आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.249/RPR/2022

निर्धारण वर्ष / Assessment Year : 2010-11

Rajesh Agrawal
C/o. M/s. Chhattisgarh Steel Traders,
15/343, Main Road, Jawahar Nagar,
Raipur (C.G.)-492 001.

PAN : ACPPA2905F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Raipur-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.08.2023
घोषणा की तारीख / Date of Pronouncement : 19.10.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 14.10.2022, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 25.03.2013 for the assessment year 2010-11. The assessee has assailed the impugned order on the following grounds of appeal:

> "1. That, the Learned Commissioner of Income-tax (Appeals) erred in law as well as on facts by upholding the disallowance of interest made by the Income Tax Officer and thereby, making addition of Rs.7,56,000/-. The same is unjust & unfair and it be allowed in full as claimed.
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> 2. That the appellant reserves the rights to add, alter or modify any ground of appeal at the time of hearing."

2. Succinctly stated, the assessee, who is engaged in the business of trading of iron & steel as a proprietor of M/s. Chattisgarh Steel Traders, Raipur, had e-filed his return of income for A.Y.2010-11 on 29.08.2011, declaring an income of Rs.1,12,97,780/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee, who had outstanding interest-bearing funds/loans of Rs.10.51 crores as of 01.04.2009, had diverted funds of Rs.21 lacs on 02.04.2009 in the garb

of a gift that was given to his nephew, viz. Shri Brijesh Agrawal. The A.O. observed that the aforesaid amount of Rs.21 lacs was, thereafter, received by the assessee as an unsecured loan from the aforesaid donee, viz. Shri Brijesh Agrawal (supra) at an interest of 18% P.A. The A.O. further observed that the aforesaid done, viz. Shri Brijesh Agrawal was also a lender/creditor with an outstanding balance of Rs.26,71,016/- (Cr) on 01.04.2009 in the books of accounts of the assessee. Referring to the aforesaid loan of Rs.21 lacs (supra) received from Shri Brijesh Agrawal (supra), the A.O observed that the same had resulted in increasing the outstanding closing balance of loan/credit a/c of Shri Brijesh Agrawal to Rs.54,98,559/- (Cr.) on 31.03.2010. On a perusal of the records, it was observed by the A.O. that the assessee had paid interest of Rs.3,78,000/- (i.e. @18% P.A on Rs.21 lacs) to Shri Brijesh Agarwal.

4. Also, the A.O. observed that the assessee had, in the immediately preceding year, i.e., A.Y.2009-10, in a similar manner, transferred a sum of Rs.21 lacs to his other nephew, viz. Shri Kamal Agrawal. It was observed by the A.O that the amount of Rs.21 lacs that was transferred in the garb of gift transaction was, in turn, received back as an interest-bearing loan from the said person @ 18% P.A. It was, thus, observed by the A.O that the assessee had during the year paid interest of Rs.3.78 lacs on the loan of Rs.21 lacs that was received from Shri Kamal Agrawal.

5. The A.O. holding a conviction that the assessee had in the garb of the ingenuine gift transactions to his aforesaid nephews, viz. S/shri Brijesh Agrawal and Kamal Agrawal had reduced his taxable income by raising a bogus claim for

deduction of interest paid on the respective loans that were received from them, thus, disallowed an amount of Rs.7,56,000/- (i.e., Rs.3.78 lacs each) u/s. 36(1)(iii) of the Act. The A.O in order to fortify his aforesaid conviction was of the view that now when the assessee was already heavily burdened with interest-bearing loans of Rs.10.51 crore as of 01.04.2009, which included the outstanding interest-bearing loan/credit on 01.04.2009 of Rs. 26,71,016/- from Shri Brijesh Agrawal, it was, thus, beyond comprehension that instead of squaring up the outstanding loan of Shri Brijesh Agrawal (supra) by repayment/part-repayment of his outstanding loan/credit, he would have gifted an amount of Rs.21 lacs to him, which in turn, and then receive back the said amount as an interest-bearing loan. Accordingly, the A.O. held the gift transaction as ingenuine and, being of the view that the assessee had diverted his interest-bearing funds for a purpose other than business, disallowed the assessee's claim for deduction of corresponding interest expenditure of Rs.7,56,000/- u/s. 36(1)(iii) of the Act.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. Referring to the fact that the assessee had diverted the sum of Rs.42 lacs as gifts to his nephews, viz. Shri Brijesh Agrawal and Shri. Kamal Agrawal and thereafter, received back the said respective amounts as interest-bearing unsecured loans @18% p.a; from both of them, the CIT(Appeals) was of the view that the entire series of transactions were illusory, colorable, ingenuine, and not for the purpose of business. Accordingly, the CIT(Appeals), upheld the disallowance of Rs.7,56,000/- made by the A.O u/s.36(1)(iii) of the Act, observing as under:

"5. Decision:

The records and the submission filed by the appellant have been perused. Brief facts of this case are that the appellant is the proprietor of M/s Chhattisgarh Steel Traders, engaged in the business of Iron & Steel Trading. The appellant filed his return of income for AY 2010-11, declaring total income at Rs.1,12,97,780/-. The assessment has been completed u/s 143(3) vide order dated 28.03.2013 determining total income of Rs. 1,20,53,780/-. The AO has made disallowance of Rs 7,56,000/-u/s 36(1)(iii) of the Act on account of interest paid on unsecured loans taken from Shri Brijesh Agarwal and Shri Kamal Agarwal. Aggrieved by the assessment order, appellant is in first appeal.

5.2 The AO has noted that the nephew of the appellant, Sh. Brijesh Agarwal was a creditor in the appellant's books of account and his opening credit balance was Rs.26,76,016/- as on 01.04.2009. On 02.04.2009, the appellant transferred an amount of Rs. 21,00,000/- through banking channel in form of Gift to Sh. Brijesh Agarwal. However, on the same day i.e., 02.04.2009, appellant received the same amount from Sh. Brijesh Agarwal as unsecured loan on which interest @ 18% per annum has been paid and claimed as deduction. The appellant already had interest bearing fund of Rs. 10.51 crores as on 01.04.2009. The AO has further noted that the appellant has diverted interest bearing funds to the family members. Instead of repayment of existing loan, the appellant has first given money in form of gift to Sh. Brijesh Agarwal and thereafter, accepted the same amount as loan. The AO has observed that there was no business purpose/business expediency to perform this transaction that the exercise has been undertaken to reduce tax liability. He has held that the gift is not genuine as it lacks the necessary condition of being voluntary in nature and has treated the same as repayment of loan and as a result disallowed the interest of Rs. 3,78,000/- u/s 36(1)(iii) of the Act. The appellant has also entered into transaction of similar nature with another nephew named Sh. Kamal Agrawal. The interest of Rs. 3,78,000/- paid to Sh. Kamal Agrawal has also been disallowed on the same lines.

5.3 During the course of appellate proceedings, the appellant has submitted that to fulfill the financial needs of the business, the appellant preferred to take unsecured loans over the secured loan in view of various difficulties faced while obtaining secured loans such as legal formalities, collateral securities, brokerage etc. He, therefore, obtained the unsecured loans from relatives as per the need of business. It was further submitted that funds borrowed, and interest paid on it are wholly and exclusively for the purpose of business. The appellant has relied on various judgements and contended that it is not for the Income-tax Department to examine whether there was no need to borrow money because he had ample fund of his own. He has further submitted that his relatives are already paying highest tax on such interest income and the disallowance is uncalled for.

5.4 At this juncture, it is relevant to reproduce the section 36(1)(iii) of the Act:

"Other deductions.

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

……

iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:"

From perusal of section 36(1)(iii) of the Act, it is evident that 3 conditions must be complied with namely, money must have been borrowed by the assessee, it must have been borrowed for the purpose of business and the assessee must have paid the interest on the aforesaid amount and claimed it as deduction. In the instant case, genuineness of the transaction claiming that it is for the purpose of business is in question. This phrase "for the purpose of business", as held by many legal pronouncements, is the most important yardstick for the allowability of deduction under Section 36(1)(iii) of Act. While explaining the meaning of this phrase the Hon'ble Supreme Court in the case of S. A. Builders Ltd. Vs. CIT(A), Chandigarh [2007] 158 Taxman 74 (SC) has used the word "commercial expediency". The Supreme Court has defined commercial expediency as "an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency".

5.5 Further, following the above judgment of Hon'ble Supreme Court, the High Court of Delhi, in the case of Punjab Stainless Steel Inds. Vs. CIT [2011] 196 Taxman 404, has held that:

"The commercial expediency, in our view, would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests. The business interest of the assessee has to be distinguished from the personal interest of its directors or partners, as the case may be. In other words, there has to be a nexus between the advancing of funds and business interest of the assessee firm. The appropriate test in such a case would be as to whether a reasonable person stepping into the shoes of the directors/partners of the assessee firm and working solely in the interest of the assessee firm/company, would have extended such interest free advances. Some business objective should be sought to have been achieved by extending such interest free advance when the assessee firm/company itself is borrowing funds for running its business. It may not be relevant as to whether the advances have been extended out of the borrowed funds or out of mixed funds which included borrowed funds. The test to be applied in such cases is not the source of the funds but the purpose for which the advances were extended."

5.6 In the instant appeal, the money was first diverted by the appellant from his business disguising it as gift to the two nephews and thereafter the same money was taken back from them as unsecured loans on which interest@18% was paid and claimed as deduction. Therefore there is no actual/genuine borrowing of capital.

Further, instead of repaying existing loans taken from the creditors including the nephews Shri Brijesh Agarwal and Shri Kamal Agarwal, the appellant first chose to give an amount of Rs.42 lakhs as gift to both the nephews of Rs. 21 lakhs each and then took loan of said amount on the same day from them paying interest @18%. In place of paying existing loan and reducing interest burden, appellant increased his interest burden thereby reducing taxable income. No businessman will gift money when he himself is in need of it. No prudent businessman will enhance his interest liability as done by the appellant in the instant case. The appellant has tried to give the whole arrangement a colour of business expediency though the real interest is to reduce tax liability. The appellant's contention that it preferred to have unsecured loans over the secured loans and the same was for the purpose of business is far from the truth. Therefore, this transaction cannot be held to have been entered into for purpose of business since there was no business expediency to enter into the said transaction. In fact it is an illusionary, colourable and non genuine transaction entered into with the main motive of reduction of tax liability.

5.7 The decision of Hon'ble Gujarat High Court in the case of Jayesh Raichand Shah V ACIT Tax appeal No. 705 of 202 July 2, 2013 [2015] 55 taxmann.com 108 (Gujarat) is squarely applicable to the facts of the case. In this case the assessee made gift of certain amount to three persons, and immediately thereafter three persons placed same amount in the hands of the assessee on which interest was claimed as deduction by the assessee. The Court held that entire series of transactions were illusory, colourable and not genuine and, therefore, assessee was not entitled to deduction under section 36(1)(iii).

Relevant extracts of the decision of Hon'ble High Court of Gujarat are reproduced as under:

"4 While disallowing the aforesaid claim and making addition of the aforesaid amount of Rs.7,46,965 to the total income, the Assessing Officer observed as under:

"Here it is important to mention that business exigency and prudency are the two basic parameters to determine the allowability of any expenditure. Therefore, no prudent businessman will gift his money when there is certain exigency of money. In the instant case, it is seen that the assessee has made gift of Rs. 20,00,000 to each to Shri Bhavik J. Shah, Shri Tejas Shah and Shri Jignesh Shah on June 19, 2007, June 19, 2007, and June 16, 2007, respectively, and almost the same amount is received as loan from these persons just after 3 days that is on June 22, 2007. This action of the assessee

clearly transpires that business exigency was over looked and unreasonable interest was paid to the above persons. Therefore, the interest paid to the above persons on the amount gifted is not allowable as per section 40A(2)(b) of the Income-tax Act. Accordingly, I calculate the excessive payment of interest on the amount gifted as under:

Name of Person	Amount of gift (Rs)	Gift made on	Period up to March2008	Interest at 16% (in Rs.)
Bhavik J.Shah	20,00,000	19/06/07	285 days	2,49,863
Tejas R Shah	20,00,000	19/06/07	285 days	2,49,863
Jignesh Shah	20,00,000	16/06/07	285 days	2,47,239
			Total	7,46,965

The same came to be deleted by the Commissioner of Income-tax (Appeals) and in appeal the Income-tax Appellate Tribunal reversed the order of the Commissioner of Income-tax (Appeals) and confirmed the addition made by the Assessing Officer. While restoring order passed by the Assessing Officer, the Income-tax Appellate Tribunal in the impugned order has observed and held as under (emphasis added):

"17. We have heard both the parties. Observations made in the assessment order indicate that Rs. 60,00,000 were diverted by the assessee from his business in favour of three persons, namely, Shri Bhavik J. Shah, Shri Tejas R. Shah and Shri Jignesh R. Shah allegedly by way of gift. After the so-called gift, the assessee got back the same money from all the aforesaid three persons on which the assessee chose to pay interest at 16 per cent. which aggregated to Rs. 7,46,965. None of the aforesaid persons could have got interest at 16 percent as the rate of interest given by the bank and financial institutions even on fixed deposit was not as high as 16 per cent in the year under appeal. The assessee claims that Shri Bhavik J. Shah alone was related to the assessee within the meaning of section 40A(2) (b) and remaining two persons were not related to the assessee within the meaning of section 40A(2). It is, however, not in dispute that all the three persons were related to the assessee which may or may not be covered by section 40A(2)(b).

18. Section 36(1)(iii) allows deduction for payment of interest on capital borrowed for the purpose of business. In the present case, the money was first diverted by the assessee from his business disguising it as gift to the aforesaid three persons and thereafter the same money was taken back by the assessee from the aforesaid two persons on which the impugned interest was claimed by the assessee to have paid to them. On the facts of the case,

there is no borrowing of capital and, therefore, the requirement of section 36(I)(iii) is not fulfilled. Without prejudice to the aforesaid, the entire series of transactions are illusory, colourable and not genuinely for the purpose of the business. In this view of the matter, the assessee is not entitled to deduction under section 36(I)(iii). The order of the Assessing Officer making the impugned disallowance is, therefore, restored(emphasis added).

19. Reliance placed by the learned Commissioner of Income-tax (Appeals) on section 40A(2) (b) is completely misplaced for the reason that the deduction towards the interest paid on borrowed Capital has to be examined firstly with reference to the provisions of section 36(I) (iii) and thereafter with reference to the provisions of section 40A(2). In the Present case, the series of transactions carried out by the assessee simply indicate a colourable device to ensure deduction of interest from taxable income. They do not establish any genuine borrowing. It is quite well settled that illegal or colourable devices have to be ignored (emphasis added). The Commissioner of Income-tax (Appeals) ought to have ignored them and decided the issue in accordance with the provisions of section 36(1)(iii) which was relevant for deciding the issue under appeal. Ground 2 is allowed."

5. We are in complete agreement with the reasoning given by the Income-tax Appellate Tribunal. The Submissions on behalf of the assessee that out of the aforesaid three persons, two persons, namely, Mr. Tejas Shah and Mr. Jignesh Shah Cannot be said to be related to the assessee within the meaning of section 40A(2)(b) of the Act is concerned, it is required to be noted that as such the aforesaid persons are found to be nephews of the assessee and the finding that money was first diverted by the assessee from his business as a gift to the aforesaid three persons and thereafter the Same money was given to the assessee at the rate of 16 per cent per annum and on which the assessee claimed the benefit under section 40A(2)(b) of the Act and the entire series of transactions were illusory, colourable and not genuinely for the Purpose of the business. It is rightly held that there is no borrowing of Capital and, therefore, the requirement of Section 36(I)(iii) is not fulfilled and, therefore, the Income-tax Appellate Tribunal has rightly restored the disallowance by the Assessing Officer. No interference of this court is called for(emphasis added).

5.8 In the present case also Rs 42 lakh was first diverted by the appellant from his business disguising it as gift to the two nephews and thereafter the same money was taken back from them as unsecured loan on which the impugned interest @18% was claimed by the appellant as deduction. On the facts of the Case, there is no borrowing of Capital and, therefore, the requirement of section 36(1)(ili) is not fulfilled. Without prejudice to the above observation, the entire series of transactions are illusory, colourable and not genuinely for the Purpose of the business. The appellant has deliberately adopted this artificial and colourable device for reducing the income and tax thereon. Therefore, considering the facts and circumstances of the Case and relying upon the judgement of Gujarat High Court in the case of Jayesh Raichand Shah V ACIT Tax appeal No. 705 of 202 July 2, 2013 (Supra) it is

held that the assessing officer has rightly disallowed the interest of Rs. U/s 36(1)(iii) of the Act. I uphold the addition of Rs.7,56,000/- made by the Assessing Officer. The grounds of appeal No.2 and 3 are dismissed.

6. Ground No. 1 and 4 are general in nature and do not require specific adjudication.

7. In the result, appeal is dismissed."

7. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

8. We have heard the ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

9. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the disallowance made by the A.O u/s. 36(1)(iii) of the Act of Rs.7,56,000/-.

10. At the threshold of hearing of the appeal, Shri Ravi Agrawal, Ld. authorized Representative (for short 'AR') for the assessee submitted that the A.O had on wrong premises disallowed the assessee's claim for deduction of interest expenditure u/s. 36(1)(iii) of the Act. Elaborating his aforesaid contention, it was submitted by the Ld. AR that as the assessee had sufficient self-owned/interest-free funds available with him, there was no justification for the A.O to have inferred that any part of the interest-bearing funds had been diverted/utilized by the assessee for making gifts to his nephews, viz. S/shri Brijesh Agrawal and Kamal Agrawal. Carrying his contention

further, the Ld. AR had taken us through the "capital account" of the assessee with M/s. Chhattisgarh Steel Traders, Raipur, Page 4 of APB, which revealed an "Opening balance" of Rs.37.63 lacs (approx.) on 01.04.2009. The Ld. AR further submitted that the assessee had during the year generated a profit of Rs.1.14 crore (approx.); and as a result, the capital account of the assessee on 31.03.2010 amounted to Rs.1.51 crore (approx.). Backed by the aforesaid facts, the Ld. A.R submitted that now, when the assessee had sufficient interest-free/self-owned funds available with him both by way of the opening balance of capital and profit garnered during the year, which sufficed to source the gifts transactions in question, therefore, the disallowance of the assessee's claim for deduction of interest expenditure made by the A.O on a presumption that the interest bearing funds were diverted/utilized for a non-business purpose was absolutely incorrect and based on misconceived facts. He further submitted that as the disallowance u/s.36(1)(iii) of the Act of Rs.7,56,000/- made by the A.O. was ill-founded, therefore, the same could not be sustained and was liable to be vacated.

11. Per contra, the Ld. Departmental Representative (for short, "DR") relied on the orders of the lower authorities.

12. We have given thoughtful consideration to the issue at hand and principally are in agreement with the Ld. AR that in case the assessee had sufficient self-owned/interest-free funds available with him, then it has to be presumed that the amounts of gifts given to his relatives, viz. S/shri Brijesh Agrawal and Kamal Agrawal were made from the said funds. Our aforesaid view is fortified by the judgment of the

Hon'ble Supreme Court in the case of **CIT Vs. Reliance Industries Ltd. 261 Taxman 165 (SC)** wherein the Hon'ble Apex Court has held it that if the interest-free funds available to the assessee are sufficient to meet its investment, it could be presumed that the investments are made from the interest-free funds available with the assessee and not from borrowed funds. Also, a similar view had been taken by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom).** The Hon'ble High Court, while dealing with the issue, had held that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investments. Reiterating the same view, the Hon'ble High Court of Bombay in the case of **Commissioner of Income Tax-2, Mumbai Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.)** after relying on its earlier judgment in the case of CIT Vs. Reliance Utilities & Power Ltd. (supra) had observed that where both assessee's own funds and other non-interest-bearing funds were more than the investment in tax-free securities, then it should be presumed that investments would be out of the interest-free fund generated or available with the company if the interest-free funds were sufficient to meet the investments. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as follows:

> "4. We do not agree. In the case at hand, as recorded by the ITAT, undisputedly the assessee's own funds and other non-interest bearing funds were more than the investment in the tax free securities. The ITAT therefore held that there was no basis for deeming that the Assessee had used the borrowed funds for investment in tax free

securities. On this factual aspect, the ITAT did not find any merit in the contention raised by the Revenue and therefore, accordingly answered the question in favour of the Assessee. On going through the order of the CIT (Appeals) dated 28th March 2005 as well as the impugned order, we do not find that the CIT (Appeals) or the ITAT erred in holding in favour of the Assessee. In this regard, the submission of Mr Mistry, the learned Senior Counsel appearing on behalf of the Assessee, that this issue is squarely covered by a judgment of this Court in the case of Commissioner of Income Tax v/s Reliance Utilities and Power Ltd., reported in (2009) 313 ITR 340 (Bom) is well founded. The facts of that case were that the Assessee viz. M/s Reliance Utilities and Power Ltd. had invested certain amounts in Reliance Gas Ltd. and Reliance Strategic Investments Ltd. It was the case of the Assessee that they themselves were in the business of generation of power and they had earned regular business income therefrom. The investments made by the Assessee in M/s Reliance Gas Ltd. And M/s Reliance Strategic Investments Ltd. were done out of their own funds and were in the regular course of business and therefore no part of the interest could be disallowed. It was also pointed out that the Assessee had borrowed Rs.43.62 crores by way of issue of debentures and the said amount was utilised as capital expenditure and inter-corporate deposit. It was the Assessee's submission that no part of the interest bearing funds (viz. Issue of debentures) had gone into making investments in the said two companies. It was pointed out that the income from the operations of the Assessee was Rs.313.53 crores and with the availability of other interest free funds with the Assessee the amount available for investments out of its own funds were to the tune of Rs.398.19 crores. In view thereof, it was submitted that from the analysis of the balance-sheet, the Assessee had enough interest free funds at its disposal for making the investments. The CIT (Appeals) on examining the said material, agreed with the contention of the Assessee and accordingly deleted the addition made by the Assessing Officer and directed him to allow the same under the provisions of the Income Tax Act, 1961. The Revenue being aggrieved by the order preferred an Appeal before the ITAT who upheld the order of the CIT (Appeals) and dismissed the Appeal of the Revenue. From the order of the ITAT, the Revenue approached this Court by way of an Appeal. After examining the entire factual matrix of the matter and the law on the subject, this Court held as under :-

> "If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (1982) 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.'s case (1982) 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits were

> sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there were funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investment. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal."
>
> (emphasis supplied)
>
> 5. We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities and Power Ltd. (supra). The finding of fact given by the ITAT in the present case is that the Assessee's own funds and other non-interest bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities and Power Ltd (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee. We therefore, are unable to agree with the submission of Mr Suresh Kumar that the Tribunal had erred in dismissing the Appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected."

13. Also, the **Hon'ble Supreme Court** in the case of **South Indian Bank Ltd. Vs. Commissioner of Income Tax (2021) 130 taxmann.com 178 (SC)** had held that where interest-free own funds available with the assessee exceeded their investments in tax-free securities, then investments would be presumed to be made out of the assessee's own funds. At this stage, we are also reminded of the judgment of the **Hon'ble Supreme Court** in the case of **Munjal Sales Corporation Vs. CIT, Ludhiana & Anr. Appeal (Civil) 1378 of 2018 dated 19.02.2008,** wherein the Hon'ble Apex Court disapproved the view taken by the Tribunal, which had

disallowed u/s. 36(1)(iii) of the Act, the assessee's claim for deduction of interest expenditure for the reason that there was nothing on record to show that loans were given by the assessee to its sister concern out of its own funds and had inter alia observed that as profit earned by the assessee during the year were sufficient to cover the impugned loan given to its sister concern, therefore, no disallowance u/s. 36(1)(iii) was liable to be made in its hands. For the sake of clarity, the relevant observations of the Hon'ble Apex Court in the case of **Munjal Sales Corporation Vs. CIT, Ludhiana & Anr. (supra)** are culled out as under:

> "17. One aspect needs to be mentioned during the AY 1995- 96, apart from the loan given in August/September 1991, **the assessee advanced interest free loan to its sister concern amounting to Rs.5 lacs**. **According to the Tribunal, there was nothing on record to show that the loans were given to the sister concern by the assessee-firm out of its Own Funds and, therefore, it was not entitled to claim deduction under Section 36(1)(iii)**. This finding is erroneous. The Opening Balance as on 1.4.94 was Rs.1.91 crores whereas the loan given to the sister concern was a small amount of Rs.5 lacs. **In our view, the profits earned by the assessee during the relevant year were sufficient to cover the impugned loan of Rs.5 lacs**."
>
> (emphasis supplied by us)

14. Backed by the aforesaid facts, we are of the considered view that as the self-owned funds available with the assessee as the "opening balance" of his capital on 01.04.2009, along with the "net profit" of Rs. 1.14 crore (approx.) earned by him during the year under consideration, which, therein, aggregated to Rs.1.51 crore, was sufficient to source the gifts of Rs.42 lacs to the aforesaid donee's, viz. S/shri Brijesh Agrawal and Kamal Agrawal, therefore, it can safely be presumed that the said self-owned funds/ profit generated during the year by the assessee was utilized

for making gifts under consideration and no part of the interest-bearing funds were diverted for the said purpose. Accordingly, we are unable to concur with the view taken by the lower authorities who have disallowed the assessee's claim for deduction of interest expenditure of Rs. 7.56 lac (supra) on the presumption that the interest-bearing funds were utilized by the assessee for making gifts to his nephews, and, thus, vacate the said disallowance so made/sustained by them u/s.36(1)(iii) of the Act.

15. Before parting, we may herein observe that as the A.O., without placing on record any material, had merely presumed that the gifts transactions *inter-se* the assessee and his nephews, viz. S/shri Brijesh Agrawal and Kamal Agrawal were ingenuine; therefore, we are unable to approve the said observations, which, thus, are vacated. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of our aforesaid observations.

16. The **Ground of appeal No.2,** being general in nature, is dismissed as not pressed.

17. In the result, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 19th day of October, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 19th October, 2023
**#SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.