IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2761/Del/2016
Assessment Year: 2011-12

Dheeraj Thakran, C/o Nagesh Bhel & Co., CAs, 21/25, Moti Nagar, New Delhi.	Vs	ITO, Ward-1(4), HSIIDC Building, Udyog Vihar-V, Gurgaon.
PAN: AEWPT8543B		
(Appellant)		(Respondent)

Assessee by	:	Shri Ved Jain, CA
Revenue by	:	Shri Bhopal Singh, Sr. DR
Date of Hearing	:	12.05.2021
Date of Pronouncement	:	28.05.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 11th March, 2016 of the CIT(A)-I, Gurgaon, relating to the assessment year 2011-12.

2. This appeal was earlier dismissed by the Tribunal for want of prosecution. Subsequently, the Tribunal, vide MA No.754/Del/2019, order dated 8th January, 2021, recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from rent, profession and other sources. He filed his return of income on 14.11.2011 declaring taxable income of Rs.1,59,620/-. The case of the assessee was selected for scrutiny and statutory notices u/s 143(2)/142(1) along with the detailed questionnaire were issued and served upon the assesseee. The authorized representative of the assesseee appeared before the AO and sought adjournment which was granted by the AO. However, there was non-compliance from the side of the assesseee subsequently for which the AO proceeded to make assessment u/s 144 of the Act.

4. The AO noted that the assessee has deposited cash of Rs.32,90,000/- in Oriental Bank of Commerce and Rs.17,50,000/- in Punjab National Bank during the impugned assessment year the details of which are given at para 2 of the assessment order. Since the assessee did not file any reply to explain the source of such cash deposits in the bank account, the AO relying on various decisions, made addition of the same to the total income of the assessee.

5. Similarly, the claim of the assessee of Rs.42,850/- u/s 80C of the Act was disallowed by the AO in absence of filing of any proof to substantiate the same. The AO further made an addition of Rs.13,344/- and Rs.30,609/- being interest received on savings bank account maintained with Oriental Bank of Commerce and Punjab National Bank respectively. Similarly, the interest on fixed deposits of

Rs.40,819/- being fixed deposits maintained with PNB was also added by the AO to the total income of the assessee.

5.1 During the course of assessment proceedings, the AO noted that the assessee has received rental income of Rs.3,30,000/- from M/s NIIT Ltd., during the year. After allowing 30% statutory deduction u/s 24 of the Act, the AO made addition of Rs.31,000/- to the total income of the assessee under the head: ôIncome from house property.ô The AO further noted that as per 26AS, the assessee has received professional income of Rs.4,20,000/- whereas the assessee in his return of income has shown income from ôBusiness or professionô at Rs.2,02,468/- out of the total receipt of Rs.7,50,000/-. Since as per form No.26AS, the total receipt is Rs.7,50,000/- and the receipt of Rs.3,30,000/- is rental income, therefore, the AO, in absence of filing of any documentary evidence, made addition of Rs.4,20,000/- to the total income of the assessee. Thus, the AO determined the total income of the assesseee at Rs.58,18,620/- as against the returned income of Rs.1,59,620/-.

6. Before the CIT(A), the assessee challenged the order of the AO. The assessee also filed certain details in the shape of additional evidences on the ground that the documents could not be produced at the assessment stage for certain reasons. It was argued that the assessee has not received any notice sent by the AO as a result of which the assessee was not able to appear before the AO. It was argued that the assessee was prevented by sufficient causes to appear before the AO. The ld. CIT(A) forwarded the additional evidences to the AO for his

objection if any for admission of the same and for his remand report. The AO objected to the admission of additional evidences. So far as the merit of the case is concerned, the AO reiterated his earlier stand and submitted that the assessee could not explain the source of cash deposits in the bank account and the various gifts received by him from father and mother, brother and wife. The ld.CIT(A) confronted the same to the assessee. The assessee filed a rejoinder to the same and the ld.CIT(A) again called for a remand report from the AO. In his second remand report also, the AO reiterated his earlier stand. After considering the two remand reports of the AO and the rejoinder of the assessee to such remand report, the ld.CIT(A) upheld the various additions made by the AO.

7. So far as the cash flow statement filed by the assessee wherein it was submitted that the assessee has received certain gifts from his parents, opening cash balance at the beginning of the assessment year and various amounts were withdrawn from the bank earlier, which was subsequently deposited in the bank account is concerned, the ld.CIT(A) rejected all such claims made by the assessee on the ground that there was no such closing balance in the return filed for preceding assessment year and, therefore, the theory of opening cash balance cannot be accepted. So far as the gifts received from various family members are concerned, the ld.CIT(A) was of the opinion that the assesseee, for accepting the gift, is required to establish that the donor had the means and the gift was genuine and was out of natural love and affection. Further, surrounding circumstances,

human probabilities and reality of human life are also to be considered for determining the genuineness of the gifts. According to him, the assessee, in the instant case, could not substantiate all these ingredients. Therefore, he rejected the claim of gift received by the assesseee from the various family members. So far as the various amounts withdrawn from the bank earlier which was explained to be deposited in the bank account subsequently is concerned, the ld.CIT(A) held that the assessee could not substantiate as to why those amounts were earlier withdrawn and kept for such a long period with the assessee without depositing the same. So far as the deduction of Rs.42,850/- claimed by the assessee u/s 80C of the IT Act is concerned, the ld.CIT(A) also upheld the same on the ground that the assessee could not substantiate with evidence to his satisfaction regarding such claim. The ld.CIT(A) also sustained the addition of Rs.84,772/- being interest on savings bank account and Rs.40,819/- being interest on fixed deposits. So far as the addition of Rs.2,31,000/- on account of rental income received during the year is concerned, the ld.CIT(A) also sustained the same. Thus, in nutshell, the ld.CIT(A) sustained various additions made by the AO and dismissed the appeal filed by the assesseee.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> ñ1. That CIT (A) erred in upholding the additions of Rs.50,40.000 made by the AO on account of cash deposited in bank account.
>
> 2. That CIT (A) erred in upholding the additions of Rs.2,31,000 made by the AO on account of rental income.

3. That CIT (A) erred in upholding the additions of Rs.4,20,000 made by the AO on account of professional income.

4. The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.ò

9. The ld. counsel for the assessee strongly challenged the order of the CIT(A) in confirming the various additions made by the AO. Referring to copy of the Profit & Loss Account filed by the assessee, copy of which is placed at page 20 of the paper book, the ld. counsel submitted that the assesseee is a gym trainer and has shown rental income from renting of gym equipments at Rs.3,30,000/- and professional fees as gym trainer at Rs.4,20,000/- both totaling to Rs.7,50,000/-. After claiming various expenses and depreciation, the assessee has shown net profit of Rs.2,02,468/- as his net income. He submitted that when the assessee had shown rental income from renting of gym equipments at Rs.3,30,000/-, the AO was not justified in treating such rental income from gym equipments as ñincome from house propertyò and cannot again make the addition of the same which is double addition. Referring to page 39-45 of the paper book, the ld. counsel drew the attention of the Bench to the copy of the agreement between the assessee and M/s NIIT according to which the assessee had provided the gym equipments for hiring. Referring to clause 2 of the said agreement, the ld. counsel drew the attention of the Bench to the obligations and responsibilities of the assessee to NIIT where the responsibility of the assessee has been provided towards rental of the equipments and professional services. Referring to page 46 of the paper book,

the ld. counsel drew the attention of the Bench to the submissions made before the CIT(A) wherein it was categorically stated that the assessee has received an amount of Rs.3,30,000/- as rental of equipments on which TDS @ 2% has been deducted u/s 194A(a) and Rs.4,20,000/- as professional receipt as trainer of gym. Therefore, making addition of the rental income of the equipments and again adding the rental income as income from house property amounts to double taxation of the same.

10. So far as the amount of Rs.50,40,000/- in the bank account is concerned, the ld. counsel submitted that the above cash was explained to be out of opening cash balance of Rs.5,55,500/-, gift received from parents, brother and wife amounting to Rs.9,25,000/- and Rs.36,39,000/- being the amount withdrawn from the bank which was utilized for re-deposit of the same. The ld. counsel for the assessee drew the attention of the Bench to the submissions made by the assessee during the remand proceedings wherein the cash deposited in the bank account amounting to Rs.50,40,000/- was explained. He submitted that the assessee, during the impugned assessment year had an opening cash balance of Rs.5,55,500/-. He submitted that there is no such provision in the Income-tax Act or in the income-tax return form to disclose the opening cash balance at the beginning of the year or closing cash balance of last year. Therefore, the lower authorities, without any basis have ignored that the opening cash balance of Rs.5,55,500/- was available to the assessee for deposit in the bank account. The stand of the lower authorities that

that the assessee had not shown such a closing balance in the return of income is not in accordance with law since the law does not provide to show such cash balance. The ld. counsel emphasized that there is no such column in the income-tax return to declare the closing cash balance at the end of the year. He submitted that keeping of such small amount of Rs.5,55,500/- by the assessee should not have been doubted by the lower authorities and merely because the assessee has not disclosed the closing cash balance in the preceding year which is the opening cash balance of the current year cannot be a ground to make the addition especially when neither in the law nor in the Income-tax Act nor in the return form there is a provision to disclose such closing cash in hand.

11. So far as the gift received of Rs.9,25,000/- is concerned, the ld. counsel submitted that the assessee has received a gift of Rs.5,75,000/- from father Shri Shubhram Thakran, Rs.1 lakh from mother Smt. Savitri Devi, Rs.1 lakh from wife Smt. Sunita and Rs.1,50,000/- from his brother Shri Ravinder Singh. The ld. counsel for the assessee, referring to the copy of the remand report, submitted by the AO on 25th January, 2016, copy of which is placed at pages 72 to 77 of the paper book, drew the attention of the Bench to the same and submitted that the AO himself in the remand report has accepted that the assessee had filed four affidavits in the shape of e-stamp purchased on 8th December, 2015 accepting the case of gift from parents, brother Shri Ravinder Singh and spouse Mrs. Sunita. He had also acknowledged that the proofs of the donors have been filed in the shape of

Aadhaar, the bank account in respect of father Shri Shubhram Thakran and copy of income-tax return filed by brother Shri Ravinder Singh, declaring income of Rs.1,89,520/-. Further, the assesseee had also filed cash book for the relevant period which was filed before the CIT(A) as additional evidence and which was filed before the AO.

11.1 The ld. counsel drew the attention of the Bench to para 2.5 and 2.6 of the remand report wherein the AO had given the datewise amount of gifts received by the assessee from his father. The AO himself had given a finding that cash of Rs.2 lakh was withdrawn on 6th May, 2010 and Rs.1,50,000/- on 17th May, 2010 which was given by the father to the assessee on 7th May, 2010 as gifts. Therefore, gifts from the father to the extent of Rs.3,50,000/- is from the withdrawal from the bank account. So far as the remaining gift is concerned, the ld. counsel for the assessee submitted that the father of the assessee is an agriculturist and has given the gift out of the cash balance with him. So far as the argument of the AO that the father of the assessee could have given cheque instead of giving cash gifts, the ld. counsel submitted that nowhere in the law it is prohibited that cash gift cannot be given by the father to his son.

11.2 So far as the gift from brother of Rs.1,50,000/- is concerned, the assessee submitted that the brother of the assessee is an income-tax payee and has declared an amount of Rs.1,89,500/- as his income for the impugned assessment year. He

submitted that in addition to the above income his brother is also having agricultural income and, therefore, the gift should have been accepted.

11.3 So far as the gifts of Rs.1 lakh from mother and Rs.1 lakh from wife are concerned, the ld. counsel submitted that the same has been given by them out of past savings and, therefore, considering the smallness of the amount, the same should not have been doubted. The ld. counsel for the assessee submitted that the gifts have been received from the immediate family members and are not received from any outsider or any unknown relatives. Therefore, under the facts and circumstances of the case, the gifts received from the father, mother, brother and wife amounting to Rs.9,25,000/- should have been accepted.

11.4. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Fair Investment Ltd., 357 ITR 146, the ld. counsel submitted that even if the AO or the CIT(A) had any doubt in relation to the gifts received by the assessee, they should have conducted independent inquiry u/s 133(6) or 131(1) of the IT Act. However, in the instant case, he has not done so, therefore, once the gifts are explained, identity and credit worthiness of the presenter and genuineness of the transaction of gift should not have been doubted.

12. So far as the balance amount of Rs.35,59,500/- deposited in the bank is concerned, he submitted that the same is from previous withdrawals of Rs.41,15,000/- from the same bank. The ld. counsel for the assessee drew the

attention of the Bench to the cash book filed before the AO, copy of which is placed at pages 22 to 25 of the paper book. The ld. counsel for the assessee drew the attention to the withdrawal of cash of Rs.3 lakh on 23rd June, Rs.2 lakh on 2nd July, 2010, Rs.2 lakh on 12th July, Rs.4 lakh on 12th July and Rs.2 lakh on 19th July from different bank account. Referring to page 23 of the paper book i.e., second page of the cash book, the ld. counsel for the assessee drew the attention of the Bench to the deposit of cash on 21st July, 2010 amounting to Rs.5 lakh. Similarly, Rs.5 lakh deposited on 4th September, 2010, Rs.90,000/- deposited on 6th September, 2010 with Oriental Bank of Commerce and Rs.5 lakh deposited on 6th September, 2010 with Punjab National Bank. The ld. counsel, referring to various decisions submitted that merely because the cash was withdrawn earlier, which was subsequently deposited in the bank account after a few days cannot be a ground to reject the claim. Referring to the decision of the Hon'ble Karnataka High Court in the case of S.R. Venkata Ratnam vs. CIT, 127 ITR 807, the ld. counsel drew the attention of the Bench to the following observations:-

> ñThere is some force in the argument of the learned counsel for the petitioner and the argument advanced by the revenue is, therefore, without any force. Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same.ò

13. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs Kulwant Rai 291 ITR 36 (Del), the ld. counsel drew the attention of the Bench to the following paragraphs:-

ñThe orders of Assessing Officer as well as Commissioner of Income Tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessed, a sum of Rs. 10,000/- was being spent for household expenses every month and the assessed has withdrawn from bank a sum of Rs. 2 lacs on 4th December, 2000 and there was no material with the Department that this money was not available with the assessed. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessed are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner Income Tax (A) to support their view that the entire cash withdrawals must have been spent by the assessed and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under Section 158BC of the Act and the same was rightly ordered to be deleted.ò

14. The ld. counsel for the assessee submitted that there is also no evidence of any sort with the Department that the money so drawn from the bank and has been utilized for some other purpose and not deposited in the bank account. Therefore, under the facts and circumstances of the case the cash deposit made with the bank account should have been accepted.

15. The ld. counsel for the assessee also referred to the following decisions and submitted that the source of cash deposit in the bank account is explained by the earlier withdrawals from the bank account and, therefore, no adverse inference should have been taken and no addition should have been made on account of cash deposit in the bank account.

i) DCIT, vs. Sri Nikhil Nanda (ITANo.3644/Del/2013 18-03-2015 ITAT Delhi);

ii) ITO Vs. Mrs. Deepali Sehgal, (ITA No.-5660/Del/2012 dated 05-09-2014 ITAT Delhi);

iii) Shri Anil Gupta vs. ITO (ITA No. 5645/Del/2013 Dated 31-01-2014 ITAT Delhi);

iv) Anupama Chaudhary Vs. ITO, (ITA No. 4155/De!/2009 dated 27-12-2010 ITAT Delhi);

v) ITO, Vs. Sh. Bhupinder Pal Singh Chawla, (ITA No. 4080/Del/2010 dated 25-02-2011 ITAT Delhi);

vi) ACIT Vs Baldev Raj Charla & Ors. (121 TTJ 366 ITAT Delhi, dated 29.12.2008);

vii) M/s Moongipa Investment Limited, vs. ITO (ITA No.2605/Del./2007 dated 05-08-2011 ITAT Delhi);

viii) ITO vs. Hotel Derbey (ITA No.3413/Mum/2011 dated 20-07-2012 ITAT Mumbai);

ix) ITO vs. Mr. Javed Ahmed Abdul (ITA No.8166/Mum/2010 dated 26.09.2012 ITAT-Mumbai);

x) R.K. Dave vs. ITO (019 TTJ 094 ï ITAT Jodhpur);

xi) Shri Aasheesh M. Pittie vs. ITO (ITA No.1409/Hyd/2012 dated 11.01.2013, ITAT Hyderabad);

xii) Shri Vikram Deokisan Sarda vs. CIT (ITA No.277/M/2012 dated 05.12.2012, ITAT Mumbai);

xiii) Shri Surendra Singh vs. ITO (ITA No.650, 701/JP/2011 dated 31.01.2012, ITAT, Jaipur.).

16. So far as the deduction u/s 80C claimed by the assessee, the ld. counsel submitted that the assessee had filed the necessary details for claiming exemption and, therefore, the lower authorities should not have rejected the claim of the assessee.

17. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that the ld.CIT(A) has given a categorical finding that the assessee has not disclosed any closing cash balance for the assessment year 2010-11, therefore, the opening cash balance of Rs.5,55,000/- cannot be accepted. Similarly, the gifts received by the assessee from the parents and brother and spouse clearly shows that the assessee is a habitual gift taker and their credit worthiness has not been proved. There was no occasion on the part of the assessee for receiving the gift although from close relations. Therefore, the gifts received by the assessee was rightly rejected by the CIT(A). So far as the other cash deposits are received, he submitted that the assessee earlier had withdrawn the cash. There is no reason why the assessee will withdraw the money and keep it with himself and again after a long gap shall re-deposit the same. The assessee might have spent the money or utilized for some other purposes which is in his exclusive knowledge. Therefore, the argument of the assessee that the deposit in the bank account is out of the earlier withdrawal does not inspire confidence.

Therefore, on this count also the cash deposit in the bank account should be rejected.

18. The ld. counsel for the assessee in his rejoinder submitted that there is no requirement in the law to give the details of closing cash balance in the return of income. Further, in the instant case, the gifts have been received from parents and spouse and brother out of natural love and affection and, therefore, there is no requirement of any occasion for receiving the gift. The assessee has not received the gift from any outsider or any distant relative, but, has received the gift from father, mother, brother and spouse. He accordingly submitted that the cash deposit in the bank account stands fully explained and no addition is called for. The ld. counsel further submitted that the assessee has filed the Profit & Loss Account and the Revenue authorities without bringing any material on record had disallowed various expenses which is not justified under the facts and circumstances of the case. He accordingly submitted that no addition on account of cash deposit or on account of rental income is called for.

19. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The first issued to be decided of the grounds of appeal is regarding the order of the CIT(A) in confirming the addition of Rs.50,40,000/- made by the AO on account of cash

deposit in bank account. A perusal of the assessment order shows that the AO made addition of the above amount due to non-submission of details during the course of assessment proceedings. Before the CIT(A), it was submitted that the above amount of Rs.50,40,000/- was deposited out of cash withdrawal from the same bank amounting to Rs.41,15,000/-, Rs.9,25,000/- received as gifts from father, mother, brother and wife and an amount of Rs.5,55,000/- was the opening cash balance. We find, the ld.CIT(A), after obtaining two remand reports from the AO and the rejoinder of the assessee to such remand reports, sustained the addition made by the AO. A perusal of the various details furnished by the assessee in the paper book which were also filed before the lower authorities, shows that the assessee, during the year under consideration has explained the deposit of the above amount of Rs.50,40,000/- as under:-

a)	Opening cash balance	-	Rs.5,55,000/-
b)	Cash withdrawn by the assessee from the bank and re-deposited during the year	-	Rs.41,15,000/-
c)	Gift received from blood relations and spouse	-	Rs.9,25,000/-

20. So far as the opening cash balance of Rs.5,55,000/- is concerned, we find, the ld.CIT(A) rejected the opening cash balance of Rs.5,55,000/- shown by the assessee in the cash book produced before him on the ground that the assessee has not disclosed such closing cash balance in the return of income of the preceding year. It is the submission of the ld. counsel that the income-tax return form does not have a column to show such figure of closing cash balance and it is also his

submission that there is no requirement under the law for showing such cash in hand in the return of income. While we accept the submission of the ld. counsel for the assessee that there is no requirement of law for showing the cash in hand in the return of income, however, in absence of filing of any balance sheet in the preceding year and in absence of any other evidence to show that the assessee was, in fact, in possession of opening cash balance of Rs.5,55,000/- as at the beginning of the year, the plea of the ld. Counsel for the assessee cannot be accepted in toto. However, considering the totality of the facts of the case, we are of the considered opinion that acceptance of opening capital of Rs.5 lakh in the facts and circumstances of the case will meet the ends of justice. We, therefore, accept the opening cash balance of Rs.5 lakh as explained and the balance Rs.55,000/- has to be added as unexplained cash.

21. So far as the amount of Rs.41,15,000/- withdrawn from the bank accounts and re-deposited during the year is concerned, we find from the details furnished by the assessee that there are sufficient cash withdrawals before deposits in the bank account. There is no other evidence with the Department that the assessee has in fact invested elsewhere or spent otherwise or that it is not available with him. It has been held in various decisions that when the assessee has made deposits out of the earlier withdrawal of cash from the bank account and no material has been brought by the Revenue that such money is not available with the assessee, then, the AO is not justified in making the addition. We find, the

Hon'ble Karnataka High Court in the case of S.R. Venkata Ratnam vs. CIT, 127 ITR 807, has held as under:

> ñThere is some force in the argument of the learned counsel for the petitioner and the argument advanced by the revenue is, therefore, without any force. Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same.ò

22. Similarly, the Hon'ble Delhi High Court in the case of CIT vs Kulwant Rai 291 ITR 36 (Del), has observed as under:-

> ñThe orders of Assessing Officer as well as Commissioner of Income Tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessed, a sum of Rs. 10,000/- was being spent for household expenses every month and the assessed has withdrawn from bank a sum of Rs. 2 lacs on 4th December, 2000 and there was no material with the Department that this money was not available with the assessed. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessed are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner Income Tax (A) to support their view that the entire cash withdrawals must have been spent by the assessed and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under Section 158BC of the Act and the same was rightly ordered to be deleted.ò

23. The various other decisions relied on by the ld. counsel for the assessee also support his case that the earlier cash withdrawals from the bank account should be available to the assessee for deposit in the bank account subsequently. Since, in the instant case, there is sufficient withdrawal from the bank account before such deposits were made, therefore, we accept the contention of the

assessee regarding the source of Rs.36,39,000/- withdrawn from the bank accounts to be re-deposited.

24. So far as the gift of Rs.9,25,000/- is concerned, we find from the details furnished by the assessee that the assessee has received the following gifts:-

a) Shri Shubhram Thakran (father)- Rs.5,75,000/-

b) Shri Ravinder Singh (brother) - Rs.1,50,000/-

c) Smt. Savitri Devi (mother) - Rs.1,00,000/-

d) Smt. Sunita (wife) - Rs.1,00,000/-

25. From the various details furnished by the assessee, we find, the AO, during the course of remand proceedings, himself has accepted the withdrawals of cash by his father from the bank account to the tune of Rs.3,50,000/-. It is the submission of the ld. counsel that merely because the father of the assessee has not made gifts in cheque and has made the gift in cash, the same cannot be rejected disregarding the various other documentary evidences furnished by the assessee. Further, when the father of the assessee is an agriculturist, possession of balance cash amount of Rs.2,25,000/- should not have been doubted. Similarly, the brother and wife of the assessee are income-tax payees and the mother has given out of her past savings. We find some force in the above arguments of the ld. counsel. During the course of assessment proceedings, the assessee has filed the affidavits of the donors who are parents, brother and spouse, respectively. They are not outsiders or unknown

persons. No independent inquiry whatsoever was conducted by the AO either u/s 133 (6) or 131(1) of the Act. Since the gifts in the instant case are received from parents, brother and spouse, respectively and the father has withdrawn substantial cash amount from the bank before giving the gift of Rs.5,75,000/- on various dates to his son and the gifts of Rs.1,50,000/- from brother, Rs.1 lakh from mother and Rs.1 lakh from spouse are not huge amounts, therefore, doubting the genuineness of such gifts received from blood relations is not justified. We accordingly accept the source of Rs.9,25,000/- deposited in the bank to be out of gifts. Thus, in nutshell, as against the addition of Rs.50,40,000/- made by the AO and sustained by the CIT(A), an amount of Rs.49,85,000/- is accepted as explained. The order of the CIT(A) is modified to this extent and the ground raised by the assessee is partly allowed.

26. In the second ground, the assessee has challenged the order of the CIT(A) in sustaining the addition of Rs.2,31,000/- made by the AO on account of rental income. From the details furnished by the assessee, we find the assessee has shown to have received an amount of Rs.3,30,000/- as rent in respect of gym equipments given on hire to NIIT Ltd. We find, the AO in the order passed u/s 144 of the Act has made an addition of Rs.2,31,000/- after allowing 30% deduction from the rent of Rs.3,30,000/- u/s 24 of the Act. Since the assessee does not have any house property to let out and the rental income was received out of gym equipments given on hire to NIIT Ltd., therefore, the addition of Rs.2,31,000/-

made by the AO and sustained by the CIT(A) is not justified. Accordingly, the order of the CIT(A) sustaining the addition of Rs.2,31,000/- is set aside and the ground raised by the assessee on this issue is allowed.

27. The third ground relates to the order of the CIT(A) in sustaining the addition of Rs.4,20,000/- made by the AO on account of professional charges. After hearing both the sides, we find, the assessee has shown professional income of Rs.4,20,000/- and rental income of gym equipments at Rs.3,30,000/- both totaling to Rs.7,50,000/- in the Profit & Loss Account. After claiming various expenses, the assessee had declared the total income at Rs.1,59,620/-. We find, the AO in the order passed u/s 144 did not allow any of the expenditure and made the addition of the whole amount of Rs.4,20,000/- received as professional income which has been upheld by the CIT(A). It is the submission of the ld. counsel that the ld.CIT(A) upheld the addition made by the AO on the ground that the various expenses claimed by the assessee are neither justifiable nor supported by any documentary evidences and these expenses are claimed on imaginary basis. However, it is to be noted that the professional income has not been doubted by the lower authorities. Since the assessee undoubtedly, is a gym trainer and has received rental income from hiring of gym equipments as well as professional income as a trainer, the various expenses claimed by the assessee cannot be denied completely. At the same time, in absence of sufficient documentary evidences to the satisfaction of the lower authorities, the claim of Rs.5,29,355/- as expenses of

various kind cannot be accepted in full. Considering the totality of the facts, we are of the considered opinion that disallowance of Rs.53,000/- on estimate basis out of the various expenses shown at Rs.5,29,355/- will meet the ends of justice. We, therefore, restrict the disallowance to Rs.53,000/- as against Rs.4,20,000/- made by the AO and sustained by the CIT(A). Ground No.3 of the assessee is accordingly partly allowed.

28. Ground No.4 is general in nature and, hence, dismissed as such.

29. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 28 .05.2021.

Sd/- Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: May, 2021.
dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi