IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

BEFORE SHRI D. MANMOHAN, V. P. AND SHRI SANJAY ARORA, A. M.

ITA Nos. 1732 & 2109/Mum/2010
Assessment Years: 2004-05 & 2006-07

Satish L. Babladi A/16, Navshilpavani CHS, Lallubhai Park, Road No.1, Vile Parle (W), Mumbai-400 003 [PAN : AAIPB 8946 N]	Vs.	Dy. CIT, Central Circle – 36, Aayakar Bhavan, Mumbai-400 020
(Appellant)		(Respondent)

Appellant by : Shri K. Shivaram &
Shri Ajay R. Singh

Respondent by : Mrs. Rupinder Brar

Date of hearing : 20.12.2012
Date of Pronouncement : 19.03.2013

O R D E R

Per Sanjay Arora, A. M.:

This is a set of two appeals by the assesse involving two years, being assessment years (AYs.) 2004-05 and 2006-07, decided by the Commissioner of Income Tax (Appeals)-41, Mumbai ('CIT(A)' for short) vide his order dated 08/12/2009 and 06/1/2010 respectively. The issues arising for adjudication being common, arising in pursuance to the same search, the same were heard together, and are being disposed of vide a common, consolidated order.

2. We shall proceed in the matter year-wise, i.e., in the same order in which the appeals were argued before us. The facts in relation to the second year (AY 2006-07) are that the assessee along with his family members had transferred their rights in land

admeasuring 2200 sq. mtrs. located at Teli Galli of Village Gundivali, Salwadi, Andheri (East), Mumbai – 400 069 to a company, Akruti Nirman Ltd. ('ANL' for short). However, subsequently thereto some dispute arose between the two parties, i.e., the vendor and the vendee, and the matter was referred for arbitration. Vide arbitration award dated 26/11/2005, the total consideration for the transfer was decided at Rs. 4.60 crores; the share therein of different family members being defined, as under:

Sr. No.	***Name***	***Amount***
1	*Smt. Asha Babladi*	*Rs.1,65,00,000/-*
2	*Smt. Manisha Dani*	*Rs.1,65,00,000/-*
3	*Sri Satish Babladi*	*Rs.35,00,000/-*
4	*Smt. Jyoti Babladi*	*Rs.30,00,000/-*
5	*Sri Rajesh Babladi*	*Rs.65,00,000/-*
	Total	*Rs.4,60,00,000/-*

The same was to be paid by 31/12/2005, failing which the delayed payment would attract interest @ 12% p.a. The full payment, however, could not be made by the prescribed date, and was finally paid only by 15/6/2006. The issue arising is the year in which the long term capital gain arising on the transfer is to be assessed. While the assessee claims it to be the year of the receipt of the full and final payment under the award, i.e., A.Y. 2007-08, for which it claims to have returned the same, as per the Revenue, the same, i.e., full payment, is not relevant as the transfer was complete and the capital gain inured on the award being declared on 26/11/2005, so that the entire capital gain arises for AY 2006-07. The assessee has, however, raised a legal issue, claiming the assessments for both the years to be invalid, and which would, therefore, need to be addressed first. The same, though raised for the first time before the Tribunal, per an additional ground, goes to the root of the matter, with the relevant facts being undisputed and on record, so that the same is admitted.

3. The warrant of authorization dated 08/8/2006 (PB pgs. 5-6), on the basis of search u/s. 132 of the Income Tax Act, 1961 ('the Act' hereinafter) at the assessee's premises was carried out by the Department on 10/8/2006, is issued in the joint names of the

assesse and other family members. The ensuing assessments u/s. 143(3) r/w s. 153A of the Act, however, have been made in their individual names, and which are therefore not valid. Reliance for the purpose stands placed on the decision in the case of *CIT v. Vandana Verma* (2009) 227 CTR (All.) 388 [(2011) 330 ITR 533] as well as by the tribunal, following the same, in the case of another family member, i.e., *Jyoti S. Babladi v. Dy. CIT* (in ITA Nos. 2113 & 2114/Mum/2010 dated 25/3/2011) (copies on record). The Revenue, on the other hand, places reliance on the decisions in the case of *CIT v. Khyber Foods* (2012) 346 ITR 36 (Ker.); *Jose Cyriac v. CIT* (2011) 336 ITR 241 (Ker.); and *Raghu Raj Pratap Singh v Asst. CIT* (2009) 179 Taxman 73 (All.)[(2008) 307 ITR 450].

4. We have heard the parties, and perused the material on record.

4.1 The issue before us would be as to which of the two set of decisions, being on a matter of law, is to be followed. We have carefully perused the cited decisions, being by the higher courts of law. We may at the outset clarify that the decision by the tribunal in the case of *Jyoti S. Babladi* (supra) is distinguishable on facts. This is as in her case assessment u/s. 153A was made without her name appearing in the warrant of authorization, so that she was definitely not a person who could be said to be a person searched or in respect of whom search was initiated. Though this fact is undisputed, we have also examined both the said warrant as well as the Panchnama (PB pgs. 7-8) in the matter.

4.2 Coming to the decisions cited by the parties, we find that the preponderance of the judicial view is in the favour of the validity of the assessment made on an individual pursuant to search being authorized in the name of more than one person, with the hon'ble high court in the case of *Raghu Raj Pratap Singh* (supra) also drawing on the decision in the case of *Madhupuri Corpn. v. Dy. CIT* (2002) 256 ITR 498 (Guj.). The basis of all these decisions is that there is no restriction placed by law on the issuance of a common authorization, which is of course to be based on reason/s to believe, on the strength of materials and information with regard to the concealed income or assets of

persons in respect of whom search action is initiated. As explained, the search is of a premises, etc., so that the warrant of authorization is issued *qua* a premises, i.e., a different warrant would stand to be issued for each different place which is to be subject to search, of course in respect of the persons whose income/assets are suspected to be secreted or held at the said place. Further, as the said person/s may not be available at the said premises at the time of search, the obligation on the search party to produce and show the search warrant is to the person who is at the time relevant time in charge of the said premises; the search in the case of *Raghu Raj Pratap Singh* (supra) being on a bank, which was believed to hold undisclosed deposits (in the form of FDRs) of the persons in respect of whom the search had been authorized. In other words, if the search at a place is likely to yield evidence in relation to the undisclosed income or assets of more than one person, it is not necessary to issue separate warrants, authorizing the 'authorized officer' separately for subjecting the same place to search at the same time *qua* such persons. A valid search could thus be made on the basis of such common authorization for each of those persons.

4.3 It is not the assessee's case that the search action or proceedings are vitiated on account of a common warrant of authorization (WOA) and, therefore, the assessment/s framed pursuant thereto is bad in law. The ld. AR was specifically questioned by the Bench on this, and he clarified that the assessee does not dispute the validity of the search, but that the WOA being in joint names, the assessment/s could not be framed on the assessee as an individual, but only jointly with others named in the said WOA. We are unable to appreciate the assessee's plea. *If the search is legally valid, as indeed it is, and, further, undisputedly, how is the assessment/s in the individual name of the assessee, one of the persons in respect of whom the search is conducted or carried out, not so*? Merely because a common WOA is issued in respect of more than one person, does not imply existence of a joint entity or an Association of Persons (AOP) comprising them. The WOA names four persons, whose names are separately mentioned, with a comma in between. That would signify of it being a warrant authorizing a search at the

premises/location/address mentioned therein in respect of the four named persons, in the same manner as if their names were written in a more formal format, as (refer PB pgs. 5-6):

1) Satish Babladi,
2) Rajesh Babladi,
3) Asha Babladi, and
4) Laxmikant Babladi.

The WOA is, as already noted earlier, issued place-wise. As such, if the undisclosed income or assets of more than one person/individual are expected to be found at a particular place, a single warrant for its search, mentioning their individual names, can be issued, even as explained by the hon'ble court in the case of *Raghu Raj Pratap Singh* (supra), noting that the relevant column (for mentioning the names of the persons being subject to search) in the relevant form (Form No.45 / PB pgs. 5-6) begins with the words 'Sarvshri', indicating plurality of names. It does not in any manner indicate an AOP comprised of the said persons. It would be a different matter if the materials with the Revenue are for the undisclosed income/assets of an AOP comprising them, but the subsequent assessment/s is framed in their individual names on the strength of evidence found with regard to their individual assets in search. The assessee has no such case, which, where so, could only be on the basis of the facts and not a bald statement/s. In fact, even in such a case, there is no bar in law for framing assessments in the names of different individuals or, even for that matter, whose names are not mentioned but *qua* whom material as to undisclosed income stands found, though the same would be u/s.153C and not section 153A. In the instant case, there is no iota of evidence, nor is it the assessee's case of it being so, of any joint economic or commercial activity by the four named persons, to suggest even remotely of income/assets of an AOP. In fact, by all available counts, the information, or at least one of the informations, leading to the search action, is the monies received from ANL under the Arbitration Award dated 26.11.2005; the same having not been disclosed in the returns for the respective years. The said

income, arising from the joint ownership of the property, in defined ratios, is assessable only separately in their individual names. Rather, we have already clarified that even assessment in the hands of the person/s other than whose names stand mentioned in the WOA, as for example AOP comprising some such persons, can also be validly made if material as to its undisclosed income is found in the search, thus initiated. That is, in case of mis-match between the person/s in respect of whom search is initiated and in respect of whom assets/income is (also) found. The law is comprehensive and contemplates such a situation, prescribing a separate procedure for such cases per section 153C. We are, therefore, with respect, unable to subscribe to the view advocated by the hon'ble Allahabad High Court in the case of *Vandana Verma* (supra) that a WOA in joint names of different individuals can lead to a valid assessment/s u/s.153A only in the hands of the AOP or Body of Individuals (BOI) comprising them, and are inclined to favour the pre-dominant judicial view as expressed by three high courts, including the Allahabad High Court itself. The assessee's legal plea is, accordingly, dismissed, disposing its ground no. 1 as well as the additional ground no. 1.

5.1 We, next, discuss the assessee's case on merits. His claim is that the capital gain arises on receipt of full and final payment under the arbitration award on 15.06.2006, i.e., during the year relevant to AY 2007-08. We find the assessee's claim not tenable for two reasons. Firstly, the capital gain arises on transfer, and the charge to tax in its respect u/s.45 is attracted on accrual basis and not on receipt basis, which could form a valid basis for returning only business/professional income or income under the head "income from other sources". As such, what is material and relevant is the date of transfer.

5.2 In the instant case, as it appears, the transferors had the legal as well as the possessory rights in the property, being land admeasuring 2200 sq. mtrs., as described above (para 2). The dispute arose in relation to the compensation for delivering vacant and peaceful possession to the transferee for the development of the area under the property Slum Rehabilitation Scheme at Saiwadi. The matter was referred to arbitration. The terms of reference therefor was that the sole arbitrator was to fix the quantum of

compensation and the time when the claimants have to handover the vacant possession of the property to the respondent (Clauses 2 and 5 of the reference agreement dated 20.10.2005/PB pgs. 31-38). Vide an arbitration award dated 26.11.2005 (copy on record/PB pgs. 21-24), the compensation was awarded at Rs.4.60 crores and the claimant-transferors were directed to handover possession of the property to the respondent-transferee forwith (refer Clauses 1 to 4 of the arbitration award).

A transfer can arise only with mutual consent and agreement, so that it can, in the facts and circumstances of the case, be said to have taken place on the resolution of the dispute as well as the terms and conditions of the transfer, vide the said arbitration award, which stood accepted by both the parties. That is, on 26.11.2005, or immediately thereafter. The same provides for a compensation of Rs.4.60 crores to the transferors, including the assessee, defining their individual shares, to be paid by 31.12.2005 (which date incidentally also falls within the same previous year, i.e., financial year 2005-06), failing which interest @ 12% p.a. is to be paid by the transferee-ANL. That is, a quantified debt in favour of the transferor/s from the transferee crystallizes vide the said award, payment terms of which stands also set out, which contemplate payment/s beyond 31.12.2005. It is not necessary that a transfer should result in receipt of money, and that too immediately. We are, thus, unable to countenance the assessee's case that the transfer takes place only during the f.y. 2006-07, as about 50% of the debt was outstanding for payment as on 31.03.2006, and came to be paid only during that year. When the said debt would stand finally liquidated could not be foretold, and is something that lay in the womb of future. But that does not detract from the fact that a debt in favour of, *inter alia*, the assessee had arisen on 26.11.2005. Even if no amount stood paid during f.y. 2005-06, the assessee had recourse to the implementation of the award, seeking specific performance thereof. Further, the fact that the assessee chose not to press for interest, which was payable on payments made after 31.12.2005, is again not relevant. The Revenue has not brought any notional interest income to tax. The proposition as being canvassed by the assessee has no merits and only needs to be stated to be rejected.

The second reason for which we are unable to accept the assessee's claim is that the same is self-contradictory. The assessee claims, and has been allowed, deduction u/s.54EC for Rs.29 lakhs out of his share of Rs.35 lakhs payable to it under the award. That leaves a balance at Rs.6 lakhs, for which the assessee claims deduction u/s.54F, which stands denied by the Revenue, so that he is in appeal in its respect vide its balance grounds. The very fact that the assessee claims deduction u/ss.54EC and 54F establishes its acceptance of the transfer date as falling during the relevant previous year, i.e., f.y. 2005-06, and consequently of capital gains arising to it in that year. Further, for these deductions, investment in specific avenues is to be made within a specific time frame running from the date of transfer, so that the investment u/s. 54EC is only with reference to this date. In other words, the date of transfer gets crystallized as falling during f.y. 2005-06.

Finally, in view of our having decided thus, we find little merit in the assessee's also staking a claim for the transfer date as falling in f.y. 2006-07 on the basis of delivery of possession in that year, being made with reference to a letter of possession dated 20.06.2006 (PB pg. 54). The said letter is of no consequence. Firstly, for the reason that the same does not mention the date on which possession was handed over. Secondly, we have already explained that this makes the assessee's claim self-contradictory. In fact, this aspect stands also discussed by the ld. CIT(A) vide para 1.17 and 1.18 of his order, and whose findings, including with regard the non-admissibility of the said letter in evidence, has not been rebutted by the assessee before us, so that the same cannot be considered in evidence.

5.3 The only issue, therefore, that arises and calls for our adjudication is the eligibility of the assessee's entitlement to deduction u/s.54F; the investment in specified bonds u/s.54EC having been found to be within the prescribed time limit of six months of the date of transfer. The denial of deduction u/s.54F is for the reason that the investment in the residential flat at Pune was made by the assessee only on 15.12.2006. Though the assessee could do so; the limit for the same being two years from the date of transfer, i.e.,

26.11.2005, he had to, in terms of section 54F(4), deposit the sum not appropriated toward such investment in the capital gains account scheme with a specified bank or institution by the due date of filing the return of income u/s.139(1) for the relevant year. That having admittedly not being done, the assessee could not validly claim deduction u/s.54F. The facts and circumstances of the case being undisputed, we find the Revenue's basis for denial of deduction u/s.54F, which finds enumeration at paras 3.5 through 3.10 of the assessment order, and para 1.16 of the impugned order, as completely valid.

5.4 The second issue and, thus, the assessee's ground nos. 2 to 5 before us, are accordingly dismissed. Needless to add that the capital gains, or any part thereof, cannot be subject to assessment for the A.Y. 2007-08, so that the same where and to the extent assessed for that year, would require to be deleted.

Assessment Year 2004-05

6. For this year, the assessee raises, vide its ground no. 1 and additional ground no. 1, the same legal plea, i.e., as to the invalidity of the assessment order due to plurality of names in the WOA. In view of the discussion at paras 3 & 4 above, whereby we have dismissed the said plea, we decide this issue likewise, dismissing the said grounds.

7. The other issue, i.e., per ground no. 2 and additional ground no.2, raised in appeal is in respect of the addition of Rs.5 lakhs received as gift u/s.68 of the Act on account of being unexplained. While ground no.2 agitates the addition on merits, per the additional ground the assessee raises a legal plea, i.e., of the invalidity of assessment as no incriminating material in its respect was found during the course of search. We shall take up the legal aspect first.

Arguments

8.1 Before us, the ld. AR would rely on the decision in the case of *All Cargo Global Logistics Ltd. & Ors. Vs. Dy. CIT* (2012) 137 ITD *287* (Mum) (SB), stating that

assessment u/s.153A is not a *de novo* assessment, so that an addition not based on any incriminating material found during search could not be made.

8.2 The ld. DR, on the other hand, would rely on the decision by the Hon'ble Delhi High Court in the case of *CIT vs. Anil Kumar Bhatia* [2012] 24 taxmann.com 98 (Delhi), placing a copy of the same on record. Its stands abundantly clarified by the hon'ble high court, he would continue, that the A.O. is bound to issue notices u/s.153A for each of the six years immediately preceding the assessment year relevant to the previous year in which the search or requisition is made and, two, is empowered to assess or reassess the total income of the assessee for each of those six years as well as for the assessment year relevant to the year of search or requisition. That is, there are no fetters placed by law, and the A.O. is obliged to frame the assessment for those years assessing the total income without any restriction. In other words, there is no conditionality of discovery of any 'incriminating' material, which qualification could itself be a subject matter of dispute.

9. We have heard the parties, and perused the material on record.

9.1 In our view, the plea being canvassed by the assessee cannot be accepted in view of the decision by the hon'ble high court in the case of *Anil Kumar Bhatia* (supra), which effectively answers the issue under reference vide paras 18 to 22 of the said Judgment. It has been abundantly clarified therein that the jurisdiction to assess or reassess is assumed on the basis of the search or requisition, and is to assess the 'total income', irrespective of the assessment having been made earlier and, further, either u/s.143(1) and s. 143(3). This is also manifest from the clear language of the provision, as also found by the tribunal in the case of *Pratibha Industries* [2012] 28 taxmann.com 246 (Mum) (Trib.) [ITA Nos.2197 to 2199/Mum/2008]. An assessment of income under the Act, it needs to be appreciated, is in any case to be based on some materials, and cannot be *de hors* the same. The only restriction, to our mind, would be where a particular income has already been a subject matter of adjudication on an earlier occasion while framing the assessment for a particular year, so that the same stands considered, and a view in its respect taken by the assessing authority. This is as despite there being no bar on jurisdiction, the same

does not entitle the A.O. to review his assessment, i.e., in respect of matters concluded thereby. The power of review under the scheme of the Act is granted only to an appellate or revisionary authority. As such, the A.O. cannot disturb his earlier findings. This would also meet the assessee's contention of a section 153A assessment being not a *de novo* assessment. It would, however, be a different matter if material in respect of such 'income' or 'expenditure' is found or discovered during search or the ensuing proceedings, in which case it would not be a case of review, and the assessing authority would be obliged to consider the matter in the light of the material and information found, and even to probe the matter further if deemed proper. Similar would be the case where though subject to assessment u/s.143(1) or 143(3), no findings stood issued, and the return of income stands assessed as such, i.e., accepting the income and expenditure at the returned figures.

We may not dwell on this aspect further, on which we observe little scope for difference, as we may have otherwise wished to or would have, also adverting to the legal precedents; the matter being principally legal. This is as the present case is not a case of any incriminating material inasmuch as the fact that a subsisting dispute regarding the transfer of rights and delivery of possession in a property of the assessee, including the compensation therefor, came to be resolved through arbitration during the relevant previous year, came to light only during the course of the search proceedings dated 10.08.2006. These facts are conspicuous by their absence in the return of income for the relevant year, i.e., A.Y. 2006-07, filed on 31.07.2006, i.e., prior to the date of search. As such, even considering, for the sake of argument, some merit in the assessee's contention that section 153A could not be invoked in the absence of any incriminating material, the same would not be applicable in the facts of the instant case. This is in view of the material found in the assessee's case impacting his assessment for A.Y. 2006-07. It is not necessary that the said material is to be independently found for all the assessment years under reference, as once the A.O. validly assumes jurisdiction u/s.153A, he is duty bound to issue notices and frame the assessment for each of the six years immediately preceding the assessment year relevant to the year in which the requisite search is made as well as

the year of such search. The caveat by the hon'ble high court vide para 23 of its Judgment relates to a case where no incriminating material at all is found for any of the said years. It may be noted that in that case too additions were made for years other than for which the subject issue was before the hon'ble court. Further, it is not the assessee's case that the addition under reference, i.e., the credit of Rs. 5 lacs, claimed to be a gift, had been subject to verification or examination and, thus, findings by the Revenue at any stage earlier, with, as it appears, his return for AY 2004-05 being only subject to processing u/s. 143(1).

In our view, the present case *qua* jurisdiction u/s.153A is squarely covered by the decision in the case of *Anil Kumar Bhatia* (supra). Further, in view thereof, the reliance by the assessee on the decision in the case of *All Cargo Global Logistics Ltd.* (supra) would be of little consequence. The assessee's additional ground no.2 is, accordingly, dismissed.

10. We may now take up the assessee's ground no.2, agitating the addition on merits. The addition stood made by the A.O. as in his view the creditworthiness of the creditor as well as the genuineness of the gift stood not satisfactorily proved. In appeal, the matter was examined by the ld. CIT(A) at length. After setting out the facts and circumstances of the case, he renders his findings at paras 2.6 to 2.15 of his order, citing several decisions by the hon'ble high courts in support.

11. Before us, like submissions were raised by either side.

12. We have heard the parties, and perused the material on record.

12.1 Our first observation in the matter is that we find no corresponding addition in the assessment order, computing the total income at Rs.8,53,290/- vide para 7 (page 6) of the said order. Para 4 (at pages 3 & 4) of the order bears out the subject addition. We, therefore, consider the non addition as only an inherent mistake in the computation of the income, and proceed in the matter.

12.2 Our purview with regard to the subject matter of appeal is whether the non satisfaction of the A.O. with the assessee's explanation in respect of the nature and source of the credit of Rs.5 lakhs, since endorsed by the first appellate authority, is judicially sustainable, i.e., in law, or not. The matter is purely factual, as both the assessee's explanation and the satisfaction, which has to be arrived at objectively, based on materials and explanations, are principally matters of fact. Toward this, we find that the Revenue has found the assessee's explanation unsatisfactory on count of capacity (of the creditor) and genuineness (of the credit); the assessee being obliged to prove the credit in its books of account on the parameters of identity (of the creditor); creditworthiness and genuineness. This is for the reason as the income of the donor, Shri Vikas Bafna, for the two years for which the documents have been filed, being financial year ending 31.03.2002 and 31.03.2004, reveal it to be at Rs.1,76,741/- and Rs.1,55,068/- respectively, with the withdrawals for the two years being at Rs.83,218/- and Rs.62,064/- respectively, leading to the inference of him being a man of little means, leading a frugal life. With regard to the genuineness of the gift, the findings are even more indicting. The donor has no relationship with the donee, and is claimed to be a friend. No special need or occasion attends the gift, which has been utilized by the assessee – donee for investing in ICICI Prudential Mutual Fund, so that the apparent need for receiving the gift is the said investment, which (gift) is thus presumed to be an accommodation entry. The bank statement of the donor for the relevant year has not been furnished, citing absence of any power with the assessee under law to requisition the same. Finally, even in the gift deed, the gift has not been accepted by the donee-assessee.

12.3 With regard to the capacity, without doubt, the donor is a man of small means, earning his income principally from salary, which is in the range of Rs.1.50 lakhs to Rs.1.75 lakhs p.a. This sum would be consumed in withdrawals, tax and other minor investments, as in the NSC, PPF and LIP. What standard of living one could possibly maintain with a withdrawal level of Rs.5,000/- to Rs.7,000/- p.m., given the current price levels, is anybody's guess. No material or explanation toward this has been furnished by

the assessee. The doubts expressed by the Revenue with regard to the donor's capacity, thus, cannot be faulted, and remains unproved.

12.4 As regards the genuineness aspect, the explanation is seriously wanting. No doubt, friendship is a relationship as any other human relationship, but the same has nowhere been established. It is not a case of money being gifted for some critical need (as, say, a medical emergency, or even for meeting a dead line for a critical financial obligation) but for an investment in a mutual fund. The utility of money is a function of time and the income or wealth of the person, so that it has to be assessed relatively. As against an annual income of Rs.1.50 lakhs, to Rs.1.75 lakhs p.a., the gift amount is for Rs.5 lakhs, i.e., about three times the donor's average annual income, or equivalent to his three year's income. For somebody to gift three years of his hard earned income to another, both the bond between the two as well as the need for money must be very strong. Both the components are found to be seriously wanting. Again, it needs to be borne in mind that it is not a case of loan or advance, but of gift, so that donor relinquishes all his rights in the subject property in favour of the donee, fully identifying with his need and cause, to gift him the same. Continuing further, we find that the investment base in such investments, i.e., financial instruments, by the assessee is many times of that of the donor. One would have rather therefore expected a reverse transaction, i.e., the assessee donating to his 'friend'. The impugned transaction is against all tenets of friendship and of human conduct. Here, at this stage, we may also clarify that we do observe loans and advances in the donor's balance-sheets at a healthy sum of Rs.92.78 lakhs. However, going just beneath the surface, again raises genuine doubts in the matter. Firstly, the balance-sheets are unsigned, and the portfolio is the same, at Rs.92.78 lakhs for both the years for which the balance-sheets stand submitted. Surprisingly, of the same, no interest arises from two parties to whom Rs.90 lakhs, or the bulk of the capital, stands advanced. Neither does the donor earn interest nor recalls the said advances, which, even at 12% p.a., would yield him an income which is a multiple of his combined income from all other sources. That the assessee is unable to produce

the bank statement of the creditor for the full year, but does so only for a part of the year, i.e., up to the date of the gift, is again quizzical, if not highly unusual, and no convincing explanation for this unusual state of affairs is furnished.

12.5 The assessee has placed reliance on some decisions. However, as afore-stated, the matter is purely factual, i.e., based on primary facts on which inference as to a finding of fact, i.e., the explanation with regard to that nature and source of credit being satisfactory or not, keeping the entirety of the facts and circumstances of the case into account, is to be drawn. The decisions cited by the assessee have been with reference to the one of positive inference. It is the cumulative effect of all the facts and circumstances of the case on the basis of which the decision as to the capacity or genuineness being established is to be taken. In the present circumstances, we have no hesitation in stating that both the capacity and the genuineness of the impugned credit have not been proved by the assessee, so that no infirmity as to non-satisfaction therewith of the A.O., since confirmed by the ld. CIT(A), supporting his order with a host of case law, has been found by us. We, it would be noticed, have also not referred to the decisions referred to by the first appellate authority, and for the same reason; the law, as summarily explained hereinabove, being trite, with the said decisions being, therefore, cases of application of those principles, on which there is no doubt or dispute, nor possibly could be. The treatment of the impugned credit as the assessee's unexplained income u/s.68 of the Act is, accordingly, upheld. We decide accordingly.

13. In the result, the assessee's appeals for both the years under reference are dismissed.

Order pronounced on this 19th day of March, 2013

Sd/-	Sd/-
(D. MANMOHAN)	**(SANJAY ARORA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

MUMBAI, Dated: 19.03.2013

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The C.I.T. concerned
4. CIT (A)
5. The DR, D - Bench, ITAT, Mumbai

BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai

Roshani