

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI SHRI DEEPAK R. SHAH, ACCOUNTANT MEMBER
AND SHRI RAJPAL YADAV JUDICIAL MEMBER

ITA No. 2660 to 2665/Del/2009

Assessment Years : 2000-01, 2002-03 to 2006-07

Shri Anil Kumar Bhatia,
2046, Katra Tobacco,
Khari Baoli, Delhi.
PAN: AAFPB4733N

Asstt. Commissioner of
Vs. Income-tax, Central
Circle-17, New Delhi.

ITA No.2246/Del/2009

Assessment Year : 2000-01

ACIT, CC-17,
New Delhi.

Sh.Anil Kumar Bhatia,
Vs. Delhi.

ITA No 2666 to 2672/Del/2009

Assessment Years : 2000-01 to 2006-07

Shri Sanjay Bhatia,
2046, Katra Tobacco,
Khari Baoli, Delhi.
PAN: AAFPB4733N

Asstt. Commissioner of
Vs. Income-tax, Central
Circle-17, New Delhi.

(Appellants)

(Respondents)

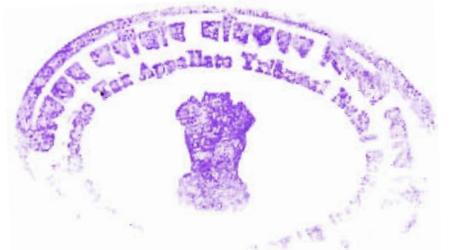
Assessee by : Shri Kapil Goel, CA
Department by : Shri Stephen George, CIT-
DR.

ORDER

PER BENCH

These cross appeals in the case of Shri Anil Bhatia and

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appeals in the case of Shri Sanjay Bhatia, have been instituted by the assessee and revenue against the orders of Ld CIT-Appeals II New Delhi dated 27/03/2009 in Appeals against orders framed u/s 153A read with section 143(3) of the Income Tax Act, 1961 (Act).. Since common issues are involved in all the appeals therefore we heard them together and deem it appropriate to dispose off them by this common order.

2. Brief facts relating to these common appeals are noted hereinafter. A search was conducted u/s 132 of Act on assessee on 13/12/2005. Pursuant to same, assessments for assessment years 2000-2001 to 2006-2007 has been framed u/s 153A read with section 143(3) of the Act.

3. The chart for various additions as made by Ld AO and respect disputed by assessee and revenue, vis-à-vis orders of Ld CIT-A, is pr below:

Anil Bhatia (Paper Book Page No 1)

Assessment Year	Assessee's Appeal Grounds	Revenue's appeal grounds
2006-2007	<ul style="list-style-type: none"> • Gift Rs 5,18,631 from Real brother in law • Agricultural income 	

	<ul style="list-style-type: none"> Rs 36,474 • Notional interest Rs 27,000 	
2005-2006	<ul style="list-style-type: none"> • Agricultural income Rs 36,524 • Notional Interest Rs 27,000 	
2004-2005	<ul style="list-style-type: none"> • Agricultural income Rs 10,33,129 • Notional interest Rs 27,000 	
2003-2004	<ul style="list-style-type: none"> • Gift Rs 2,71,000 from Ram Rattan Garg • Alleged unexplained deposit in bank Rs 150,000 • Alleged loan to Chander Mohani Sharma Rs 150,000 • Agricultural income Rs 16,699 	
2002-2003	<ul style="list-style-type: none"> • Agricultural income Rs 6,12,885 • Alleged unexplained deposit Rs 57,115 	
2000-2001	<ul style="list-style-type: none"> • Alleged unexplained deposit Rs 2,50,000 	Rs 13,89,095 Addition for alleged ingenuine exchange fluctuation

Sanjay Bhatia (Paper Book Page No 1)

Assessment Year	Assessee's Appeal Grounds	Revenue's appeal grounds
2006-2007	<ul style="list-style-type: none"> • Agricultural income 	

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	Rs 35,229	
2005-2006	<ul style="list-style-type: none"> • Agricultural income Rs 33,854 	
2004-2005	<ul style="list-style-type: none"> • Agricultural income Rs 10,38,706 	
2003-2004	<ul style="list-style-type: none"> • Gift Rs 2,50,000 from Ram Rattan Garg • Agricultural income Rs 17,260 	
2002-2003	<ul style="list-style-type: none"> • Agricultural income Rs 6,10,900 	
2001-2002	<ul style="list-style-type: none"> • Gift from Father and Mother Rs 2 lacs each : Total Rs 4,00,000 • Agricultural income Rs 4,120 	
2000-2001	<ul style="list-style-type: none"> • Gift from Father Rs 350,000 • Unexplained deposit Rs 70,000 	

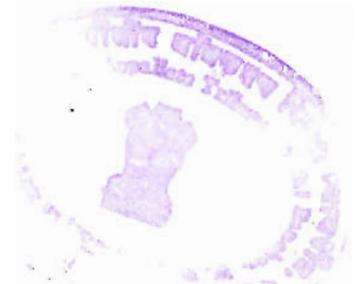
4. In aforesaid connection, revenue has disputed the stated additions as deleted by Ld CIT-A and assessee has disputed the stated additions as sustained and/or made by Ld CIT-A, in their respective grounds of appeal. Further assessee has also challenged before us the legal validity of aforesaid additions made in subject assessments u/s 153A of the Act.

5. Ld counsel for the assessee Shri Kapil Goel, CA, submitted as under on legal validity of subject additions made in assessment u/s 153A of the

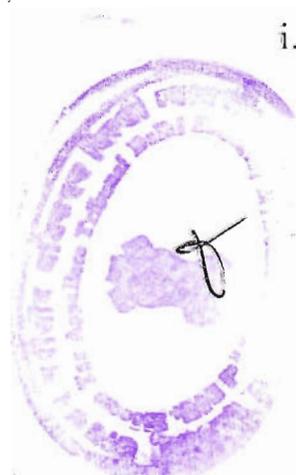
Act:



- a) During search on assessee's premises, no document much less incriminating material, except one unsigned undertaking for loan, was found. Reference in this regard was made to material available on record in subject assessment orders and Ld CIT-A orders.
- b) That on basis of aforesaid factual position, additions made in the assessment years 2000-2001 to 2005-2006, deserves to be deleted as
- i. no corresponding seized material much less incriminating material was found in the course of search for subject additions and
 - ii. relevant income tax returns for said years were filed prior to the search in normal course, suo moto disclosing the particulars of subject additions, which stood accepted u/s 143(1) of the Act;
 - iii. returns having been accepted u/s 143(1), no assessment as such could be said to be "pending" on the date of initiation of search and have "abated" in light of the contextual and harmonized reading of second proviso to section 153A(1). (reference invited to returns filed and assessment made in this regard as per paper book)
- c) That assessment as contemplated u/s 153A is not a de novo assessment and additions made therein, has to be necessarily, restricted to undisclosed income unearthed during search.



- d) That as per SC ruling in Manish Maheshwari (289 ITR 341), present provisions of section 153A leading to six years assessment, being drastic in consequences needs to be interpreted most strictly and wherever possible to the favor of assessee.
- e) That since longest arm of revenue, being search action u/s 132 of the Act, stands exercised in present case, assessment u/s 153A needs to be made on the basis of: Hidden assets/unaccounted money; Incriminating material; unearthed during search. For this reliance is placed on decision of Allahabad High Court in case of Dr R.M.L Mehrotra (case law paper book pages 15 to 18).
- f) That assessment u/s 153A on basis of search action u/s 132, cannot and should not be equated to regular/normal scrutiny assessment u/s 143(3).
- g) That Power of review being not available to same authority under the Act in normal circumstances must/should not be allowed in present provisions of section 153A where last weapon in arsenal of the department (search) stood used, as otherwise it would allow roving and fishing enquiries in search based assessment, which is not the legislative intent.
- h) That aforesaid legal position stands accepted in following orders of ITAT, in context of section 153A assessments:
- i. Ahmedabad Bench of ITAT ruling in Meghmani Industries and Organics (Case law Paper book pages 19 to 64) –(to which one of us (AM) has been a party)



- ii. Jodhpur Bench of ITAT ruling in Suncity Alloys (case law paper book pages 1 to 14)
- iii. Kolkatta Bench of ITAT ruling in LMJ International (119 TTJ 214)

6. In reply to aforesaid legal submissions, Ld DR without controverting the basic factual position as posted by Ld AR, relying upon the Delhi Bench of ITAT rulings in 114 TTJ 940 (Shyam Lata Kaushik) and 304 ITR 271 (AT) (Shivnath Harnarain) submitted before us that a) there is no condition to ascribe/correlate the additions in 153A assessments with incriminating material and b) on plain interpretation of section 153A (particularly, first proviso to section 153A (1)), assessment stipulated there under is complete de novo assessment.

6.1 In rejoinder, Ld AR distinguished these rulings stating that same do not discuss the scope and implication of section 153A assessment vis-à-vis second proviso there to, particularly with reference to the phrase “pending” and “abate”. It was further submitted that these decisions have been considered by ITAT Ahmedabad bench in the case of Meghmani Organics (supra).

7. We have considered the rival submissions and perused the record carefully. We find ourselves in complete agreement with submission of Ld AR, on legal point, in view of analysis/reasoning following next.

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8. We quote herein below section 153A of the Act, for sake of ready reference:

“Assessment in case of search or requisition.

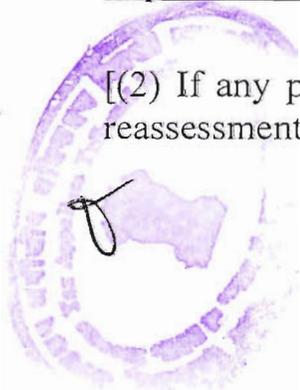
153A. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

[(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in



appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.]

Explanation: For the removal of doubts, it is hereby declared that,

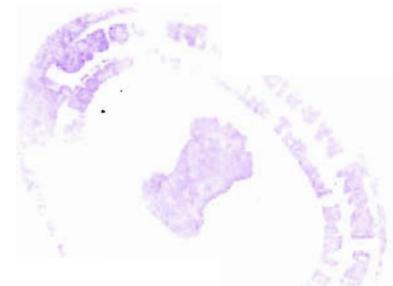
- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.”

9. We now analyse the various decisions on the subject and as relied by Shri Goel.

9.1 The Jodhpur bench of ITAT in Suncity (supra) as relied by Ld AR, in context of allowability of new claims in return filed pursuant to section 153A notice, inter alia held as under:

- i) That submission of assessee's counsel as to scope of 153A assessment being DENOVO in nature is not acceptable and submission of Ld DR that scope of 153A assessment is qua search material deserves to be accepted;
- ii) That pending assessments within meaning of section 153A(1) shall be:

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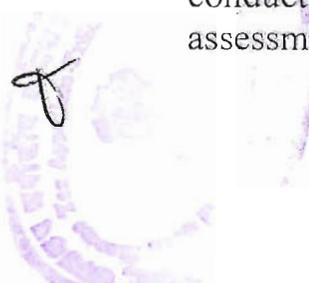


- a. Where return is filed in accordance with section 139, same is neither processed u/s 143(1) nor any 143(2) is issued for the same;
- b. Where section 143(2) notice has been issued and assessment thereon is still pending on search date;
- iii) That issuance of notice u/s 153A for all six assessment years also does not entail altogether a fresh exercise of making fresh assessment.
- iv) That necessarily only undisclosed income after defraying expenses for earning the same is taxable, when interpreted in specific CONTEXT of section 153A.

9.2 In the Ahmedabad Bench of ITAT in Meghmani Industries Ltd.

and Meghmani Organics Ltd. (supra) following ratio is available:

“The learned Counsel, Shri Soparkar, Sr. Advocate submitted that a search was conducted by issue of warrant of authorisation in the name of the assessee. During the course of search not a single piece of evidence was found which depicts that any income which has been earned by the assessee has not been disclosed. There is no reference to any materials so found while computing the income u/s 153A of the Act. Merely because search is conducted, the assessment which has become final cannot be re-agitated on a difference of opinion. In the original assessments deduction claimed u/s 80 HHC and 80IA were the subject mater of dispute. The appeals were pending before the learned CIT(A). As per first proviso to Section 153A, though the Assessing Officer can assess or reassess total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted, as per second proviso, the original assessments which were pending had been abated. This



means that the assessments which are not pending shall not abate. The power u/s 153A of the Act should, therefore, be with reference to assessment or reassessment of pending assessments or qua the materials found during the course of search. Since admittedly nothing was found during the search to suggest that any income has escaped assessment, the Assessing Officer does not have any jurisdiction for framing assessment u/s 153A of the Act. Reliance was placed on the following decision:

LMJ International Ltd. Vs DCIT (2008) 119 TTJ (Kol) 214

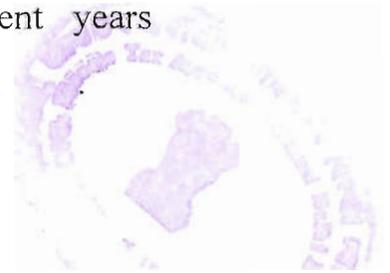
The learned DR, Shri K Sridhar on the other hand relied upon the appellate order. He submitted that the jurisdiction for framing assessment u/s 153A of the Act is derived on a conduct of search u/s 132 of the Act. Since a search warrant was issued in the name of the assessee, the assessments shall be framed u/s 153A of the Act notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153 of the Act. The Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. Therefore, jurisdiction is validly assumed. What can be the subject matter of dispute is only the addition/disallowances made therein, but not the power to frame assessment u/s 153A of the Act. Reliance was placed in the following cases.

(1) Ms. Shyam Lata Kaushik Vs ACIT (2008) 114 TTJ (Del) 940

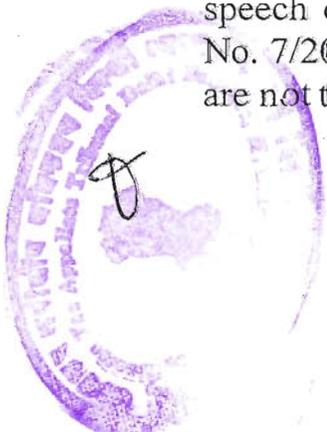
(2) Shivnath Rai Harnarain (India) Ltd. (2008) 304 ITR (AT) 271 (Del)

Held – From a plain reading of the aforesaid provisions it is clear that where a search initiated u/s 132 or books of accounts are requisitioned u/s 132A of the Act, the Assessing Officer shall issue notice and assess or reassess the total income of six assessment years

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immediately preceding the assessment relevant to which the search is conducted. As per first proviso to Section 153A the Assessing Officer is empowered to frame assessment or reassessment. However, as per second proviso the assessment or reassessments which are pending on the date of initiation of charge shall abate. Therefore, what abate are only the pending assessment or reassessment and not the completed assessments. In such a situation the power to frame assessment u/s 153 A of the Act shall be to the extent of income escaping assessment coming to the knowledge of the Assessing Officer during the course of search. Sub-section (2) of Section 153A of the Act inserted by the Finance Act with retrospective effect from 01-06-2003 dispel the doubt of the Department as to what will happen if original the assessment abates and if the proceeding initiated u/s 153A(1) is annulled. As per Sub-section (2) of Section 153A of the Act the original assessment stands revived. Harmonious reading of provisions of Sub-section (1) read with first and second proviso to Section 153A of the Act and Sub-section (2) to Section 153 of the Act makes it clear that only pending assessment or reassessments shall abate and not all the assessments comprising the period mentioned in Section 153A(1) (b) of the Act. Even if the proceedings u/s 153A (1) of the Act are to be annulled, the original assessment stands revived. This shows that there can be duality of the assessment for same assessment year. The assessments or reassessments which are not pending on the date of search but pending before the appellate authority will also survive. The assessments u/s 153A of the Act shall be with reference to the valuable articles or things found or documents seized during the year during the search which are not disclosed in the original assessment. Even as per the speech of the Hon'ble Finance Minister and the circular No. 7/2003 issued by the C B D T the appeal proceedings are not to abate...



10. The decisions relied on by the learned DR are distinguishable on facts. In the said cases the Tribunal have given a finding that “it is not the complaint of the assessee that any income, which is already subjected to assessment under s. 143(3) or under s. 148 of the Act completed prior to the search in respect of six assessment years referred to in s. 153A (b) of the Act and in the second proviso to s. 153A, has also been included in the assessment framed under s. 153A of the Act.” However, in the present case the Assessing Officer has recomputed deduction u/s 80 HHC and 80IA of the Act by reducing the claim thereof. The Assessing Officer was not competent to do so in assessment u/s 153A of the Act. We, therefore, cancel the assessment framed u/s 153A of the Act for all the years. .”

Hence, it is seen that the decisions which are now relied upon by the learned DR were also considered in the case of Meghmani Organics Ltd. (supra) and were distinguished on facts.

9.3 The Kolkatta Bench of ITAT in LMJ International case (Supra) held as under:

“A reading of s. 153A reveals apparent contradiction in the first proviso and the second proviso. The proviso provides that the assessment or reassessment shall be done by the A O in respect of each assessment year falling within six assessment years preceding the year of search. The second proviso, on the other hand, provides that the assessment/reassessment pending on the date of search shall abate. In other words, the assessments which are not pending, shall hold the field. The language of s. 153A is not unambiguous and is not susceptible to only one meaning. In the circumstances, the principle of literal construction is of no help. In the circumstances, the principle of literal construction is of no help. One of the salutary rule is rule of harmonious construction. According to this rule, a statute must be read as a whole and one provision of the Act should be

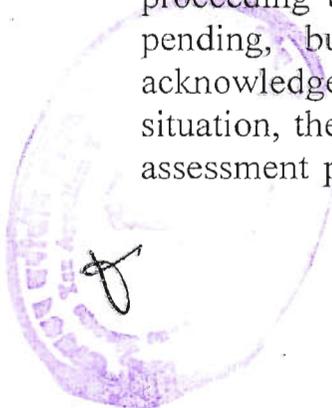
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construed with reference to other provisions in the same Act so as to make a consistent enactment. The meaning of assessment/reassessment does not always mean taking recourse to the whole procedure laid down in the Act for computing the tax liability. It is possible to effect reconciliation of the two provisos appended to s. 153A by restricting the meaning of the term “assess or reassess” appearing in the first proviso. After the search, the total income of the assessee is to be recomputed on the basis of the undisclosed income unearthed during search and the same is to be added with the regular income assessed under s. 143(3) or computed under s. 143(1) for each of the six preceding assessment years.....” This meaning when articulated in context of section 148, more appropriately fits in context of section 153A.

9.4 The Lucknow Bench of ITAT in Kailash Auto Finance reported at 32 SOT 80 , on connotation of “pending” with reference to returns filed u/s 139: held as under:

“.....From the above definitions/concepts of the term 'pending', an authority is required statutorily to complete a proceeding when it is pending before him. Thus, unless authority/court, by operation of law, is required to conclude the proceedings it could not be said to be pending before it. If we examine the nature of the proceedings before the Assessing Officer (commenced by filing the return) in the light of above definitions, we find that a return filed by an assessee and processed by the Assessing Officer could not be said to be pending before him as he is not statutorily required to conclude those proceedings, it would have been a different matter if after filing of the return of income, the Assessing Officer does not process the return. Such return which has commenced a proceeding before the Assessing Officer would be said to be pending, but when return is processed or even where acknowledgement of return is treated as intimation, in that situation, the Assessing Officer is not required to conclude the assessment proceedings necessarily. Therefore, it could not be



said that a proceeding is pending because of the return filed by the assessee...”

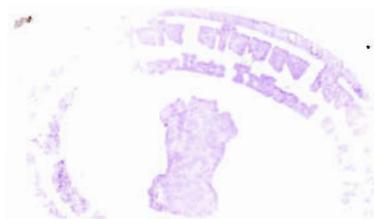
9.5 The Hon'ble Supreme Court in case of Parshuram Potteries 106 ITR 1

inter alia held as under:

“It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.”

9.6 From aforesaid analysis of judicial precedents, we are of the considered view that since for all the assessment years in consideration, processing returns u/s 143(1)(a) stood completed, for returns filed in due course before search, and no material being found in search thereafter, no addition can be made for agricultural income, gifts, unexplained deposit as stated in chart (supra).

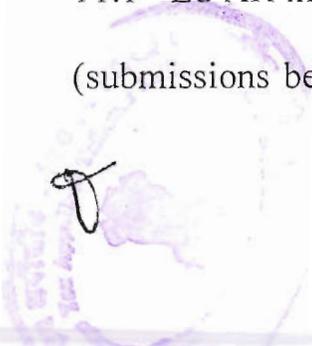
10. As regards, solitary addition of Rs 150,000 relating to alleged unexplained/unaccounted loan to Mohani Sharma (Anil Bhatia case) and consequential addition of presumed/alleged interest thereon of Rs 27,000 in assessment years 2003-2004 to 2006-2007, after analyzing the subject



document carefully, recovered from search, we are of the view that same do not bears signature of assessee nor Mohani sharma (alleged borrowers) Smt. Mohani Sharma has been ever examined by authorities below. Therefore, it lacks corroboration and cannot be made the sole basis to make subject additions. In this connection, we do not find merit in submission of Ld DR that assessee should have produced Mohani Sharma or an irrebutable presumption needs to be drawn for unaccounted income emerging therefrom. It is well settled that an unsigned document which is stated to have been never acted upon right from beginning, cannot be presumed to contain undisclosed/unaccounted income. Further, on basis of legal principle that no notional income, which should have been earned and is not earned, can be taxed. Notional interest added in stated years is hereby deleted. We accordingly delete these additions and reverse the findings of Ld CIT-A.

11. As regards assessment year 2006-2007 (in regular assessment), in Anil Bhatia case, since notional interest (Rs 27,000) stands deleted as per para 14 and agricultural income (Rs 36,474) is to be deleted on ground of consistency. Thereafter, only addition which remains is of Gift from real brother in law (Rs 5,18,731 Bhimsen Bhotra).

11.1 Ld AR in this connection drew out attention to paper book page no 10 (submissions before CIT-A) and page no 12/13 (draft of gift from relative)



and accordingly reiterated the same. Ld DR in reply stated mere gift from relative without occasion cannot be treated as genuine.

11.2 We find that gift in subject year stands covered by section 56(1)(v), relationship being undoubted by Ld DR, which exempts gifts from relatives. Accordingly, after applying section 56(1)(v), we delete the same.

12. As regards assessment year 2006-2007 in Sanjay Bhatia case, solitary addition is of agricultural income Rs 35,229, is to be deleted on ground of consistency.

13. As regards revenue's appeal in assessment year 2000-2001, since we have decided the same on legal ground in favor of assessee, same becomes infructuous/academic. However, after finding that said foreign exchange loss of Rs 13,89,095 pertains to genuine import of Hing and revenue in character, we do not find any error in the conclusion of Ld CIT-A on the same.

14. In result, all the appeals of assessees are allowed and that of revenue is dismissed.

Pronounced in the open court on

1st January 2010
December, 2009.

(RAJPAL YADAV)
JUDICIAL MEMBER

(DEEPAK R. SHAH)
ACCOUNTANT MEMBER

Dated: December, 2009.

1st January 2010.



ITA Nos.2260 to 2665, 2246, 2666 to 2672/Del/2009

Copy of the order forwarded to:-

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

By hand (Dr. Sanjay Bhatia)

By order

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उपहायक रजिस्ट्रार
Assistant Registrar
Deputy Registrar, ITAT.
अधिकार क्षेत्रीय अधिकारी
Income Tax Appellate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Bench, New Delhi