

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.289/SRT/2022

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Virtual Court Hearing)

Assistant Commissioner of Income-tax, Circle-1(3, Room No.301, 3 rd Floor, Anavil Business Centre, Hajira Road, Adajan, Surat-395009	Vs.	Shri Pravin Pannalal Shah Lal Bunglow, Athwalines, Surat-395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADRPS 1045 H		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Tushar P. Hemani, Sr. Advocate &
Shri Parimal Parmar, Advocate

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing** : **03/07/2023**

घोषणाकीतारीख/**Date of Pronouncement** : **31/07/2023**

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to assessment year 2014-15, is directed against the order passed by the National Faceless Appeal Centre, Delhi, [‘NFAC/Ld.CIT(A)’ for short] dated 16.08.2022, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’), dated 30.12.2016.

2. The grounds of appeal raised by Revenue are as follows:

“(i) On the facts and circumstances of the case and in law, ld. CIT(A) has erred in deleting the additions of Rs.1,60,66,513/-, made by the assessing officer u/s 68 of the I T Act on account of treating gift received from Shri Dhwanil P Shah as unexplained cash credit since the assessee had failed to prove creditworthiness of donor i.e., Shri Dhwanil P Shah to advance the money as “Gift”.

(ii) On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in relying on the claim of assessee that he had furnished requisite documents like certified copy of certificate of Hong Kong based auditor and financial statements of M/s Ankit Gems Hong Kong Ltd. during assessment

proceedings to prove the creditworthiness of donor i.e., Shri Dhwanil P Shah, even though after giving ample opportunities, he had failed to furnish such details during the assessment proceedings.

(iii) The findings of Ld. CIT(A) is inconsistent with material on record as the assessee had failed to furnish original signed certified certificate of Hong Kong based auditor for the year under consideration as well as earlier two years along with copy of balance sheet of Ankit Gems Hong Kong Ltd., copies of relevant books of account of D P Shah showing the amount due to him for Ankit Gems Hong Kong Ltd., details of transactions which led to accumulation of funds with Ankit Gems on behalf of or as due to Shri D P Shah.

(iv) On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer

(v) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

(vi) The assessee craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

3. All the above noted grounds of appeal are interconnected and mixed, therefore, we shall adjudicate them together.

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is an individual and filed his return of income, declaring total income of Rs.50,44,230/- on 19.11.2014. Consequent to selection of the assessee's case for scrutiny, statutory notice u/s 143(2) of the Act was issued to assessee on 04.09.2015. Subsequently, notice u/s 142(1) of the Act was issued on 27.06.2016. As per details filed before the Assessing Officer, the source of income of the assessee for the year is income from 'salary', income from 'house property', income from 'business and profession' and income from 'other sources' comprising interest income. During the assessment proceedings, the assessing officer observed that assessee has purchased a property amounting to Rs.6,37,97,760/- during the assessment year under consideration. The source of the funds are mostly loans and gifts received by the assessee from various persons during the year other than loans received from different parties. Two gifts amounts have been claimed, as received by the assessee, from his son Shri Dhwanil P Shah

during the year, out of that one gift amounting to Rs.38,63,733/- has been received on 26.02.2014 and second gift amounting to Rs.1,22,02,780/- has been received on 18.03.2014. These two amounts of gifts, have been received in the form of foreign remittances, through the HSBC account of Shri Dhwanil P Shah, assessee's son.

5. Therefore, the Assessing Officer has examined the details and documents to establish the creditworthiness of Shri Dhwanil P. Shah. From the details and documents furnished it was observed by the Assessing Officer that Shri Dhwanil P. Shah has very low returned income for the year. For the year under consideration his gross income was only Rs.9,515/-. It was observed by the Assessing Officer that on account of low returned income and low comparative balance sheet (assets), the creditworthiness of the assessee's son, who has given loan to him of Rs.1,23,60,145/- was not established. Despite ample and adequate opportunity, no further documents with regard to creditworthiness of Shri Dhwanil P Shah was furnished besides the weak balance sheet of one year. Even three years' balance sheets were not filed despite specifically being asked for and bank statement of Shri Dhwanil P Shah for the whole year has also not been furnished but only the page just before the transactions of money / gifts have been furnished through specifically asked for by the assessing officer, as on 26.12.2016. One final opportunity was given by Assessing Officer to furnish all these documents latest by 29.12.2016. The assessee has furnished with letter dated 28.12.2016 a copy of certificate of some Hong Kong Auditors showing outstanding balances in the name of Shri Dhwanil P Shah with a Hong Kong based firm M/s Ankit Gems Hong Kong Ltd.

6. The assessee was asked to produce the original certificate of the said creditor issued at Hong Kong, for this year and earlier two years, the copy of balance sheet of Ankit Gems Hong Kong Ltd for the year, copies of relevant

books of account of Shri Dhwani P Shah showing the amount due to him for M/s Ankit Gems Hong Kong Ltd, details of transactions which led to accumulation funds on behalf of or as due to Shri Dhwani P Shah, copies of Reserve Bank of India's permission documents and approvals for transactions of transfer of such funds etc. It was also noted by Assessing Officer that the said credits are in the savings bank account of Shri Dhwani P Shah from Ankit Gems Hong Kong Ltd. The assessing officer noted that how a savings banks account can be utilized for any substantially heavy business transactions. Moreover, despite ample insistence in writing and oral, the assessee has not furnished the said savings bank statement of Shri Dhwani P Shah for the entire year. As the details have been furnished toward the fag-end near to time barring date, it has not been possible to obtain the bank statements from the foreign bank/s branches. Therefore Assessing Officer held the credit worthiness of the giver of gift has not at all been established. The total gift amount of Rs.1,60,66,513/- was therefore treated as unexplained credits in the books of account u/s 68 of the Act.

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal, before Ld. CIT(A), who has deleted the addition. In sum and substance, the ld CIT(A) observed that assessee submitted the gift declaration/copy of gift deed before the Assessing Officer, which is duly signed by the donor and donee. On, going through the said declaration of gift, it was observed by ld CIT(A) that it is apparent and patent on the face of gift deed that the gifts were made by the donor to the donee, without any consideration and the gift was accepted by the donee. It has been established that there was absence of consideration, the subject matter of the gifts were foreign remittance of Rs. 38,63,733/- and Rs. 1,22,02,780/-, totaling to Rs.1,60,66,513/- on 26-02-2014 and 18-03-2014 respectively, and the same were transferred by the donor Sh. Dhwani P Shah to the donee Sh. Pravin

Pannalal Shha and the donee accepted the gifts. It has also been established that consequent to the said declaration, the donee recognized the gifts as valid and legal, therefore, Id CIT(A) deleted the addition.

8. Aggrieved by the order of Ld. CIT(A) the Revenue is in appeal before us.

9. Learned DR for the Revenue, argued that despite ample and adequate opportunity, given by the assessing officer, during the assessment stage, none of details and documents have been submitted by assessee to prove creditworthiness of Shri Dhwanil (Doner). The onus in this regard continues to lie with the assessee and such onus has not shifted from him. Therefore, Id DR stated that creditworthiness of the giver of gift has not been established. The Id DR pointed out that assessee has not submitted copy of signed certificate from 'Certified Public Accountants of Hong Kong' duly reflecting the receivables balance of the donor, *i.e.*, assessee son's in the company Ankit Gems (Hong Kong) Ltd. Therefore, it is clear that the assessee has falsely claimed that he has furnished such documents during assessment proceedings. The assessee submitted copy of confirmation dated 24.10.2013 which could not be cross verified by the assessing officer and the Income Tax Return and the other financial statements of Dhwanil P Shah could not establish the creditworthiness of the doner to advance the money. Therefore, the onus continued to lie with the assessee. Besides, the assessee could not submit any comparative financial position to establish his creditworthiness to give such a big gift to his father. Even the assessee has not submitted any documentary evidence to prove about his son is an NRI and since how long he is residing in Dubai. The assessee has also not submitted any documentary evidence to prove regarding accumulation of such a huge fund, therefore, Id DR prays the Bench that addition made by the assessing officer may be sustained.

10. On the other hand, Shri Tushar P. Hemani, Senior Advocate, appearing on behalf of the assessee defended the order passed by NFAC/Ld. CIT(A) and argued that assessee has furnished various documentary evidences viz. copy of gift deed, copy of confirmation of donor, copy of income proof, copy of balance sheet and capital account, source of gift etc, to establish the identity and creditworthiness of the donor and to establish the genuineness of the transaction. He also stated that Assessing Officer was not justified in treating the gift of Rs.1,60,66,513/- as unexplained credit u/s 68 of the Act whereas there is separate provision for gift in the Income Tax Act, which are contained in Section 56(2) (vii) of the Act. The Id Counsel also relied on various judicial precedents in support of his stand and contended that Id CIT(A) has passed a detailed and speaking order, therefore conclusion reached by the Id CIT(A) may be upheld.

11. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee with the able assistance of Shri Tushar Himarni, (Senior advocate), representing the assessee and Shri Vinod Kumar, Learned Sr-DR, representing the Revenue. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The Assessing Officer noted that during the year under consideration, the assessee purchased a property for total consideration of Rs.6,37,97,760/-, the source of fund was stated to be as loans and gifts received by the assessee. The Assessing Officer further noted that other than loans received from different parties, the assessee claimed to have received gifts of Rs.38,63,733/- and Rs.1,22,02,780/-, totaling to Rs.1,60,66,513/- on 26-02-2014 and 18-03-2014 respectively from his son Sh. Dhwanil P Shah.

The Assessing Officer further noted that these two gifts received in the form of foreign remittance through the HSBC Account of Sh. Dhwanil P. Shah. While holding the gift as non-genuine, the Assessing Officer noted that the donor had no capacity to make gift of Rs.1,60,66,513/- to the assessee as he had meager income of Rs.9,515/- only. Therefore, the Assessing Officer being not satisfied with the assessee's submissions and supporting evidences produced by the assessee to prove the genuineness of the transaction, treated the total gift of Rs.1,60,66,513/- as unexplained u/s 68 of the Act by observing that the assessee failed to prove the creditworthiness of the donor and to establish the genuineness of the transaction.

12. Before Id CIT(A), the assessee submitted copy of gift deed, copy of confirmation of donor, copy of income proof, copy of balance sheet and capital account, source of gift etc. to establish the identity and creditworthiness of the donor and to establish the genuineness of the transaction. Considering the facts of the assessee's case and documentary evidences brought on record by the assessee, the Id CIT(A) analyzed the relevant provision of Section 122 of the Transfer of Property Act, which defines the gift. Therefore, as per Id CIT(A), the necessary ingredients of the valid gift would be:

- (1) Absence of consideration.
- (2) The donor
- (3) The donee
- (4) Subject-matter
- (5) The Transfer
- (6) Acceptance.

It was observed by Id CIT(A) that the assessee submitted the gift declaration/copy of gift deed before the Assessing Officer which is duly

signed by the donor and donee. On, going through the said declaration, it is also apparent and patent on the face of it that the gifts were made by the donor to the donee, without any consideration and the gift was accepted by the donee. It has been established that there was absence of consideration, the subject matter of the gifts were foreign remittance of Rs. 38,63,733/- and Rs. 1,22,02,780/-, totaling to Rs. 1,60,66,513/- on 26-02-2014 and 18-03-2014, the same were transferred by the donor Sh. Dhwanil P Shah to the donee Sh. Pravin Pannalal Shha and the donee accepted the gifts. It has also been established that consequent to the said declaration, the donee recognized the gifts as valid and legal and consequently encashed the above transfer in his bank account and purchased the property. It is also apparent and patent on the face of the record that the assessing officer failed to prove that any consideration by way of cash or otherwise passed by the assessee to the donor. The assessing officer has failed to prove that it was not gift but was a transfer for cash consideration. There is nothing on record which could prove either directly or indirectly that cash or any other benefit passed on to the donor either before or after making the gift. Thus, the provisions of Transfer of Property Act are complied with fully.

13. The Id CIT(A) noted that assessee has furnished various following documentary evidences to establish the identity, creditworthiness and genuineness of the transaction:

- (i) Copy of ledger account alongwith gift deed
- (ii) Copy of bank statement of the donor, i.e. Mr.Dhwanil Shah, reflecting the transactions of the amount given as gift to his father along with bank advices duly reflecting the remittance of amount from the account of Dhwanil P. Shah to Pravin P. Shah

- (iii) Copy of bank statement of the assessee duly reflecting the gift received from the assessee's son.
- (iv) Certificate from Certified Public Accountants of Hong Kong, duly reflecting the receivables balance of the donor, i.e. assessee son's, in the company Ankit Gems (Hong Kong) Ltd.
- (v) Copy of balance sheet and confirmations of Ankit Gems (Hong Kong) Ltd, for the year under consideration, duly reflecting the amount due to Dhwani Shah by the company.
- (vi) Copy of confirmations of Ankit Gems Hong Kong Ltd.

Based on the above documents and evidences, the Id CIT(A) observed that Sh. Dhwani P Shah has been working with Ankit Gems Hong Kong Ltd, a Hong Kong based company engaged in the business of import and export of Polished Diamond, operating from branch office at Dubai where Sh. Dhwani P Shah is posted/worked. There is no dispute that Sh. Dhwani P Shah is son of the assessee, Sh. Pravin Pannalal Shah. Though Sh. Dhwani P Shah had meager income in India but he has sufficient earning from his employer Ankit Gems Hong Kong Ltd, which fact is also confirmed by Ankit Gems Hong Kong Ltd. From audited accounts of Ankit Gems Hong Kong Ltd and confirmation furnished by it, it is clear that Sh. Dhwani P Shah had sufficient earning so as to give gifts to the assessee. Further, it was noted by Id CIT(A) that the amounts of gifts were transferred /received in the form of foreign remittance through the HSBC Account of Sh, Dhwani P Shah, Branch Dubai and due credits of the same is also reflecting in the assessee's bank account no. 039983800000642, Katargam, Surat. Thus, from the details and evidences furnished by the assessee, it is very much clear that there is no dispute regarding identity of the donor and moreover, the creditworthiness of the donor and genuineness of the transaction duly stand proved.

14. Considering, that above facts and circumstances, the Id CIT(A) has examined the Identity of the donor, Capacity of the donor to give gift, and Genuineness of the transactions, as follows:

(i) Identity of the donor. The assessee furnished the name and address of donor Sh. Dhwanil P Shah. In fact, the assessing officer has not disputed the identity of the donor. Thus, the identity of the lender stood established.

(ii) Capacity of the donor to give gift. To establish the capacity of Sh. Dhwanil P Shah, the assessee furnished copy of Certified Public Accountants of Hong Kong Auditors which duly reflecting the receivables balance of the donor, *i.e.*, assessee son's, in the company Ankit Gems (Hong Kong) Ltd., from where the amount was received which duly prove the capacity of the donor. If the amount reflected in the CPA certificate is in US\$ which after converting to HK\$ by applying the conversion rate of 7.8 HK\$ tallies with the audited financial statement of the Ankit Gems (Hong Kong) Ltd. The receivable balance of the donor as on 31/03/2013 in the Ankit Gems (Hong Kong) Ltd., as per CPA certificate is \$ 45,71,684.90 which is equivalent to HK\$ 3,56,59,142.22 ($\$ 45,71,684.90 * 7.8$). The receivable balance is duly reflected in the Note 17 of the audited balance sheet of Ankit Gems (Hong Kong) Ltd.

(iii) Genuineness of the transactions: To establish the genuineness of the transaction, the assessee has furnished copies of account statement of HSBC from which funds were advanced to the assessee and stated that gifts were accepted through proper banking channels, hence, genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said creditor and it came from the coffers of that very creditor. The Division Bench of Delhi High Court in the case of CIT vs. Kamdhenu

Steels and Alloys Ltd. 361 ITR 220 (Del.) held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Once these documents are produced, the onus cast on the assessee can be said to have been satisfactorily discharged. This proves the genuineness of the transaction.

We agree with the above findings of Id CIT(A) that assessee has proved three ingredients namely: the capacity and creditworthiness of the donor to give gifts to the assessee and genuineness of the transaction.

15. We note that followings judicial precedents supports the case of the assessee, which were relied on by Id CIT(A), *wherein* it is categorically held that where the assessee has brought sufficient evidences to establish the genuineness of gift received, no addition can be made u/s 68 of the Act.

(i) In the decision in the case of DCIT Vs. Prakash H. Shroff reported in 3 SOT 171, the Hon'ble ITAT Ahemdabad Bench held that:

"the assessee received gift from the NRI from their NRE accounts. Copies of gifts declaration etc were filed. The Hon'ble Bench held that the assessee had proved by evidences and material, the identity of the donor, genuineness of the transaction and capacity of the donor and therefore, the gifts require to be treated as genuine as no contrary evidences or material is available on record.

(ii) The Hon'ble Chandigarh Bench of the Tribunal in the case of R.K. Syal Vs. Asstt. CIT (2000) reported in 66-TTJ 656 held as under:

"The gifts made cannot be rejected merely on the ground that there was no occasion or relationship for making the same. The element of close relationship or occasion for making gift do not flow from the definition of gift as given in section 2(xii) of the Gift-tax Act. The conditions laid down there are that there should be transfer by one person to another of any existing movable or immovable property, the transfer should be voluntary and should be made without consideration of any money."

- (iii) The Hon'ble Delhi High Court in the case of CIT Vs. Mrs. Sunita Vachani - reported in 184 ITR 121 - observed:

"The Tribunal has examined the evidence which was available on the record and has arrived at the aforesaid findings. Even though it may be surprising as to how large sums of money are received by a family in India by way of gifts from strangers from abroad, unless there is something more tangible than suspicion, it will be difficult to regard the moneys received in India from abroad as money representing the income of the assessee in India".

- (iv) The Hon'ble Delhi Bench of ITAT in the case of M.S. Agarwal vs. Deputy Commissioner - reported in 90 ITD 80 at 103 - observed:

"At this stage, we may refer to the contention of the Id. Sr. DR that there was no occasion or relationship between the donor and the donee for making the gifts in the instant case. In our considered view, genuineness of the gift transaction has to be considered on the basis of attendant facts and circumstances of the case like identity of the donor, financial capacity and factum of the transaction. Even though relationship between the donor and the donee as well as the occasion for the gift may be relevant circumstances for adjudication of the issue of genuineness of the transaction yet, no inference can be drawn merely on the basis of surmises and conjectures. Relationship or occasions for the gift are not in any case essential elements as engrained in the definition of gift under the Gift-tax Act."

- (v) The Hon'ble Allahabad Bench of ITAT in the case of ITO vs. Matadin Snehlata (HUF) - reported in 90 ITD 203 observed:

"In this case, the evidence on record clearly shows that the gift was made by the donor to the donee without any consideration and the gift is accepted by the donee by delivery. For the movable property, the affidavit and declaration was also effected though it was not required. Therefore, all the ingredients of gift have been specifically proved by the assessee. It also observed in this case, the assessee has accepted the gift from the donor. The subject matter is money which was transferred by Banking channel and the delivery of the money is accepted. No consideration is proved by the revenue."

- (vi) The Hon'ble Calcutta Bench of ITAT in the case of Smt. Bhagwati Devi Vs. ITO - reported in (1993) 47 ITD 58 - observed:

"It is evident from the discussions extracted by us above from the impugned order that the A.O. did not decide the issue with an open mind and was perhaps biased that the assessee, a lady residing in India, could receive a gift of Rs.1 lac from a resident of Nepal out of natural love and affection and also without there being any evidence of social interaction between donor and donee, namely, the

assessee. We fail to understand as to how and why it is necessary for the donor and the assessee to prove the social interaction between them or for the matter to prove natural love and affection by donor towards donee assessee. A person may have or develop love and affection for another person instantly and some persons may not even develop love and affection for years together but so far as the validity of a gift is concerned, these are not the considerations which are to be weighed. As per section 122 of Transfer of Property Act, a gift is complete in respect of existing movable and immovable property when there is a transfer of such property by a person called 'donor' and acceptance of such gift of such property by a person called 'donee'. If these essential conditions are prevalent or satisfied, then the gift is complete and it is not open for challenge until the same is proved to the contrary with cogent and strong evidence which in the instant case neither the A.C. nor the A.O. possess. The donor has categorically stated more than once that he has gifted Rs. 1 lac to the donee assessee and also transferred the money. The donee assessee has also stated that she has accepted the gift and received the money. Such being the case, we see no reason for the A.O. to come to the conclusion that the gift was invalid or not genuine. Apart from expressing his surprise and dissatisfaction over the amount gifted to the assessee, the A.O. has not led any iota of evidence to prove that the gift was collusive or a dubious device or a subterfuge to evade tax. The assessee did not have such income so as to collude with a Nepal Resident and adopt a dubious device to evade payment of tax. No such evidence or material is on record of the A.O nor anything is collected by the A.C. and placed on record, as stated by us above. The provisions of section 68 also in our view, are not attracted in the instant case as the sum of Rs.1 lac was not found credited in the books of account maintained by the assessee for the previous year relevant to the year under appeal. Section 68 comes into operation if any sum is found credited in the books of account maintained by the assessee and no satisfactory explanation is offered in respect of the sum so credited."

(vii) The Hon'ble Rajkot Bench of ITAT in the case of Asstt. Commissioner 'vs. Radheyshyam Bansal - reported in 68 TTJ 136 - observed:

"During the course of hearing, the learned counsel produced before us copy of letter dated 25th December, 1987, written by Shri R. Chawla of USA to the assessee wherein he has mentioned the draft number for US \$ 5,000 and has also stated that the same is being sent to the assessee through Shri Harischandra Goyal, Shri Goyal informed the assessee, vide letter dated 27th December, 1987, that he had received F.D.D. for US \$ 5000- issued by NBG International, Coral Cables (Miami) Florida bearing No.003244: 061000256: 00001880, dated 7th Jan., 1988, for and on behalf of the assessee. He has also stated that he is forwarding this draft to the assessee, which is a gift from Shri R. Chawla. In view of the documents, the genuineness of the gift cannot be doubted. The identity of the donor is established. In view of the above documents, the transaction cannot be doubted".

(viii) The Hon'ble Jodhpur Bench of ITAT in the case of DCIT vs. Ramclev Kumar - reported in 40 Taxman 102 - held that:

"It is not necessary that there should be some blood relation or gift should be made only to relatives and not to friends. Since the assessee had filed all documents, the Commissioner (Appeals) was justified in deleting addition made by the Assessing Officer. I am extracting hereunder the observations contained in para 2.9 of the order dated 9.1.2004 as below:

"It is also not disputed that the amount was received by the minor son of the assessee from NRE account of the donor. It is true that no deposits can be made in the NRE account except the realization from the foreign country. In other words, only foreign exchange can be deposited in the NRE account. It is not the case of the assessing officer that the assessee went to Thailand and gave his money to the NRI for depositing in his NRE account maintained in India or NRI received the money back from the assessee after giving the cheque to his minor son. In fact, the assessing officer was not justified in observing that the gift was an arranged gift. The assessing officer treated the gift as bogus on the basis that the assessee had not given any gift to the children of the donor in the past. In our opinion, this observation of the assessing officer is against the provisions of law because the amount can be treated as gift if it is given without any consideration and under the natural love and affection. Similarly, the observation of the assessing officer that there was no blood relation and occasion to receive the gift, is also not acceptable because for making the gift, it is not necessary that there should be some blood relation or the gift should be made only to the relatives and not to the friends".

(ix) The Hon'ble Jaipur Bench of the ITAT in the case of ACIT vs. Sampat Raj Ranka - reported in 24 Tax World 172 - observed that:

"It is observed that the assessee's claim of receipt of gift is supported by the declaration of the donor Smt. Sua Bai. Further, this claim has been substantiated by the confirmation of Shri Kanwar Lal, the grandson of late Smt. Sua Bai in his statement recorded by the assessing officer. As against this direct evidence, it is observed that, the lower authorities have examined the issue on the basis of human probabilities while observing that no such gifts were made by late Smt. Sua Bai to her grandsons or grand-daughters whereas preponderance of human probability is a circumstantial evidence, and if direct evidence is placed on one scale and human probabilities on the other, direct evidence is bound to carry more weight. It also observed: "Again, purpose and occasion are not the essential ingredients of gift".

(x) The Hon'ble High Court of Rajasthan in the case of Nek Kumar vs. ACIT - reported in 274 ITR 575 - allowed the appeal and accepted the claim of gift of Rs. 1 lac by him and by his cousin

from Smt. Asha Devi Singhi of Gangtok as genuine. The addition sustained by the Tribunal was deleted. The Hon'ble High Court referred to the relevant observation of CIT (Appeals):

"It may also be stated that the amounts were withdrawn from the bank account of Shri Ramesh Singhi, the son of the donor, and if certain deposits are made in the bank account of Shri Ramesh Singhi and the persons from whom such deposits have come are not traceable or found to be non-existent, adverse inference, if any, is to be drawn with reference to such deposits in the hands of Shri Ramesh Singhi and there was no basis at all in presuming that such deposits represented the black money of the assessee having been pondered back in the guise of gift through Smt. Asha Devi shown as donor. There is no iota of evidence to show that the amounts so deposited in the account of Shri Ramesh Singhi were from the assessee or from his brothers and this is more so when the assessee has never visited Calcutta as duly admitted by him in the statement recorded by the concerned. It further observed; "There is no material evidence whatsoever to shown that the money was deposited by the assessee or by a relative in the bank at Calcutta and thereafter got deposited in the account of Shri Ramesh Singhi which ultimately came back to the assessee under the guise of a gift. It also stated: "It may be that the assessee was not in a position to give the details about the family particulars of the donor but this too could not have given a proper basis of justify the adverse inference. The Hon'ble High Court observed at page 581; "The assessee has also been examined in the second round by the Assessing Officer wherein in answer to question No.1, the assessee submits that I know Smt. Asjia Devi Singhi since long. The donor was impressed by his grandmother, who was a 'Sadhvi' in Jain Dharam and donor also visited so many times to Jaipur and stayed with his family and gift has been given. On these admitted facts and the reasons given in detail by the Commissioner of Income (Appeals), we see no reason to confirm the view taken by the Tribunal. Even merely on conjectures and surmises, such gifts cannot be treated as not genuine".

(xi) When the availability of funds has been adequately proved, the capacity of the donors to make the gifts also stands proved. The onus to explain the credit being on the assessee, reflects the general rule of law of evidence codified in section 106 of the Evidence Act, 1872, as per which the source of income is a matter with the exclusive knowledge of the assessee which he has to prove and demonstrate. It is for this reason only that the source of source, which is not within the knowledge of the assessee at all, is not required to be proved by the assessee. The

Hon'ble Punjab and Haryana High Court, while dealing with an identical issue in the case of Jawahar Lal Oswal (supra), has categorically held at pg 27 of its order,

"An arrangement between a donor and another is an arrangement between the donor and his source of money. The onus to probe and prove this aspect lies upon the Revenue and not upon the assessee, particularly where the income is being dealt with under a deeming provision. A person who receives a gift, is not required to prove the source of the money of his donor"

(xii) The addition has been made merely on the basis of suspicion, without any iota of evidence to even lead to the fact that the amount received as gifts were actually the assessee income only. This cannot be the basis of making an addition under a deeming provision, section 68 in the present case. The Hon'ble Punjab and Haryana High Court in the case of Jawahar Lal Oswal (supra) has dealt with the said issue as follows:

"A deeming provision requires the Assessing Officer to collect relevant facts and then confront the assessee, who is thereafter, required to explain incriminating facts and in case he fails to proffer a credible information, the Assessing Officer may validly raise an inference of deemed income under section 69-A of the Act. As already held, If the assessee proffers an explanation and discloses all relevant facts within his knowledge, the onus reverts to the revenue to adduce evidence and only thereafter, may an inference be raised, based upon relevant facts, by invoking the deeming provisions of Section 69-A of the Act. It is true that inferences and presumptions are integral to an adjudicatory process but cannot by themselves be raised to the status of substantial evidence or evidence sufficient to raise an inference. A deeming provision, thus, enables the revenue to raise an inference against an assessee on the basis of tangible material and not on mere suspicion, conjectures or perceptions. It would also be necessary to reiterate that it is not perceptions but concrete facts that underline quasi judicial determinations and where concrete facts are not available, relevant facts, as would raise a credible inference of culpability requiring an assessee to rebut the inference so raised. More often than not, revenue authorities, for want of relevant material, institute "inquisitions", as opposed to inquiries and by addressing questions that the more inculpatory in nature, seek to build their case, from answers proffered by an assessee."

16. We note that in the instant case, the Assessing Officer doubted the creditworthiness of the donor on the ground that in the return of income for AY 2014-15, the donor had shown only income of Rs.9,515/-. However, we

find that the Assessing Officer failed to take note of the fact that donor Sh. Dhwanil P Shah is NRI since long he only had some receipt interest income and STCG and LTCG on investments made in India which were declared in the return filed for the AY 2014-15. However, we note that income declared by the assessee's son in India is not only his income and his major income is from abroad in the capacity of NRI, hence genuineness of the transaction should not be doubted. We find that in the instant the case, the assessee has adduced sufficient evidences to explain the gifts as valid by proving the identity and creditworthiness of the donor and genuineness of the transaction. In the various precedents cited above, the Hon'ble Courts consistently held that where the assessee by way of documentary evidence satisfactorily established the identity and creditworthiness of the donor and genuineness of the transaction, there is no justification to treat the credit / gift as *unexplained or non-genuine*. Therefore, it is abundantly clear that where the assessee had produced enough evidence to prove identity of donor, his creditworthiness and also genuineness of gift, addition on account of such gifts could not be sustained. Hence, we note that conclusion reached by Id CIT(A) is correct. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

16. In the result, appeal of the Revenue is dismissed.

Order is pronounced on 31/07/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat/दिनांक/ Date: 31/07/2023
Dkp Outsourcing Sr.P.S.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat