the cases where the procedure for accepting additional evidence under Rule 46A was violated. Whereas, these are the cases where A.O. had not submitted remand report within a reasonable period of about 3 months and, that too despite reminders therefore, the Ld. CIT(A) was justified in passing the order after waiting for remand report. The Revenue has taken the ground that Ld. CIT(A) has accepted the additional evidences in-spite of the fact that sufficient opportunities were provided to assessee whereas from assessment order, we do not find any such opportunities. Therefore, the ground taken by Revenue is factually in correct. Moreover we observe that vide letter dated 08.12.2009, the assessee had submitted to A.O. regarding another source of income of Mr. Mohit Puri for which only confirmation was to be filed which could not be filed before A.O. as assessment order was passed on 29.12.2009 and therefore, the same was filed before Ld. CIT(A) as additional evidence.

8. In similar circumstances, ITAT in the case of DDIT Vs Human Care Medical Charitable Trust in LT.A.No. 2333/De1/2009 has held in favour of the assessee by holding as under:

> "We have heard the rival contentions and perused the material on record. We find merit in the argument of Ld. Counsel. CIT(A) has validly exercised his power to admit additional evidence under Rule 46A by sending copy thereof to A.O., who instead of commenting on the additional evidence filed, sat on the proceedings. We also find these evidences are filed before A.O. on 26.12.2007 and the same was not considered and the assessment order was passed on the same day. In our view, no violation of Rule 46A can be discerned. In view thereof, we uphold the order of CIT(A)."

9. The case law of Manish Buildwell relied upon by Ld. D.R. is not applicable as in that case, the additional evidences were admitted without confronting to A.O. whereas in the present appeals, the additional evidences were forwarded to A.O. but he did not reply. For the sake of convenience the findings of Hon'ble Delhi High Court in the case of Manish Buildwell are reproduced below:

"24. In the present case, the CIT (A) has observed that the additional evidence should be admitted because the assessee was prevented by adducing them before the assessing officer. This observation takes care of clause (c) of sub-rule (1) of Rule 46A The observation of the CIT (A) also takes care of sub-rule (2) under which he is required to record his reasons for admitting the additional evidence. Thus, the requirement of sub-rules (1) and (2) of Rule 46A have been complied with. However, sub-rule (3) which interdicts the CIT(A) from taking into account any evidence produced for the first time before him unless the Assessing Officer has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the order of the CIT (A) to show that the Assessing Officer was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the Assessing Officer furnishing his comments and without verification. Since this is an indispensable requirement, we are of the view that the Tribunal ought to have restored the matter to the CIT(A) with the direction to him to comply with sub-rule (3) of Rule 46A. "

10. Therefore, after analysis of both case laws relied upon by Ld. D.R. and Ld. A.R., we find that the facts and circumstances of the present appeals are similar to the facts and circumstances of case law relied upon by Ld. A.R. Therefore, following above and keeping in view the facts and circumstances of the present appeals, we dismiss ground No.2 of the revenue's appeal."

11. In view of above, ground No.2 of appeal as already dismissed vide order dated 28.11.2014 remains dismissed.

12. Now. Coming to the merits of the cases, we find that the A.O. questioned the genuineness of gift as well as creditworthiness of donor because of the reason that in his opinion, Mr. Vikrant Puri Brother of Mohit Puri, the donor, was a hawala operator who had received his ill gotten money by first getting it gifted from his brother Mohit Puri from Dubai in the name of his parents and then getting it transferred the same in his own account. The A.O. has made the addition based upon this expression of doubt and has not commented upon the evidences filed by assessee in support of establishing creditworthiness of donor. The A.O. though has held in the assessment order that the total income of assessee in Dubai as admitted by him was Rs.3.6 crores only but he held that the same was not substantiated. However, the fact remains that vide letter dated 08.12.2009 placed at paper book page 5, assessee had placed on record part proof of earning of donor in Dubai and had also mentioned that proof of another source of income was awaited and will be filed shortly. This proof of another source of income which was income from real estate brokerage was filed as additional evidence. During appellate proceedings before us, this letter was found placed in assessment record but A.O. has not commented upon these documents and rather held that no proof was filed which is contrary to the facts.

13. During appellate proceedings before us, Ld. D.R. extensively argued on the merits and went to the extent that evidences filed by assessee in support of claim of income of donor was not reliable at

all as he raised many objections on the documents especially mismatch of signature of donor on employment agreement but we are of the view that if revenue intends to dislodge an evidence submitted by assessee, it has to do it by bringing contrary evidence on record which has not been done in these cases. What to find fault in the employment agreement, A.O. did not mention about the same in the assessment order. If the revenue authorities had doubts about the agreement, it should have made inquiries regarding the existence of the firm with which agreement was made. Therefore, all the arguments of Ld. D.R. with regard to non reliability of evidence in support of income of assessee does not hold any force in view of the fact that no contrary evidence was brought on record. All arguments of Ld. D.R. are based upon the allegation of Revenue that brother of donor was a hawala operator.

14. Similarly, Ld. D.R. argued mismatching of signatures of donor on gift deed and raised further issue that gift deed was an afterthought. In this respect, we find that gifts are of money transferred by donor to the account of donees and gifts are of movable property, therefore, gift can take place in the absence of even gift deed. So, the arguments with respect to mistakes in gift deed like witnessing of deed, mismatch of signatures does not hold much force as in the case of gift of movable property, oral gift can be made. Moreover, we find that donor in his statement recorded u/s 132(4) has admitted the fact of having made gift to parents and this fact is noted in assessment order.

15. Ld. D.R. has also relied upon the decision of Sumati Dayal Vs CIT 214 ITR 801 decided by Hon'ble Supreme Court where Hon'ble Supreme Court had held that matter has to be considered by applying the test of human probabilities. It was argued that receipt of repeated amounts by assessee as well as her husband from donor son without there being any occasion was clearly against human probabilities. In this respect, we find that the gifts were received from son and there is nothing wrong in receipt of gift by parents form a son as long as the source of sending such gifts is explainable. We find that the whole argument of Ld. D.R. revolved around the doubt of revenue that the gifts in fact represented ill gotten money of Vikrant Puri brother of donor who had first siphoned the amount from India to Dubai and then had brought back the same in the form of gift by his brother to the parents. However, this doubt is based upon surmises and conjectures as there is no proof to establish that Vikrant Puri siphoned the funds from India to Dubai and moreover, the evidences filed by assessee in support of the claim of creditworthiness has not been dislodged by filing some contrary evidence. Therefore, in view of the above, the evidences filed by assessee cannot be disregarded. Ld. D.R. had also argued that no occasion was there to make the gift. In this respect, we find that for making gift by son to parents, no occasion is required as there is always natural love and affection between parents and son. The utilization of gift amount by donee also cannot determine the non genuineness of gift. Though A.O. has not mentioned the section under which addition was made but we find that additions were made by A.O. on the basis that gifts were non genuine and probably the additions were made u/s 68. The requirement of Section 68 includes that identity, genuineness and creditworthiness of the person form the amounts are received has to be established. There is no doubt about the identity as the donor is having passport and PAN. The genuineness of transactions cannot be doubted as the amounts were received through proper banking channels and was money received from a son to his parents. The amounts received by assessee were confirmed to have been sent by donor in his statement recorded u/s 132(4). These are not the cases where donors are unknown persons and after making gifts had disappeared. As

regards creditworthiness of donor, the assessee had filed the proof of income of donor. A part of proof of income was filed during original assessment proceedings and a part was filed as additional evidence. The Revenue could not bring to our notice anything adverse against proof of income of donor except highlighting certain defects including mismatch of signatures of donor on employment agreement with that on passport which in our opinion, can happen over a period of time as there is considerable time gap between the date of preparation of passport and that of agreement. The case laws relied upon by A.O. and Ld. D.R. are distinguishable on facts. We find that Ld. CIT(A) has passed a speaking and well reasoned order wherein he has taken note of sources of donor. For the sake of convenience, the order of Ld. CIT(A) in I.T.A.No. 3378/Del/2011 is reproduced below in the case of I.T.A. No. 3378/Del/2011:

> "5. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by AR as well as the position of law and the facts of case. The appellant has ~ the following documents to prove the genuineness and the creditworthiness.
>
> i) Memorandum of gift
>
> ii) Copy of Income Tax Return of the donor.
>
> iii) Copy of Employment Agreement with M/s Friend's General Trading FICO, Dubai indicating salary of 40,000 DH per month (Rs. 4,96,400/- approx. @ 1 DH = Rs. 12.41 in April, 2006) + commission @ 12.5% besides reimbursement of expenses in respect of boarding, lodging, transport, communication, meals, etc.
>
> iv) Confirmation from Employer regarding reimbursement of various personal expenses.
>
> v) Confirmation from Employer regarding payment of commission
>
> vi) Agreement with M/s Smart Inspection Industrial Equipment LLC, Dubai.
>
> vii) Confirmation from M/s Smart Inspection Industrial Equipment LLC, Dubai, regarding commission paid to Shri Mohit Puri from July 2006 to November 2006
>
> viii) Copy of passport of Shri Mohit Puri alongwith residence VISA of UAE.
>
> 6. Memorandum of Gift filed before the Ld. AO clearly mentions that the gift was made out of natural love and affection. I have also gone through the judgment dated 27.4.2010 from jurisdictional High Court in the case of CIT vs. Suresh Kumar Kakar, 2010-

TIOL-294-HC-DEL-IT, wherein it is clearly held that there is no occasion required for making a gift out of love and affection and accordingly the Revenue's appeal was dismissed. Therefore, it is held that no occasion is required for giving a gift out of natural love and affection.

7. As regards the genuineness, the AO has mentioned that genuineness transaction is in doubt. He has not given any reasons for the doubts in his mind. The additions cannot be based on doubts and have to be based on definite findings relying on evidences to that effect. I agree with the AR that addition cannot be made on the basis of suspicions, surmises and conjectures~ Hon'ble ITAT Mumbai has clearly upheld this ratio in the case of Guruprerna Enterprises vide its order dated 7/1/2011 in ITA no. 255/256/257/Mum/2010, page 26 para 36 wherein it was held thatthe addition cannot be made by making an observation that the loans do not appear to be genuine.

8. Shri Mohit Puri, the donor, is a resident of Dubai as evidenced by his passport where residence visa is endorsed. Moreover, this fact that Sh. Mohit Puri was non resident during AY 2007-08 was explained in detail even before DDIT(lnv.), AIU, New Delhi as early as 09/05/2007, i.e., within 3 months of the search. A copy of this letter was also filed. Letter dated 811212009 filed before the AO also categorically mentions that Shri Mohit Puri left India on 9/4/2006 for employment with MIs Friend's General Trading FICO, Dubai. The gift has been given through proper banking channel as evidenced by memorandum of gift itself. The donor is the son of the donee. The statement of the donor was also recorded u/s 132(4) during the course of search on 28/2/2007 wherein he has categorically admitted that he has given gifts to his parents. The AO has not found any fault with the documents filed by the appellant. He has also not brought any material on record to prove that the gift is bogus. I have also gone through the judgment of Hon'ble ITAT Delhi in the case of ACIT vs. UJJAGAR SINGH OBEROI, (2009) 121 TIJ (Del) 228, wherein it was held that if the AO has found any fault with the letters issued by the donors confirming the gift or with the copies of return of Income Tax of the donors, in the absence of any independent verification of gift, CIT (A) was justified in holding that the gift was genuine. In the case of the appellant also, the AO has not found any fault with the documents filed before him or u/r 46A. He has not carried out any independent verification leading to any finding about non- genuineness of the gift. Under the circumstances, I hereby hold that genuineness of gift is duly established.

9. The AO has also doubted the genuineness on the plea that donee has given loan to Shri Vikrant Puri, her another son. AO has also mentioned that Shri Vikrant Puri is a Hawala Operator. He has not brought any material on record to establish that Mr. Vikrant Puri is a Hawala Operator. Moreover, Mr. Vikrant Puri is neither a donor nor a donee and therefore, no reference is required to be made to him. For gift to be genuine, identity, genuineness and creditworthiness of donor is to be established. The use of money by donee in her own right cannot be a question to decide the genuineness of gift. Hence, as held in the previous para, the genuineness of gift is fully established.

10. As regard the AO has mentioned that no proof of donor's income in Dubai has been filed. I find from the paper book, page no. 5 that on 8/12/2009, the following facts were brought to his notice: -

> "It is to bring to your kind notice that Mr. Mohit Puri left India for the purpose of employment with M/s Friends General Trading FZCO, Duabi on 91412006. A copy of his employment agreement is enclosed. Confirmation from the said employer regarding payment of reimbursement and commission during the period April, 2006 to December, 2006 are enclosed. Additionally the assessee was engaged in the business of Real Estate Brokerage abroad with M/s Smart Inspection Industrial

> Equipments LLC, Dubai. A copy of confirmation for the same is awaited and will be furnished shortly. In case any other information is required, it will be submitted on demand."

However, the AO ignored these facts and arrived at a hasty conclusion. From the documents filed by the assessee before AO and u/s 46A, it is clear that the donor was paid salary of 40,000 DH per month (Rs.4,96,400/- approx. @ 1 DH = Rs. 12.41 in April, 2006) besides commission of 54,54,545 DH (Rs. 6,76,90,903/- approx.) in nine months from April, 06 to December, 2006. All his personal expenses like rent, food and beverages, travelling, communication and miscellaneous expenses were reimbursed by the employer. He was also engaged in the business of Real Estate Brokerage abroad with MIs Smart inspection Industrial Equipments LLC, Dubai. During the period from July, 2006 till November, 2006, Shri Mohit Puri also received commission of 26,89,550 DH (Rs. 3,33,77,316 approx.) from the real estate brokerage. Therefore, he had enough funds to the tune of Rs. 10,55,35,819/- (4,96,400x9 + 6,76,90,903 + 3,33,77,316) upto December, 2006 to give gifts to his parents from December, 2006 to February, 2007. The AO has not found any fault with the documents filed by the appellant. He has also not brought any material on record to prove that the gift is bogus. He has also not pointed to any evidence to indicate that it was appellant's money which has been routed as gift. Evidence for income in Dubai in the form of confirmation for income from Real Estate business in Dubai along with confirmation regarding employment and remuneration in Dubai have also been filed. I have also gone through the various case laws relied upon by the AR. It was held by Hon'ble Rajasthan High Court in the case of CIT vs. Padam Singh Chouhan that the assessee having produced copies of gift deeds and affidavits of NRI donors, in the absence of anything to show that the transaction was by way of money laundering, addition could not be made in the hands of assessee donee inspite of the fact that cash deposits were made by the donors in their bank accounts soon before the gift and the donee has withdrawn the funds soon thereafter. Similarly, Hon'ble ITAT Amritsar in the case of ACIT vs. Manoj Kumar Sekhri has held that CIT(A) rightly deleted the addition made by the AD without rebutting assessee's explanation and without showing that money allegedly received by assessee through gift was in fact his own money.

11. I have also gone through the other case laws relied upon by the AR wherein it is clearly held that source of source cannot be investigated [CIT vs. Diamond Products Ltd., (2009) 21 DTR (Del) 9, Jaikishan Dadlani vs. ITO, (2005) 4 SOT 138 (Mum), Tolaram Oaga vs. CIT, (1966) 59 ITR 632 (Assam)]. Various courts have also held that it is for the AD to establish that the assessee had introduced his own unaccounted money through the creditor / donor [(ITO vs. Smt. Bibi Rani Bansal, (2010) 133 Tf J (Agra) (TM) 394,Aravali Trading Co. vs. ITO, (2008) 220 CTR (Raj.) 622, CIT vs. Value Capital Services (P) Ltd., (2008) 307 ITR 334 (Del), Orient Trading Co. Ltd. vs. CIT, (1963) 49 ITR 723 (Bom)]. Since in the case of the appellant, the existence of the donor has been proved because his statement was recorded u/s 132(4) and he has owned up the gift, primary onus placed on the appellant is discharged. Thereafter, the onus shifted on the revenue to establish that it was donee's money which was routed through the donor. But the AD has not brought any material on record to prove that it was appellant's money which was routed through her son, i.e., donor.

12. I have also gone through the case laws mentioned in the assessment order though he has not discussed as to how they are applicable to the appellant. In the case of Shyam Sunder Gupta vs. ITO,

(1995) 51 TTJ (JP) 436, addition was upheld because the assessee could not give even the address of the donor and therefore, it was held that genuineness of gift from a stranger cannot be accepted who had become assessee's friend merely on the assertion that the alleged donor occasionally stayed with the assessee in Nepal. In the case of Lal Chand Kalra vs. CIT, 22 CTR (P&H) 135, addition was confirmed because it was held that the donors were not men of means and one of them was a stranger while the other was a relative but had more important liabilities. In the case of CIT vs. Precision Finance Pvt. Ltd., 208 ITR 465 (Cal), even the identity of the creditors was not established. In the case of Sajan Das & Sons vs. CIT, 264 ITR 435 (Del), the donor denied having made any gift. In the case of the appellant, these factors are nonexistent because the donor is son of the appellant and had sufficient funds to give gifts. The AO has also recorded the statement of the donor wherein he has confirmed having given gifts to his parents. Therefore, these case laws do not support the case of AO.

13. Under the circumstances, the creditworthiness of the creditor is duly established. Since, the genuineness of the gift and the creditworthiness of the creditor are also duly established, addition of Rs. 2,05,00,000/- made by the AO is hereby deleted."

16. From the above findings of Ld. CIT(A), we do not find any infirmity in the same. Therefore, ground No.3 is also dismissed.

17. Ground Nos. 1 and 4 are general and do not require adjudication.

18. In nutshell, appeals filed by revenue are dismissed.

19. Order pronounced in the open court on 23rd Jan., 2015.

Sd./-	Sd./-
(H.S.SIDHU)	(T.S. KAPOOR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Date: 23.01.2015
Sp.
Copy forwarded to:-
1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.

5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi. True copy.

By Order (ITAT, New Delhi).

S.No.	Details	Date	Initials	Design
1	Draft dictated on	15/1		Sr. P

2	Draft placed before author	18,19,20,21,22	Sr. P
3	Draft proposed & placed before the Second Member		JM/AM
4	Draft discussed/approved by Second Member		AM/AM
5	Approved Draft comes to the Sr. PS/PS		Sr. P
6	Kept for pronouncement		Sr. P
7	File sent to Bench Clerk		Sr. P
8	Date on which the file goes to Head Clerk		
9	Date on which file goes to A.R.		
10	Date of Dispatch of order		