

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No. 230/RPR/2024)
(Assessment Year:2017-18)

Income Tax Officer-3(1), Raipur	V s	Inder Jaggi, A-7, Jeevan Apartment, Ashoka Tower, Shankar Nagar, Raipur, 492001
PAN: ACHPJ4921C		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sakshi Gopal Aggarwal, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	02.07.2024
घोषणा की तारीख/ Date of Pronouncement	:	27.08.2024

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed at the instance of the department challenging the order of Commissioner of Income Tax Appeal, NFAC, Delhi (in short "Ld. CIT"), under section 250 of the Income Tax Act, 1961 (in short "The Act"), dated 26.03.2024, for the Assessment Year 2017-18, which in turn arises from the order of Income Tax Officer, Ward-3(1), Raipur (in short "Ld. AO"), passed u/s 143(3) dated 11.12.2019.

2. The grounds of appeal raised by the department read as under:
 1. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs.80,33,600/- made by the AO u/s 68 of the Act?"

2. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 80,33,600/- by ignoring the facts as brought on record by the AO that the assessee has manipulated his books of account and increased his capital by 80,33,600/-?"
3. "Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs.80,33,600/-, thereby without considering and distinguishing the ratio of the judgment of the cases such as **Rameshwar Prasad Bagla 68 ITR 653(Allahabad) & Homi vs CIT 41 ITR 135, 142 by (Supreme Court)** wherein it is stated that the totality of circumstances must be considered in a case of circumstantial evidence & the totality of the circumstances has to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular act is proved ?"
4. The order of the Id. CIT(A) is erroneous both in law and on facts.
5. Any other ground that may be adduced at the time of hearing.

3. The brief facts of the case culled out are that, the assessee is an individual have filed his return of income (ROI) for the AY 2017-18, electronically, on 07.11.2017, declaring total taxable income of Rs.8,90,050/-. During the year under consideration, the assessee was engaged in the business through three proprietorship firms namely Siddhi Vinayak Baxi Motors, Siddhi Vinayak Purti Gas and Taxi Owners United Transport Company. Case of the assessee has been selected for limited scrutiny under "CASS", statutory notices u/s 143(2) and 142(1) along with

questionnaire were issued. In response, assessee made compliances from time to time. During the assessment proceedings, on the basis of submission and evidence of the case, the Ld. AO has observed that an addition on account of unexplained income u/s 68 of the I.T. Act is required to be made in the case of assessee. While making such addition, Ld. AO observed as under:

3. Addition on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961:- *During the year under consideration assessee is proprietor of three firms namely Siddhi Vinayak Baxi Motors, Siddhi Vinayak Purti Gas and Taxi Owners United Transport Company. Under the proprietorship firm of Taxi Owners United Transport Company, assessee has increased his capital by Rs. 80,33,600/- and he has claimed this as gift from father. Therefore, assessee was asked to explain this and to furnish supporting evidences in this regard. On perusal of the details, furnished by the assessee, it is found that assessee was gifted on 30.11.2010 a house property by his father and the fair market value for the purpose of stamp duty valuation of the property is Rs.80,33,600/-. Assessee has stated that this property, comprising land and building, was originally purchased by Grandfather of assessee Late Shri Hari Kishan Jaggi almost fifty years back and the grandfather of the assessee gifted one fourth of the property to the father of the assessee Shri Nanak Jaggi long back and his father has gifted the same property to the assessee during under consideration.*

Section 55(2)(b)(ii) stipulates that where the capital asset became the property of assessee under a gift and the capital asset became the property of the previous owner before 01.04.1981, cost of acquisition is the cost of the asset to the previous owner or the fair market value of the asset as on 01.04.1981. This is at the option of the assessee. Since, the property was acquired under gift by the father of the assessee long back which may be before 01.04,1981, in absence of option given by the assessee, the cost of the property in the hands of assessee is treated as Nil because the cost of property in the hands of previous owner i.e., assessee's father is Nil.

However, assessee has claimed the value of the property at Rs. 80,33,600/- in his balance sheet and accordingly, has raised his capital by this amount which is not correct. On being asked to explain as to why not increase in capital should be treated as unexplained cash credit, assessee has furnished as under: -

“Assessee has capitalized his asset in the books of account and the fair market value being Rs. 80,33,600/- and stamp duty of Rs. 1,22,600/- totalling to an amount of Rs. 81,56,200/-. We further submit that section 55(2) r.w.s 49(1) of the Income Tax Act, 1961 is attracted in the year which the capital asset is sold/ transferred. During the year A.Y. 2017-18, assessee has only acquired the asset and not sold/ transferred. Therefore, valuing the asset at the fair market value is the accounting treatment in the audited books of account. Tax implication of the gift transaction shall arise in the year in which the said asset is sold/ transferred. Therefore, the difference amount should not treated as unexplained cash credit. ”

Assessee's above submission has carefully perused but no merit is found. This is so because whenever assessee sells this property he will claim cost of this property as Rs. 80,33,600/- because cost of the property has already been shown to be Rs. 80,33,600/- in his balance sheet. Once assessee has booked this asset at Rs. 80,33,600/- in his books of account, this amount only will be claimed as cost of acquisition. Because even if at the time of sale of the property, if provisions of section 55 of Income Tax, 1961 are applied and cost of the property in the hands of previous owner is taken at Nil, assessee would certainly claim cost of the property at Rs. 80,33,600/- in F.Y 2016-17 in the form of improvement cost because his books of account will only show this amount as the cost of the property in F.Y. 2016-17.

Thus, it is found that assessee has manipulated his books of account and increased his capital by Rs. 80,33,600/- without any basis for his certain benefit in future. Hence, since assessee's books of account have been credited by Rs. 80,33,600/- in the form of increase in capital and the same has been found to be unsubstantiated and so unexplained, this amount of Rs. 80,33,600/- is held to be the unexplained cash credit u/s 68 of the Income Tax Act, 1961 and accordingly, is added to the returned income of the assessee.

This addition of Rs.80,33,600/- is taxed u/s 115BBE of the Act.

4. Aggrieved with the aforesaid addition by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein the addition made by the Ld. AO has been vacated by the Ld. CIT(A) with the following observations:

5.5 I have perused the both AO's observation and appellant's submission before the AO and also before me. The observation of the AO in my considerate opinion does not hold good here. First of all the appellant has not transferred the property in question but has shown in his balance sheet as per the market value of the property and the same does not give any benefit to him in the year under consideration. Secondly, invoking of section 68 of the Act is misplaced as the said increase in valuation does not comes under the purview cash credit u/s 68 of the Act. For the shake of clarity Section 68 is reproduced below:-

Cash credit-

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- 1. The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- 2. Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]"

5.6 *It Is evident from this provision that section 68 can only be applied if there are any 'sum' found credited in the assessee's books of accounts that the assessee cannot provide satisfactory explanations for the same or the explanation so offered is not found satisfactory by the AO. The money that is referred to as 'Sum' is the amount that is entered into the account books through cash, cheque or draft, A transfer of entries between heads cannot be regarded as a sum credited in the account books for the purpose of section 68 of the IT Act. The appellant appears to have only made adjustment entries and received no cash or check for the transaction.*

5.7 *Furthermore, the AO made an addition in this case regarding the possibility of something happening in the future, but it was misconceived. It is not possible to make additions based on the fear of future events.*

5.8 *The Hon'ble Calcutta High Court in the case of Jatia Investment Company vs. CIT, 206 ITR 718, has held that if there was no real cash entry on the credit side of the cash book, but, merely a notional or fictitious cash entry is there, there is no real credit of cash to its cash book and, therefore, the question of inclusion of the amount of the entry as unexplained cash credit cannot arise.*

5.9 *Based on the observations mentioned earlier, the facts and circumstances of the case, and in accordance with the judicial precedents mentioned above, I am of the view that the AO erroneously invoked the provisions of section 68 of the Act in this case.*

5.10 *Regarding application of section 55(2) the appellant submitted inter alia that said section read with section 49(1) of the Income Tax Act, 1961 is attracted in the year in which the capita/ asset is*

*sold/transferred. During the AY 2017-18, the assessee has only acquired the asset and not so/d/transferred it. Therefore, valuing the asset at the fair market value is the accounting treatment in the audited books of accounts. The tax implication of the gift transaction shall arise in the year in which the said asset will be sold/transferred. Therefore, the difference in amount should not be treated as unexplained cash credit'. I find merit in the said arguments of the appellant. Considering the discussion made above, I am of the considerate view that the addition of Rs. 80,33,600/- u/s 68 of the Act is not as per law and accordingly delete the same. **The ground of appeal is, thus, allowed.***

5. Since appeal of the assessee is allowed by the Ld. CIT(A), by deleting the addition made by Ld. AO, granting relief to the assessee, aggrieved thereby the department has preferred the present appeal before us.

6. At the very outset, Ld. Sr. DR, Shri Satya Prakash Sharma, on behalf of the revenue have reiterated the facts of the case and have raised the contention regarding no justification in the decision of Ld. CIT(A), while deleting the addition made by the Ld. AO under Section 68 of the Act. It was the submission by Ld. Sr. DR that Ld. CIT(A) was not justified in deleting the addition ignoring the facts which were brought on record by the Ld. AO, that the assessee had manipulated his books of accounts and increased his capital by the said amount. Ld. Sr. DR further placed his reliance on the case of **Rameshwar Prasad Bagla 68 ITR 653(Allahabad) & Homi vs CIT 41 ITR 135, 142 by (Supreme Court)**, wherein it is stated that the totality of circumstances

must be considered in a case of circumstantial evidence & the totality of the circumstances has to be taken into consideration, the combined effect of all those circumstances is determinative of the question as to whether or not a particular act is proved.

7. Backed by aforesaid submission, it was the prayer of revenue that the Ld. AO has rightly made the addition anticipating that the assessee will sell the impugned property, claiming the cost of acquisition of property at Rs.80,33,600/-, as he had already shown the said amount in his balance sheet. It is the submission that once the assessee has adopted the value of asset in his books of accounts, such amount will be claimed as cost of acquisition in future. Ld. Sr. DR further reiterating the facts from the order of Ld. AO had submitted that the assessee is manipulating his books of account by increasing his capital by Rs.80,33,600/- without any basis for his benefits of future, and such transaction is found to be unsubstantiated and unexplained, therefore, the addition made u/s 68 of the Act, deserves to be sustained. With such submissions, Ld. Sr. DR requested to set aside the order of Ld. CIT(A) and upheld the order to Ld. AO.

8. In rebuttal, Ld. AR, Mr. Sakshi Gopal Aggarwal, CA Authorized Representative of the assessee have submitted before us a written submission, the same for the sake of clarity has been extracted as under:

WRITTEN SUBMISSION BEFORE HON'BLE ITAT, RAIPUR BENCH

Appeal No. ITA 230/RPR/2024

Brief Facts of Case:

1. The respondent, Shri Inder Jaggi, A-7, Jeevan Apartment, Ashoka Tower, Shanker Nagar, Raipur (C.G.) has e-filed his ROI for the A.Y. 2017-18, declaring a total income of Rs. 8,90,050/- on 07/11/2017. The books of accounts of the respondent were audited under section 44AB of the Income-tax Act, 1961. Copy of Income Tax return along with Computation of Total Income is placed on **page no. 71-79 of paper book** and copy of audit report is placed on **page no. 80-108 of paper book** for your honor's kind reference.
2. The respondent's case was selected for **limited scrutiny** and the notice u/s 143(2) dated 09/08/2018 was issued and served on the respondent. The copy of notice is placed on **page no. 28-31 of paper book** for your honor's kind reference.
3. The respondent has submitted written submission on time to time in response to the notices issued by learned AO at assessment stage. The copy of written reply is placed on **page no. 34-38 of paper book**.
4. During the A.Y. 2017-18, the respondent had received gift, being ancestral immovable property, from his father Shri Nanak Chand Jaggi. The respondent capitalised the asset in the books of accounts at the fair market value, being the stamp duty value, as on the date of gift, being Rs 80,33,600/- and stamp duty of Rs. 1,22,600/-, thus totaling to an amount of Rs. 81,56,200/-. However, the learned assessing officer treated the amount of Rs. 80,33,600/- to be the unexplained cash credit u/s 68 of the Income Tax Act, 1961 and accordingly added the same to the returned income of the respondent. The learned assessing officer passed an order u/s 143(3) on 11/12/2019 assessing the total income of the respondent at Rs. 89,23,650/-. The copy of assessment order is placed on **page no. 25-27 of paper book** for your honor's kind reference.
5. Accordingly the learned assessing officer issued the notice of demand u/s 156 of income tax act for a sum of Rs 82,51,567/- on 11/12/2019. Further penalty proceedings u/s 271AAC(1) of income tax act was also initiated by issuing a notice u/s 274 r.w.s. 271AAC(1) of income tax act as on 12/12/2019 fixed for hearing on 31/12/2019.
6. However being aggrieved by assessment order, the respondent filed an Appeal before the Hon'ble CIT (Appeals) on 01/04/2020. The copy of form 35 is placed on **page no. 20-21 of paper book** for your honor's kind reference.
7. The respondent filed an appeal before the Hon'ble CIT (Appeals) on following grounds:-
 - a. **The Income Tax Officer Ward 3(1) has been erred for considering gift of immovable property of Rs. 80,33,600/- as unexplained cash credit u/s 68 of I.T Act, 1961.**
 - b. **The Income Tax Officer Ward 3(1) has been erred for passing an order which is bad in law and fact.**

8. That the respondent made proper written submission before honorable CIT(A), NFAC. The copy of written submission made before honorable CIT(A), NFAC is placed on **page no. 22-24 of paper book** for your honor's kind reference.
9. The Hon'ble CIT (A), NFAC vide its order dated 26/03/2024 had deleted the addition made and allowed relief to the assessee after considering all the facts, written submission of assessee. Copy of Appeal Order is placed on **Page No. 07-19 of the Paper Book** for your honor's kind reference.
10. That being aggrieved with order u/s 250 passed by CIT(A), NFAC, department filed an appeal before ITAT, Raipur on following grounds:-
- Whether on points of law and on facts & circumstances of the case, the ld. CIT(A) was justified in deleting the addition of Rs. 80,33,600/- made by the AO u/s 68 of the Act.*
 - Whether on points of law and on facts & circumstances of the case, the ld. CIT(A) was justified in deleting the addition of Rs. 80,33,600/- by ignoring the facts as brought on record by the AO that the assessee has manipulated his books of account and increased his capital by 80,33,600/-.*
11. Now the respondent is before honorable ITAT, Raipur to uphold the decision of CIT(Appeal), NFAC and to place his argument on grounds raised by department.

With respect to First ground of appeal raised by department-

Whether on points of law and on facts & circumstances of the case, the ld. CIT(A) was justified in deleting the addition of Rs. 80,33,600/- made by the AO u/s 68 of the Act.

Hereby we would like to bring to your honor's kind knowledge the facts:

During the AY 2017-18, the respondent has received gift of immovable property from his father, Shri Nanak Chand Jaggi PAN No. ACHPJ4922B. The copy of gift deed in favour of the respondent is placed on **page no. 39 – 63 of the paper book**. The said property was originally being purchased by the grandfather of the respondent, Late Shri Hari Kishan Jaggi almost 50 years back. Thereafter, grandfather of the respondent gifted one fourth portion of the property to Shri Nanak Chand Jaggi (father of the respondent). The copy of batwara nama is placed on **page no. 64-70 of paper book**. During the AY 2017-18, the said property was being gifted by him to his only son, Shri Inder Jaggi through a registered deed dated 30/11/2016. In the said registered deed, the stamp duty value was being assessed at Rs. 80,33,600/-. The respondent has incurred stamp duty expense being Rs. 1,22,600/-, thus totaling to an amount of Rs 81,56,200 - which has been capitalized by the respondent in the audited books of accounts.

During the course of the assessment proceedings, the learned AO has asked the respondent to furnish supporting evidence in respect of the said gift of immovable property. After verification of the details, the Assessing Officer has pointed out that recording value of the said immovable property at its stamp duty value is incorrect in view of Section 55(2)(b)(ii) which stipulates that where a capital asset became the property of respondent under a gift and the capital asset had become the property of the previous owner before 01.04.1981, cost of acquisition is the cost of the asset to the previous owner or the fair market value of the asset as on 01.04.1981, at the option of the respondent. Since, the property was acquired under gift by the father of the respondent long back which may be before 01.04.1981, in absence of option given by the respondent, the cost of the property in the hands of respondent is treated as Nil because the cost of property in the hands of previous owner i.e. respondent's father is Nil. AO

further apprehend that whenever respondent will sell this property he will claim cost of this property as Rs 80,33,600/- because cost of the property has already been shown to be Rs 80,33,600/- in his balance sheet. Once respondent has booked this asset at Rs 80,33,600/- in his books of accounts, this amount only will be claimed as cost of acquisition. Because even if at the time of sale of the property, if provisions of section 55 of Income Tax, 1961 are applied and cost of the property in the hands of previous owner is taken as Nil, respondent would certainly claim cost of the property at Rs 80,33,600/- in FY 2016-17 in the form of improvement cost because his books of account will only show this amount as the cost of property in FY 2016-17.

Thus it is alleged by the AO that respondent has manipulated his books of account and increased his capital by Rs 80,33,600/- without any basis, to accrue certain benefit in future. Treating the transaction as unsubstantiated and unexplained, the amount of Rs 80,33,600/- has been assessed as unexplained cash credit u/s 68 of the Income Tax Act and added to the returned income of the respondent.

At the time of assessment proceedings, the respondent has furnished before the learned AO all the documents viz registered gift deed of the said immovable property as well as copy of original title deed through which the said property was acquired by the father of the respondent. Hence the transaction in question can in no way be treated as a non genuine transaction. Furthermore, the said immovable property is an ancestral property of the respondent and the respondent has no intention to sell the same in future and to accrue capital gain income. Therefore question of levy of capital gain does not arise. In this regard, the respondent in the assessment proceedings has further submitted before the learned AO as under:

*The respondent has capitalized the asset in the books of accounts at the fair market value being Rs 80,33,600/- and stamp duty of Rs. 1,22,600/-, totaling to an amount of Rs. 81,56,200/-. We further submit that section 55(2) read with section 49(1) of the Income Tax Act, 1961 is attracted in the year in which the capital asset is sold/transferred. During the AY 2017-18, the respondent has only acquired the asset and not sold/transferred. Therefore valuing the asset at the fair market value is the **accounting treatment** in the audited books of accounts. The tax implication of the gift transaction shall arise in the year in which the said asset will be sold/transferred. Therefore the difference amount should not be treated as unexplained cash credit.*

The learned AO did not accept the explanation of the respondent and treated the transaction as unexplained cash credit u/s 68 of Income Tax Act.

The respondent has placed his contention before Id. CIT(A) as under:

1. That question of determination of actual cost of a capital asset as per section 55(2)(b)(ii) arises only in the year in which the said property is transferred within the meaning of section 2(47) of the Income Tax Act and that too the charging provision as stipulated under section 45(1) of the Income Tax Act get attracted. In other words the tax implication as per section 55(2) read with section 49(1) will be attracted only in the year in which capital asset will be sold or transferred.
2. That receipt of gift of an immovable property which is very well supported by registered gift deed as well as other documents cannot be held unexplained and be treated unexplained cash credit u/s 68 of the Income Tax Act, since there is no credit of money in the books of accounts under this transaction. Hence section 68 cannot be invoked in the said transaction.

Thus the addition made by the AO by treating the said transaction as unexplained cash credit u/s 68 was completely an arbitrary act without any fact and basis and does not hold good in the eyes of law.

The learned CIT(A) after examining the facts and circumstances of the case and after considering the written submission made by the respondent has rightly held as under:

5.5 I have perused the both AO's observation and appellant's submission before the AO and also before me. The observation of the AO in my considerate opinion does not hold good here. First of all the appellant has not transferred the property in question but has shown in his balance sheet as per the market value of the property and the same does not give any benefit to him in the year under consideration. Secondly, invoking of section 68 of the Act is misplaced as the said increase in valuation does not come under the purview cash credit u/s 68 of the Act. For the shake of clarity Section 68 is reproduced below:-

Cash credit-

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

[Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

1. *The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
2. *Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory;*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]"

5.6 It is evident from this provision that section 68 can only be applied if there

are any 'sum' found credited in the assessee's books of accounts that the assessee cannot provide satisfactory explanations for the same or the explanation so offered is not found satisfactory by the AO. The money that is referred to as 'Sum' is the amount that is entered into the account books through cash, cheque or draft. A transfer of entries between heads cannot be regarded as a sum credited in the account books for the purpose of section 68 of the IT Act. The appellant appears to have only made adjustment entries and received no cash or check for the transaction.

5.7 Furthermore, the AO made an addition in this case regarding the possibility of something happening in the future, but it was misconceived. It is not possible to make additions based on the fear of future events.

5.8 The Hon'ble Calcutta High Court in the case of *Jatia Investment Company vs. CIT*, 206 ITR 718, has held that if there was no real cash entry on the credit side of the cash book, but, merely a notional or fictitious cash entry is there, there is no real credit of cash to its cash book and, therefore, the question of inclusion of the amount of the entry as unexplained cash credit cannot arise.

5.9 Based on the observations mentioned earlier, the facts and circumstances of the case, and in accordance with the judicial precedents mentioned above, I am of the view that the AO erroneously invoked the provisions of section 68 of the Act in this case.

With respect to second ground of appeal raised by department-

Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 80,33,600/- by ignoring the facts as brought on record by the AO that the assessee has manipulated his books of account and increased his capital by 80,33,600/-.

Hereby we would like to bring to your honor's kind knowledge the facts:

It is alleged by the AO that respondent has manipulated his books of account and increased his capital by Rs 80,33,600/- without any basis, to accrue certain benefit in future. Treating the transaction as unsubstantiated and unexplained, the amount of Rs 80,33,600/- has been assessed as unexplained cash credit u/s 68 of the Income Tax Act and added to the returned income of the respondent.

The respondent has capitalized the asset in the books of accounts at the fair market value being Rs 80,33,600/- and stamp duty of Rs. 1,22,600/-, totaling to an amount of Rs. 81,56,200/-. During the AY 2017-18, the respondent has only acquired the asset under a bonafide gift from his father which is duly registered under the relevant act. Therefore valuing the asset at the fair market value is the **accounting treatment** in the audited books of accounts. The books of accounts of the assessee are duly audited by a Chartered Accountant and also even alleged manipulated by the learned AO but he has not rejected the same under section 145. The tax implication of the gift transaction shall only arise in the year in which the said asset will be sold/transferred.

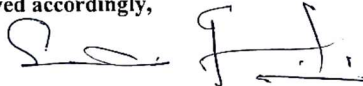
The learned CIT(A) after examining the facts and circumstances of the case and after considering the written submission made by the respondent has rightly held as under:

5.10 Regarding application of section 55(2) the appellant submitted *inter alia* that 'said section read with section 49(1) of the Income Tax Act, 1961 is attracted in the year in which the capital asset is sold/transferred. During the AY 2017-18, the assessee has only acquired the asset and not sold/transferred it. Therefore, valuing the asset at the fair market value is the accounting treatment in the audited books of accounts. The tax implication of the gift transaction shall arise in the year in which the said asset will be sold/transferred. Therefore, the difference in amount should not be treated as unexplained cash credit'. I find merit in the said arguments of the appellant. Considering the discussion made above, I am of the considerate view that the addition of Rs. 80,33,600/- u/s 68 of the Act is not as per law and accordingly delete the same. The ground of appeal is, thus, allowed.

Honorable CIT(A) has considered both merits of case as well as the legal aspects. Thus, the case has been properly dealt in by the honorable CIT(A) and need no further inference. The respondent herewith relied upon decision of honorable CIT(A) and prayed accordingly.

Thanking you,

Yours faithfully,
Prayed accordingly,



CA SAKSHI GOPAL AGGARWAL
Counsel for the Respondent

9. Backed by aforesaid written submissions, Ld. AR argued that Ld. CIT(A) had rightly appreciated the facts of the case, wherein the issue in hand has been decided in favour of the assessee on two counts:

- (i) That if there was no real income in cash and no cash and check transaction, no entry on the credit side of Cash book, but merely a notional entry or fictitious entry is there, the question of inclusion of the amount of entry as unexplained cash credit cannot arise.

- (ii) Application of provisions of section 56(2) r.w.s 49(1) of the Income Tax Act is triggered in the year in which capital asset is sold / transferred. Whereas, in the present case during the relevant AY2017-18, the assessee has only acquired the asset and not sold/ Transferred it. Valuing asset at the Fair Market Value (FMV) is the accounting treatment in the audited books of accounts. The tax implication of the gift transaction shall arise only in the year of sale / transfer of such asset. Such accounting treatment in books of account cannot be treated as unexplained cash credit as per law under the provisions of section 68.

10. With the aforesaid submissions, it was the prayer of Ld. AR that the issue has been properly deliberated and dealt with by the Ld CIT(A), he placed his strong reliance on the findings by the Ld CIT(A), thus requested to uphold the same.

11. We have considered the rival submission, perused the material available on record and case laws relied upon by the revenue. The undisputed facts of the present case state that, during the year under consideration, the assessee was gifted with a property in his favour on 30.11.2016 by his father, The gift deed was registered and the fair market value for the purpose of

stamp duty value of the subject asset was determined at Rs.80,33,600/-. The Gifted property comprises of land and building, which is originally purchased by assessee's grandfather almost 50 years back, 1/4th portion of the property has traversed through the hands of grandfather, who gifted the same to assessee's father and father in turn has gifted the same to the assessee. On being queried regarding the applicability of section 55(2)(b)(ii), assessee responded before the Ld. AO that the property was received by the assessee under a gift and in such as case, wherein the previous owner has acquired property before dated 1.4.1981, cost of acquisition is cost of the asset to the previous owner or the fair market value as on 1.4.1981, whichever is opted by the assessee.

12. Ld. AO observed that in absence of any option chosen by the assessee, the cost of acquisition of property in hand the assessee is treated as NIL. Ld. AO further observed that since the assessee has recorded the value of this property as his asset in his audited books of accounts at Rs.8,33,600/-, resultantly, the capital of the assessee is increased to that extent. Therefore, he treated the same as unexplained cash credit. The response of the assessee was not found acceptable by the AO, that the provisions of Section 55(2) r.w.s. 49(1) of the Act are not applicably in the

present case, such provisions can only be triggered in the year in which the capital of asset is sold / transferred, whereas during the relevant assessment year assessee has only received the subject property as gift from his father. However, we find force in such contentions of the assessee, which further elaborated by the Ld AR that only valuing the asset at fair market value in the books of accounts cannot bring the same under the scope of section 68 of the Act. Though, Ld. AO does not find the reply of assessee tenable in the eyes of law, he disputed with his conviction that when in future the asset is sold the assessee will take benefit of cost of acquisition on the basis of amount recorded in his audited books of accounts, but we cannot subscribe to such a futuristic anticipation of the Ld. AO, which is not in conformity to the mandate of law. We may herein observe that the notional / fictitious entry of asset made by the assessee in his books of account cannot be the basis for determining the cost of acquisition either at any stage, the cost of acquisition has to be decided under the prescribed provisions of Act u/s 49(1) r.w.s. 55(2) or relevant provisions prevailing at the time of sale or transfer of the property. So, AO's futuristic observations is found to be extraneous, unnecessary and misplaced at this stage.

13. Coming to the two-faced decision by Ld CIT(A), the first finding *qua* receipt of real cash, cheque or draft is very subjective and absolutely depended on facts of each case, therefore, we cannot concur with the same in general, but in present case the same being a notional entry can be accepted. The second aspect on which the addition has been deleted is found to be correct, wherein, Ld. CIT(A) had given his approval to the contention of the assessee that the tax implication on the transaction will come into play only in the year in which the asset is actually sold / transferred, therefore, at this juncture, no addition can be made presuming that the assessee will be benefitted in future merely on account of accounting entries in the books.

14. Regarding, reliance placed by the department on the case of **as Rameshwar Prasad Bagla 68 ITR 653(Allahabad) & Homi vs CIT 41 ITR 135, 142 by (Supreme Court)** that the circumstance must be looked into in totality to determine whether particular act is proved or not. The judgment referred cannot rescue the contentions of the revenue, as in present case the transaction of sale / transfer, which is the prerequisite condition for invoking the provisions of section 55(20 r.w.s. 49(1) is admittedly missing, so no further circumstantial analysis needs to be performed.

15. In view of facts and circumstances, we concur with the decision of Ld. CIT(A) of deleting the addition observing that the tax implication of the gift transaction shall arise in the year in which the said asset will be sold/transferred. In fact, the cost of acquisition shall be arrived at in terms of the provisions of law which are applicable at the relevant time of sell / transfer of the said property, without any influence drawn from the accounting treatment of asset and entries nationally made by the assessee in his books of accounts.

16. Resultantly, the ground of appeal raised by the revenue in the present appeal based on events that will take place in future are found to be bereft of merits and devoid of any convincing substance to be admitted.

17. Resultantly, the appeal of the department stands **dismissed**, in terms of our aforesaid observation.

Order pronounced in the open court on 27/08/2024.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 27/08/2024

Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- ITO-3(1), Raipur
2. प्रत्यर्थी / The Respondent- Inder Jaggi, Raipur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior. Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur