

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1367/Ahd/2024 & 1368/Ahd/2024
निर्धारण वर्ष /Assessment Years :2016-17 & 2017-18 respectively

| | | |
|---|-----------------------|--|
| Abhaykumar Sevantilal Sanghavi Sanghavi Brothers 1 st Floor, Swastik Bldg Nr. City Police Station Nr. Dena Bank, Main Bazar Deesa - 385 535 (Gujarat) | <u>बनाम/ v/s.</u> | ACIT Circle, Palanpur [Old Jurisdiction-Circle, Palanpur. New Jurisdiction-Circle, Gandhinagar.] |
| स्थायी लेखा सं./PAN: AFBPS 1660 L | | |

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| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |
|------------------------|--|--------------------------|

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|---------------|-----------------------------|
| Assessee by : | Shri Mehul Shah, AR |
| Revenue by : | Shri B.P. Srivastava, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 05/12/2024
घोषणा की तारीख /Date of Pronouncement: 13/12/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

Both these appeals preferred by the assessee pertain to the Assessment Years (AYs) 2016-17 and 2017-18. Since the issues involved are common and connected, they were heard together and are being disposed of by this consolidated order. The appeals arise out of the orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] under Section 250 of the

Income Tax Act, 1961 [hereinafter referred to as “the Act”]. These orders upheld the assessments framed by the Assessing Officer [hereinafter referred to as “AO”] under Section 143(3) of the Act.

Facts of the case:

2. The assessee filed his return of income for both the A.Y.(s) and the returns were processed u/s 143(1) of the Act. Later, the cases were selected for scrutiny under CASS. The assessments were completed by passing orders u/s 143(3) of the Act with some additions. Following are the tabulated details of return filed and additions for both the years under consideration:

| Details | AY 2016-17 | AY 2017-18 |
|---|-------------------|-------------------|
| Date of Filing Return | 29/03/2017 | 19/03/2018 |
| Returned Income | Rs. (-2,00,000/-) | Rs. 26,76,430/- |
| Agricultural Income | Rs. 2,69,907/- | Rs. 3,26,769/- |
| Date of AO Order | 30/12/2018 | 18/12/2019 |
| Section under which AO Order Passed | 143(3) | 143(3) |
| Disallowance u/s 14A | Rs. 14,042/- | Not applicable |
| Proportionate Interest Disallowance | Rs. 38,36,692/- | Rs. 44,06,456/- |
| Unexplained Cash Credits (Sec. 68) | Rs. 16,50,000/- | Rs. 12,50,000/- |
| Disallowance of Cost of Improvement (Capital Gains) | Rs. 29,18,308/- | Rs. 51,88,368/- |
| Bogus Gift | Rs. 10,00,000/- | Not applicable |
| Notional Rent (Sec. 23(4)) | Rs. 52,530/- | Not applicable |
| Higher Tax Rate under Section 115BBE | Not applicable | Yes |
| Total Additions by AO | Rs. 94,71,572 | Rs. 1,08,44,820/- |
| Assessed Income by AO | Rs. 90,48,690/- | Rs. 1,35,21,250/- |

3. The assessee preferred appeals before the CIT(A), who found no merit in the assessee's appeals for both assessment years, sustaining all additions and disallowances made by the AO. The primary basis for the decisions was the lack of adequate evidence and justification provided by the assessee.

4. Aggrieved by the orders of CIT(A), the assessee is in appeal(s) before us with following grounds of appeal:

ITA No. 1367/Ahd/2024 for A.Y. 2016-17

1. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.14,042/- u/s.14A r.w.r. 8D.*
2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.38,36,692/- on account of disallowance of proportional interest expense for allegedly utilising borrowed funds for investment in personal assets/interest for loans.*
3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making an addition Rs.16,50,000/- u/s 68 of the Act on account of unexplained cash credit.*
4. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in disallowing cost of improvement of Rs. 29,18,308/- claimed.*
5. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making an addition of Rs.10,00,000/- on account of gift considered as bogus.*
6. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming action of assessing officer in not granting deduction of interest on borrowed funds from notional rent calculated at Rs. 52,530/-.*
7. *It is therefore prayed that above additions/disallowance made by the assessing officer and confirmed by CIT(A) may please be deleted.*
8. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

ITA No. 1368/Ahd/2024 for A.Y. 2017-18

1. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in disallowing cost of improvement of Rs. 51,88,368/- claimed on sale of property.*
 2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs. 44,06,456/- on account of disallowance of proportional interest expense for allegedly utilising borrowed funds for investment in personal assets/interest for loans.*
 3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making an addition Rs.12,50,000/- u/s. 68 of the Act on account of unexplained cash credit.*
 4. *On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s 115BBE @ 77.25 % in a retrospective manner by applying the duly substituted S.115BBE inserted retrospectively instead of taxing it at 35.54 % as per the old provisions of S.115BBE*
 5. *On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition made u/s.68 by taking the rate @77.25% by attracting S. 115BBE instead of normal tax rate. The addition if any that maybe confirmed should be taxed as business income.*
 6. *It is therefore prayed that above additions/disallowance made by the assessing officer and confirmed by CIT(A) may please be deleted and/or addition to be taxed at normal rate.*
 7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*
4. During the course of hearing before us, the Authorized Representative (AR) of the assessee did not press for the Ground No. 1 relating to disallowance u/s 14A of the Act in ITA No. 1367/Ahd/2024 for the A.Y. 2016-17 and, hence, the same is not adjudicated.

5. We now deal with common grounds of appeal for each assessment year.

Ground Relating to disallowance of proportionate interest Expenses

6. During the course of assessment, the AO observed that the assessee has claimed certain amount as interest expenses and also has claimed some interest income. The AO also observed that the assessee has some personal assets, agricultural land and interest free loans and advances. The AO noted that personal investments and loans were significant compared to the overall borrowed funds. The AO concluded that the borrowed funds were partly utilized for these non-income-generating investments. The AO calculated a proportionate disallowance by attributing a portion of the interest expenses to investments in personal assets and interest-free loans. The details of the same are tabulated below:

| Particulars (Amounts in Rs.) | AY 2016-17 | AY 2017-18 |
|--|-------------------|-------------------|
| Total Interest Claimed | 52,71,292 | 56,79,181 |
| Interest Disallowed u/s 14A | 14,042 | 0 |
| Interest Considered for disallowance | 52,57,250 | 56,79,181 |
| Personal Assets (Balance Sheet) | 1,58,06,759 | 1,63,79,495 |
| Agricultural Land Value / Non-Agri. Land | 3,60,27,911 | 5,51,36,091 |
| Interest-Free Loans & Advances | 2,97,36,737 | 3,53,15,732 |
| Assets considered for proportionate disallowance | 8,15,71,407 | 10,68,31,318 |
| Total Assets | 11,17,73,713 | 13,76,87,588 |
| Proportionate Interest Disallowed by AO | 38,36,692 | 44,06,456 |

7. The CIT(A) upheld the AO's disallowance, stating that the assessee failed to provide clear evidence that interest-bearing funds were not used for personal investments. The CIT(A) also concluded that no direct correlation

was established to prove the exclusive use of non-interest-bearing funds for the questioned investments. The CIT(A) observed that the disallowance was proportionate and reasonable in light of the facts presented.

8. During the course of the hearing before us, the AR stated that the sufficient interest-free funds were available to cover the investments in personal assets and loans/advances. The AR explained from the paper book that the interest free funds are exceeding the personal assets and investments for both the years as detailed below -

- For AY 2016-17 Interest-free funds included owned capital of Rs. 3,58,51,055/- and interest-free loans of Rs. 77,15,325/- totalling to Rs. 4,35,66,380/- which exceeded personal asset investments.
- For AY 2017-18 Interest-free funds included owned capital of Rs. 4,18,97,438/- and interest-free loans of Rs. 2,37,15,325/- totalling to Rs. 6,26,36,342/- which exceeded personal asset investments.

8.1. The AR also stated that a significant portion of the personal assets, agricultural land, and liabilities reflected in the balance sheet were inherited or pre-existing from earlier years. The AR further stated that these inherited assets were acquired through non-interest-bearing funds, family arrangements, or earlier non-borrowed investments. The AR argued that the AO failed to establish a direct nexus between the interest-bearing borrowed funds and the personal investments or interest-free loans. The AR stated that interest expenses were consistently allowed in earlier years under scrutiny assessments and the CIT(A) has taken note of the same in his order but has not appreciated the same. The AR pointed out that the assessee provided detailed ledgers and documentation for certain assets during appellate

proceedings, demonstrating that their acquisition was not financed by interest-bearing borrowed funds. The AR also contended that the funds were mixed, making it impractical to trace the use of specific borrowed funds. The AR placed reliance on certain judicial precedents which suggest that in cases of mixed funds, disallowance should not be made without clear evidence of misuse of borrowed funds. The put forward the fact that in case of assessee's both the co-ordinate bench has decided in favour of the assessee and allowed such interest expenditure. (ITA No. 520/Ahd/2020 – Shreyans S. Sanghavi Vs. ACIT dated 10-08-2022). The Departmental Representative (DR) relied on the order of lower authorities and stated that the co-ordinate bench has observed and commented on the capitalization of interest.

9. We have considered the contentions of the rival parties, perused the material on record, and examined the relevant judicial precedents. It is evident that the assessee had sufficient interest-free funds in the form of owned capital and unsecured loans, exceeding the alleged investments in personal assets and interest-free advances for both assessment years. Following the principles established in *South Indian Bank Ltd. vs. CIT (2021) 438 ITR 1 (SC)* and the decision of the Co-ordinate Bench in *Shreyans S. Sanghavi vs. ACIT (ITA No. 520/AHD/2020)*, it must be presumed that the investments were made from interest-free funds in the absence of a direct nexus between borrowed funds and the investments.

9.1. Further, the assessee demonstrated that a substantial portion of the personal assets and liabilities were inherited or pre-existing and were not

funded by interest-bearing borrowings. The AO's failure to establish any direct connection between borrowed funds and non-income-generating investments, coupled with the inconsistent treatment of similar expenses in earlier scrutiny assessments, renders the disallowance unsustainable.

9.2. The CIT(A) erred in upholding the proportionate disallowance of interest expenses without adequately addressing the aspects discussed above.

9.3. Accordingly, we hold that the proportionate disallowance of interest expenses amounting to Rs.38,36,692/- for AY 2016-17 and Rs.44,06,456/- for AY 2017-18 is unjustified and liable to be deleted.

10. The **ground of appeal is allowed** in favour of the assessee for both assessment years.

Ground relating to addition u/s 68 on account of unexplained cash credit

11. The AO noted that the assessee had taken unsecured loans from the following parties during the assessment years under consideration.

| A.Y. | Name of the Lender | Amount (Rs.) |
|----------------|---------------------------|---------------------|
| 2016-17 | Smt. Ramilaben Sanghavi | 1100000 |
| | Shri Shreyans S. Sanghavi | 550000 |
| | Total | 1650000 |
| 2017-18 | Abhay Singhvi HUF | 750000 |
| | Shri Shreyans S. Sanghavi | 500000 |
| | Total | 1250000 |

12. The assessee furnished Loan confirmations, Bank statements, PAN details and Ledger accounts. Based on ledger accounts and bank statements submitted by the assessee, the AO observed that the loans were advanced via banking channels (cheques) but significant cash deposits were made in the bank accounts of the lenders just prior to issuing cheques to the assessee. The assessee explained that the cash deposits in the lenders' accounts represented independent sources of income and Pre-existing cash balances. Despite the documents submitted, the AO considered the explanation insufficient, citing unexplained cash deposits and lack of credible evidence regarding the lenders' creditworthiness. The AO invoked Section 68 of the Act, to treat unsecured loans received by the assessee as unexplained cash credits.

13. The CIT(A) relied heavily on the inability of the assessee to establish the source of cash deposits in the lenders' bank accounts. The submissions made by the assessee, including loan confirmations and financial details, were deemed insufficient to prove the genuineness of the loans. Both additions under Section 68 of the Act for AY 2016-17 and AY 2017-18 were upheld.

14. During the course of hearing before us, the AR stated that the assessee had already provided confirmations, copy of ITR along with computation of income, ledger account extracts, cash book and bank statements of lenders therefore identity, genuineness and credit worthiness is proved. The AR further stated that the all the lenders are filing return of income and assessed to tax and they were having sufficient cash balance to deposit the cash in their

bank accounts which can be verified from the cash books of the ledgers which were submitted to both AO and CIT(A). The AR explained the fact pointing out the case of loan from Ramilaben Sanghvi in whose case the main source of cash was mainly from sale proceeds of land which was offered for tax as per her computation of income. The AR also placed on record the assessment order of Ramilaben Sanghvi for the A.Y. 2016-17 in support of his contention. The AR further stated that all these loans in question are from the family members having independent source of income, therefore, should not be treated as non-genuine. The AR argued that when the identity of the creditor is proved, documents such as confirmation, copy of ITR is submitted and when the amounts are received by cheque or through banking channel, which is not in dispute in present case, the assessee must be taken to have proved that the creditor has credit worthiness to advance the loan. The AR also argued that the burden gets shifted to the AO to prove the contrary. The AR placed reliance on following judicial precedents:

- CIT Vs. Ranchod Jivabhai Nakava [2012] 21 taxmann.com 159 (Guj. HC).
- CIT Vs. Chanakya Developers [2014] 43 taxmann.com 91 (Guj.HC)

15. The DR, on the other hand, relied on the order of lower authorities and stated that only cash book can't be considered as sufficient evidence to prove the genuineness of the source.

16. We have carefully considered the rival submissions, perused the material on record, and examined the decisions cited. The core issue pertains to the addition of unsecured loans received by the assessee, which were

treated as unexplained cash credits under Section 68 by the AO. The assessee furnished loan confirmations, copies of income tax returns, bank statements, PAN details, and ledger extracts to establish the identity, genuineness, and creditworthiness of the lenders. It is undisputed that the loans were advanced via banking channels. The primary contention of the AO was the presence of significant cash deposits in the lenders' bank accounts before issuing the cheques. However, the AO failed to substantiate that these cash deposits were linked to the assessee or that the loans were non-genuine. The assessee explained that the cash deposits were sourced from independent activities of the lenders, including business receipts, pre-existing cash balances, and in the case of Smt. Ramilaben Sanghavi, proceeds from the sale of land. The sale proceeds were offered to tax in her income tax return, and the assessment order for AY 2016-17 substantiates this claim. Despite these explanations and supporting documents, the AO did not issue any notice under Section 133(6) of the Act or summon the lenders under Section 131 of the Act to verify the cash deposits or their sources. This crucial step, which could have resolved any doubt regarding the lenders' creditworthiness, was not undertaken by the AO.

16.1. It is a settled legal position, as held by the Hon'ble Gujarat High Court in *CIT vs. Ranchod Jivabhai Nakava* [2012] 21 taxmann.com 159 and *CIT vs. Chanakya Developers* [2014] 43 taxmann.com 91, that once the assessee provides evidence to establish the identity, genuineness, and creditworthiness of the lenders, the onus shifts to the Revenue to prove otherwise. In the present case, the assessee has discharged its initial burden of proof, and the AO has failed to rebut the evidence submitted.

16.2. Considering the above, we hold that the additions made under Section 68 of the Act for AY 2016-17 and AY 2017-18 are not sustainable. The loans have been sufficiently substantiated by the assessee, and no adverse inference can be drawn solely based on the cash deposits in the lenders' bank accounts, especially when corroborative evidence of their sources has been provided. **This ground of appeal is allowed**, and the additions made under Section 68 for both assessment years are deleted.

Ground relating to disallowance of cost of improvement while calculating capital gains.

17. The AO disallowed the cost of improvement claimed by the assessee while computing capital gains from the sale of properties for both AY 2016-17 and AY 2017-18. The amounts disallowed were:

| A.Y. | Cost of Improvement Claimed (Rs.) | Amount Disallowed by AO (Rs.) |
|----------------|--|--------------------------------------|
| 2016-17 | 29,18,308 | 29,18,308 |
| 2017-18 | 51,88,368 | 51,88,368 |

17.1. The AO observed that the assessee claimed significant amounts as costs incurred for improving the properties sold during the relevant assessment years. The assessee submitted some bills relating to "Mitti for Puran", as evidence of the costs incurred. The assessee also submitted identification proofs of suppliers such as PAN copy. The AO found the documentation

submitted by the assessee to be inadequate. The AO noted that the suppliers have not filed return of income.

18. The CIT(A) sustained the disallowance, agreeing with the AO's findings. It was held that the evidence provided, such as invoices and vendor details, were insufficient to establish the genuineness and reasonableness of the improvement costs.

19. During the course of hearing before us, the AR stated that all the bills and invoices were sample copies, and other bills are part of paper book. The AR stated that the cost of improvement is justified. The AR further stated that for land at 508, 509/2 (2,612.77 sq. meters), the cost of acquisition was Rs. 7,29,333/-, while the land was sold for Rs. 1,16,82,000/- (16 times the cost) and such an increase in value necessitated improvements like fencing and "Mati Puran," which were essential for plotting and selling the land. The AR emphasized that the AO failed to verify the invoices, vendors, or transactions under Section 133(6) of the Act or Section 131 of the Act despite having access to all necessary details. Reliance was placed, by the AR, on the Hon'ble Gujarat High Court decision in *CIT vs. Chanakya Developers* [43 **taxmann.com** 91], where it was held that once the assessee submits details like PAN and address of the vendors, the onus shifts to the AO to conduct proper inquiries. Without prejudice, the assessee submitted that if any disallowance is made due to lack of verification, it should be restricted to 5% of the expenses on a reasonable estimation basis.

20. The DR relied on the orders of CIT(A) and AO and stated that the assessee has not provided any proof that actual improvement on land was made.

21. We have carefully considered the rival submissions, examined the material on record, and reviewed the orders of the lower authorities. The issue pertains to the disallowance of the cost of improvement claimed by the assessee while computing capital gains for the sale of properties during AY 2016-17 and AY 2017-18. The assessee claimed improvement expenses of Rs. 29,18,308/- for AY 2016-17 and Rs. 51,88,368/- for AY 2017-18, supported by bills and invoices for "Mati Puran" (land levelling and filling) and other works, along with PAN and addresses of the vendors. The expenses were recorded in the books of accounts, and some of them were accepted during the scrutiny assessment of earlier years. The AO disallowed the entire claim, citing inadequate documentation, lack of corroborative evidence, and the non-filing of tax returns by the vendors. The CIT(A) upheld the disallowance on similar grounds.

22. During the hearing, the assessee explained that the expenses were essential for improving the land's value, particularly for land at 508, 509/2, where the cost of acquisition was Rs.7,29,333/- and the sale price was Rs. 1,16,82,000/-. The assessee argued that the AO failed to conduct inquiries under Section 133(6) or 131 to verify the invoices and vendors. Reliance was placed on the Hon'ble Gujarat High Court decision in *CIT vs. Chanakya Developers* [43 taxmann.com 91], which held that once the identity of

vendors and supporting documents are submitted, the onus shifts to the AO to conduct proper inquiries.

23. While the evidence provided by the assessee substantiates a significant portion of the claimed expenses, the absence of additional corroborative evidence, such as agreements with contractors or photographic proof of the improvements, raises questions about the complete genuineness of the claim. Further, the AO did not undertake any verification to disprove the expenses but relied solely on the perceived inadequacies in the documentation.

23.1. Considering these factors, we deem it appropriate to restrict the disallowance to 10% of the claimed expenses. This estimation is justified based on the following rationale:

1. While the invoices and vendor details substantiate the majority of the expenses, the lack of full corroboration warrants a reasonable adjustment.
2. Activities such as "Mati Puran" and fencing often involve cash-intensive transactions, increasing the possibility of overstatement.
3. A 10% disallowance provides a fair balance between recognizing genuine improvement costs and addressing the Revenue's concerns about incomplete verification.
4. Judicial precedents emphasize proportional disallowance in cases where documentation is partially verifiable.

23.2. The assessee's alternative submission to restrict the disallowance to 5% is considered but given the above reasons and the fact that the assessee

himself offered 10% disallowance before CIT(A), a higher disallowance of 10% better reflects the nature of the deficiencies noted.

24. The disallowance is partly sustained, and the AO is directed to allow 90% of the improvement expenses claimed by the assessee for both AYs. The ground of appeal is **partly allowed**.

Ground in ITA No. 1367/Ahd/2024 relating to Bogus gift of Rs.10,00,000/-

25. During the A.Y. 2016-17 the assessee claimed to have received a gift of Rs. 10,00,000/- from Ms. Julieben A. Sanghavi during the assessment year. A confirmation of Accounts for the gift was submitted. A capital account of the donor was also provided, showing an opening balance of Rs. 45,01,432.29, from which the gift was claimed to have been given. The gift was stated to have been made out of cash in hand. The AO observed that the confirmation and capital account were unsigned, raising questions about their authenticity. The AO also stated that the relationship is not disclosed and no gift deed or formal documentation to substantiate the gift transaction was furnished. The AO also stated that the source of the opening balance in the donor's capital account was not explained. The AO concluded that the assessee failed to establish the genuineness of the gift and its source. The AO treated as unexplained cash credit under Section 68 of the Act.

26. Based on the lack of sufficient and credible evidence, the CIT(A) upheld the addition of Rs. 10,00,000/- made by the AO as unexplained and treated the gift as bogus.

27. During the course of the hearing before us, the AR explained that the said Julieben A. Sanghavi is a wife of brother of the assessee - Amitbhai Sanghavi who was having sufficient cash balance as per her cash book therefore gifted the amount to the assessee. The AR further stated that she has filed return of income for the said assessment year and the copy of ITR along with computation of income and cash book was submitted to both AO and CIT(A). The AR pointed out that the cash balance as on 01-04-2015 in the hands of Julieben Sanghavi was Rs. 14,87,566.82 out of which she gifted Rs.5,00,000/- on 28-04-2015 and Rs.5,00,000/- on 15-05-2015.

28. The DR stated that since relationship with the assessee was not disclosed at the time of assessment, the AO treated the same as unexplained.

29. We have considered the rival submissions, examined the material on record, and reviewed the orders of the lower authorities. The issue pertains to the addition of Rs.10,00,000/- as unexplained cash credit under Section 68 of the Income Tax Act, 1961, representing a gift claimed to have been received by the assessee during AY 2016-17 from Ms. Julieben A. Sanghavi.

29.1. The assessee submitted a signed confirmation from the donor in support of his claim, along with capital account and cash book. The cash book reflected an opening balance of Rs.14,87,566.82 as on 01-04-2015, from which gifts of Rs.5,00,000/- each were made on 28-04-2015 and 15-05-2015. The donor's income tax return and computation for the relevant assessment year were also submitted, evidencing her creditworthiness.

29.2. The AR clarified during the hearing that Ms. Julieben Sanghavi is the wife of the assessee's brother, thus establishing that the donor is a relative within the meaning of Section 56(2)(vii) of the Act. The relationship, which was not disclosed during the assessment, was satisfactorily explained during the appellate proceedings. The additional documents submitted demonstrate that the donor had sufficient cash balance to make the gift, and her creditworthiness stands proved.

29.3. The AO's disallowance was primarily based on the unsigned confirmation and the absence of formal documentation, such as a gift deed. The CIT(A) sustained the disallowance, concluding that the creditworthiness of the donor and the genuineness of the transaction were not established. However, the evidence submitted before us, including the signed confirmation, cash book, and ITR of the donor, adequately addresses these concerns.

29.4 Considering the relationship of the donor with the assessee, the sufficiency of cash balance in the donor's hands, and the established creditworthiness and genuineness of the transaction, we find no justification to sustain the addition made by the AO and upheld by the CIT(A).

30. The addition of Rs.10,00,000/- made under Section 68 of the Act is deleted. **The ground of appeal is allowed.**

Ground Relating to Notional Rent in ITA No. 1367/Ahd/2024

31. The AO made an addition to the assessee's income by considering notional rent under Section 23(1)(a) of the Income Tax Act, 1961, for certain properties owned by the assessee that were lying vacant during the relevant assessment year. The assessee contended that the properties were not let out, and hence no actual rental income was received. However, the AO determined the fair rental value of the properties and added it to the assessee's income as notional rent. Before the CIT(A) the assessee claimed deduction on account of interest paid on unsecured loan from such notional rent to the extent of disallowance of interest on unsecured loans. The CIT(A) dismissed the ground stating that the assessee has not filed any details and evidence for admissibility of said interest.

32. The AR did not advance any arguments on this ground before us. However, since the ground relating to interest on unsecured loans has been decided in favor of the assessee, this ground is dismissed as consequential. Since the additions made under Section 68 of the Act in ITA No. 1368/Ahd/2024 have been deleted, the following grounds are **rendered infructuous** as they are consequential in nature:

- **Ground No. 4:** The assessing officer's action in taxing the income under Section 115BBE at 77.25% retrospectively, instead of 35.54% as per the old provisions of Section 115BBE, is no longer relevant.
- **Ground No. 5:** The assessing officer's action in taxing the addition made under Section 68 at 77.25% under Section 115BBE, instead of the normal tax rate or as business income, does not survive as the addition itself has been deleted.

32.1. Accordingly, these **grounds are dismissed** as infructuous.

33. In the combined result, both the appeals filed by assessee are partly allowed.

Order pronounced in the Open Court on 13th December, 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 13/12/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
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