

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 5917/Mum/2025
Assessment Year : 2019-20

ACIT, Circle-3(2)(1), Room No. 608, 6 th Floor, Aayakar Bhavan, M.K.Road, Churchgate, Mumbai-400020.	vs.	SIP Infotech Limited, 3/2, Filka Building, Daftary Road, Malad (East), Mumbai-400097. PAN : AAEC9670D
(Appellant)		(Respondent)

For Assessee :	Shri K. Gopal & Ms. Neha Paranjpe
For Revenue :	Shri Brajendra Kumar, Sr.DR

Date of Hearing :	04-12-2025
Date of Pronouncement :	17-12-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 31-07-2025, pertaining to Assessment Year (AY) 2019-20.

2. Briefly stated, facts of the case are that the assessee filed its original return of income declaring loss of Rs.3,47,130/-. Subsequently, a search and seizure action u/s. 132 of the Income Tax Act, 1961 (‘the Act’) was conducted in the case of Shri Jesus Lall and Universal Education Group on 14-03-2022. Thereafter, the case of the assessee was reopened and

notice u/s. 148 of the Act was issued on 31-03-2023 and in response to the notice, the assessee filed its income tax return of income on 10-07-2023. Thereafter, after issuance of notice and calling for the necessary information and documentation, the assessment order was passed u/s. 147 r.w.s. 143(3) of the Act, vide order dt. 28-03-2024, wherein the AO has determined the assessed income at Rs. 29,48,080/-, disallowing expenses amounting to Rs. 3,01,988/- u/s. 37(1) of the Act, working out notional interest on advance given to the Directors amounting to Rs. 29,93,220/- and making a protective addition of Rs. 38,64,815/- in respect of transfer of property by way of gift to M/s.Vidya Vikas Education Trust.

3. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since set aside the findings of the AO and against the said order, the Revenue is in appeal before us.

4. The Ld. Sr.DR has been heard, who has relied on the findings of the AO, which read as under:

“3. Disallowance of indirect expense claimed of Rs. 3,01,988/-

During the year the assessee company claimed expenses of Rs. 3,32,149/- out of which finance cost is of Rs. 248, depreciation and amortization expense Rs. 29,913/- and other expense of Rs. 3,01,988/-, Since in the case there is no business activity and the Revenue of the company is Nil from past so many years. So the assessee company is issued show cause notice to disallow the expenses claimed by the company, being a paper company

In response to that the assessee submitted that the assessee is required to incur expense to maintain its corporate identity and hence it has incurred expenses towards statutory/regulatory compliance (rent paid for use of registered office address, professional tax paid, fees paid to professional, audit fees, expenses retaining to ROC compliance depreciation etc.) which are for the purpose of business and hence allowable u/s 37 of the Act.

The submission of the assessee is considered and cannot be accepted as the assessee company has never involved in activity which will create revenue. Rather the assessee company issued shares to Mr. Jesus Lall and the share subscribed money is taken by the director as loan. The company is not involved in any activity but it is a paper company only. Therefore the expense

of Rs. 3,01,988/- is disallowed and added to the total income of the assessee for which penalty u/s 270A is initiated for misreporting of income.

4. *Notional interest on the advance given to the director:-*

From the Balance sheet of the company it is found that an interest free advances of Rs. 1,66,28,990/- (as per closing balance) is given to the director of the company, so the assessee company was given show cause notice regarding charging of notional interest on the advance given, at the rate of 18% per annum.

In response to the same the company submitted that it is not at all necessary that loan and advance given by a company at all times must have an element of interest also. It is the prerogative of the company to decide whether interest should be charged on loans and advance given. The AO can not sit in the shoes of the businessman and take business decision as to whether interest should be charged on loans and advances given by the company. There is no provision under the law which lets the AO to compute notional income.

In this connection it is to state that the company has issued shares to Mr. Jesus Lall and Sh. Jesus Lall is holding 99.98% share of the company. The total subscribed amount as well as part of the reserve is given as advance to the same share holder. For the same no interest is charged, rather company is incurring expense on different heads. Therefore notional interest @ 18% is charged on the advances given to the share holder. So the total interest income worked out to be 29,93,220/- which is added to the total income of the assessee as income from other sources and penalty u/s 270A is initiated for under reporting of income.

Further more, in this case as per the details submitted by the assessee company one property of book value of Rs. 38,64,815/- was transferred to M/s Vidya Vikas Education Trust by virtue of a gift deed. The same gift deed is registered on 15.09.2018. The assessee company in AY 2020-21 has affected the said gift as donation to the said trust and claimed in profit and loss account. The said donation is disallowed in computation of Income for AY 2020-21. Since, the subject transaction is affected in F.Y, 2018-19, so the donation should be shown in AY 2019-20, accordingly it should be disallowed in profit and loss account. Therefore, the same addition is made in this year on protective basis.”

5. Per contra, the Ld.AR has relied on the written submissions filed before the Ld.CIT(A), which reads as under:

“GROUND NO. 1: DISALLOWANCE OF EXPENSES U/S 37 OF THE ACT

1.1. Facts of the Case

During the year under review, the Appellant incurred a total expenditure of Rs. 3,32,149/- towards various indirect expenses, which were debited to the profit and loss account and claimed as a deduction u/s 37 of the Income Tax Act

while filing its return. Out of this, an amount of Rs. 3,01,988/- was disallowed. The details of the disallowed expenses are as follows:

1.2 Assessing Officers Contention

The Ld. AO in Para 3 of the assessment order has stated that, "During the year the assessee company claimed expenses of Rs. 3,32,149/- out of which finance cost is of Rs. 248, depreciation and amortization expense Rs. 29,913/- and other expense of Rs. 3,01,988/-, Since in the case there is no business activity and the Revenue of the company is Nil from past so many years. So, the assessee company is issued show cause notice to disallow the expenses claimed by the company, being a paper company.

In response to that the assessee submitted that the assessee is required to incur expense to maintain its corporate identity and hence it incurred expenses towards statutory/regulatory compliance (rent paid for use of registered office address, professional tax paid, fees paid to professional, audit fees, expenses retaining to ROC compliance depreciation etc.) which are for the purpose of business and hence allowable u/s 37 of the Act.

The submission of the assessee is considered and cannot be accepted as the assessee company has never involved in activity which will create revenue. Rather the assessee company issued shares to Mr. Jesus Lall and the share subscribed money is taken by the director as loan. The company is not involved in any activity but it is a paper company only. Therefore, the expense of Rs. 3,01,988/- is disallowed and added to the total income of the assessee for which penalty u/s 270A is initiated for misreporting of income."

Thus, the Ld. AO was of the view that since the Appellant was never involved in any activity which will create revenue, the Company is a Paper Company and hence the expenses of Rs. 3,01,988/- is not allowed as a deduction u/s 37 of the Act

1.3 Appellant's Contention

1.3.1 Provisions of Section 37(1) of the Income Tax Act, 1961 and Allowability of Expenses incurred by the Appellant

Allow us to draw your attention to the provisions of section 37(1) of Income Tax Act, 1961 which reads as "Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Thus, it may be noted that following are the conditions for allowing expenses as a deduction u/s 37 (1):

-Such expenditure should not be covered under the specific section i.e. sections 30 to 36;

-Expenditure should not be of capital nature

-The expenditure should have been incurred wholly and exclusively for the purpose of the business or profession;

-The expenditure incurred should not be personal in nature.

In the given case, the Appellant has incurred various expenses which are wholly and exclusively for the purpose of running its business. During the course of assessment proceedings vide letter dated 26.03.2024, the Appellant had provided the details of indirect expense incurred and debited to the Profit & Loss Account along with supporting documents.

Further, the Appellant had vide its submission explained that the Appellant Company is required to incur expenses to maintain its corporate identity and hence it had incurred expenses towards statutory/regulatory compliances (i.e. rent paid for use of registered office address, profession tax paid, fees paid to professionals, statutory audit fees, expenses pertaining to ROC compliances etc.), which are all incurred wholly and exclusively for the purpose of running the business and maintaining its corporate identity and hence allowable u/s 37 of the Act. Merely because no revenue is earned from business activity, the expenses incurred cannot be disallowed u/s 37 of the Act.

Copy of the submission dated 26.03.2024 along with its annexures are attached herewith as Exhibit 5. (Refer Pg No 202 to 326 of Paper Book).

It may be appreciated, that the Ld. AO has not doubted the genuineness of any of the expense incurred but merely because there is no business activity / revenue generated during the year, the same has been disallowed by the Ld. AO by treating the Company as a Paper Company. He has failed to take note that when the Appellant had otherwise maintained its corporate identity, all expenses incurred for the business of the Appellant should be allowed as a deduction u/s 37(1) of the Act.

W.r.t. each expense incurred during the year under review, the Appellant states as under,

A) Statutory Audit Fees of Rs 19,500/-

During the year under review, the Appellant has incurred a sum of Rs 19,500/- as statutory audit fees.

The Appellant is a Public Company incorporated under the Companies Act, 1956. which is liable to get its books of accounts audited under the Companies Act, 1956. Hence, the statutory audit fees paid to the auditor is an essential expenditure even if no business was carried on and hence allowable expense u/s 37 of the Act.

Copy of invoice of statutory audit fees paid to Warma Periwal & Associates, the statutory auditor of the Appellant, was attached as Annexure 7.1 to

submission e-filed on 26.03.2024. Copy of submission e-filed on 26.03.2024 is attached above as Exhibit 5. (Refer Pg No 208 of Paper Book).

B) Rent Expenses of Rs 70,800/-

The Appellant maintains its registered office address at Filka Co-Operative Housing Society, Daftary Road, Opp. Railway Station, Malad (East), Mumbai 400097 which is taken on rent from Mrs. Neelam Lall for a nominal license fee of Rs 5,000/- per month plus GST as applicable.

Even if the company is not earning immediate revenue, the premises are necessary for maintaining the company's operations and legal status and as a correspondence address. Rental payments by a business entity falls under the operating expenses.

Therefore, the rent expenditure incurred is wholly and exclusively for the purposes of business and are allowable expenditure u/s 37 of the Income Tax Act, 1961.

Copy of rent agreement between Neelam Sudhir Lall and the Appellant was attached as Annexure 7.2 to submission e-filed on 26.03.2024. Copy of submission e-filed on 26.03.2024 is attached above as Exhibit 5. (Refer Pg No 209 to 213 of Paper Book).

C) Professional Fees of Rs 45,500/-

A Company is liable to adhere to numerous statutory compliance requirements under various laws.

These obligations necessitate engaging professional services to ensure timely and accurate compliance, including the preparation and filing of statutory returns, maintenance of records, and adherence to legal requirements.

Thus, the incurrence of such expenses is a legitimate business necessity, irrespective of whether the company is currently earning revenue. During the year under review, the Appellant has paid professional fees to Compliance CFO LLP which is wholly and exclusively incurred for the purposes of the business and hence allowable as a deduction u/s 37 of the Income Tax Act.

Copy of professional fees invoice was attached as Annexure 7.3 to submission e-filed on 26.03.2024. Copy of submission e-filed on 26.03.2024 is attached above as Exhibit 5. (Refer Pg No 214 to 218 of Paper Book).

D) Property Maintenance Expense of Rs 1,60,988/-

During the year under review, the Appellant has paid maintenance charges for the registered office to Filka Premises Co-operative Society Limited. Property maintenance expenses are essential for the upkeep of the premises used by the company.

Therefore, the property maintenance charges paid are wholly and exclusively for the purpose of business and are allowable as deduction u/s 37 of the Income Tax Act.

Copy of invoices of Maintenance Charges was attached as Annexure 7.4 to submission e-filed on 26.03.2024. Copy of submission e-filed on 26.03.2024 is attached above as Exhibit 5. (Refer Pg No 219 to 222 of Paper Book).

E) Profession tax of Rs 2,500/- and ROC Filing Fees of Rs 2,700/-

The Appellant is a Company who is liable for payment of Profession tax under The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975. It is also required to make payment of fees to Ministry of Corporate Affairs for filing of AOC-4 forms. These are all the statutory obligations which any company is required to do and hence such expenses incurred maintaining the company's legal existence and fulfilling corporate governance requirements, being revenue in nature, are allowable as deduction u/s 37 (1) of the Act.

Copy of receipts was attached as Annexure 7.5 and 7.6 to submission e-filed on 26.03.2024. Copy of submission e-filed on 26.03.2024 is attached above as Exhibit 5. (Refer pg No 223 to 225 of paper book).

1.3.2. Appellant is not a Paper Company

The Ld. AO has stated that since "the assessee company has never involved in activity which will create revenue. Rather the assessee company issued shares to Mr. Jesus Lall and the share subscribed money is taken by the director as loan. The company is not involved in any activity but it is a paper company only."

It may be appreciated that one of the objects for which the Appellant Company was formed was with an objective to acquire real or leasehold estate. In the initial years of business, the company had purchased land at Survey No: 189/3, Kaman-Bhiwandi Road, Village Kaman, Taluka Vasai, District Thane 401202 on 29.10.2008. The ownership of the land can be verified from Note 5 of the audited financial statements attached above as Exhibit 1 (Refer Pg No 94 of Paper Book). Thus, the same reflects the intention of the Company to start a business activity. Hence, it cannot be said that the Appellant Company is a paper Company merely because the Appellant had not generated any revenue.

Further, it may be appreciated that, it is not necessary to earn income for claiming deduction u/s 37(1) of the Act, what is important to claim deduction u/s 37(1) of the Act is that the expenditure should wholly & exclusively for the purposes of the business of the Appellant. Once the same is proved along with the relevant supporting documents, which were not doubted by the Ld. AO, the denial of deduction u/s 37(1) of the Act on the grounds that the Appellant is a paper company is bad in law.

1.3.3 Judicial Pronouncements

The Appellant places reliance on the following judicial pronouncements wherein it is held that where during the year there is no business income however, certain expenditure were incurred by assessee for the purpose of

maintaining its legal status, all such expenditures incurred were to be allowed as deduction u/s 37(1) of the Act:

Thus, it can be concluded that, where even if the Appellant has not earned any business income during the year, certain expenditure which were incurred wholly and exclusively for the purpose of business, in respect of rent, professional charges, audit fees, property tax, etc, since, such expenditure were necessary to incur to keep the business alive, maintain its legal status, the said expenditures are to be allowed as deduction under section 37(1) of the Act.

1.4 Appellant's Plea:

In view of the facts of the case and as held in various judicial pronouncements, the Appellant states that where the expenditure is incurred wholly and exclusively for the purpose of business, even if no business activity has been undertaken and no revenue has been generated during the year, the expenditure incurred is allowable u/s 37 of the Act and hence the Appellant prays that the disallowance of Rs 3,01,988/- made by the Ld. AO be deleted.

GROUND NO 2: ADDITION OF NOTIONAL INTEREST INCOME UNDER THE HEAD INCOME FROM OTHER SOURCES

2.1. Facts of the Case

During the year under review, the Appellant Company had given interest free unsecured loans & advances to Mr. Jesus Lall, the opening balance of which was Rs. 1,71,99,990/- out of which a sum of Rs. 5,71,000/- has been repaid during the year under review and Rs. 1,66,28,990/- was outstanding as on 31.03.2019.

Copy of ledger confirmation from Mr. Jesus Lall was attached as Annexure 6 to submission e-filed on 04.03.2024. Copy of the ledger confirmation from Mr. Jesus Lall is attached herewith as Exhibit 6. (Refer Pg No 327 of Paper Book).

2.2 Assessing Officers Contention

The Ld. AO is of the view that, "The company has issued shares to Mr. Jesus Lall and Sh. Jesus Lall is holding 99.98% share of the company. The total subscribed amount as well as part of the reserve is given as advance to the same share holder. For the same no interest is charged, rather company is incurring expense on different heads. Therefore, notional interest @ 18% is charged on the advances given to the shareholder. So, the total interest income worked out to be 29,93,220/- which is added to the total income of the assessee as income from other sources."

2.3 Appellant's Contention

2.3.1. Addition of Notional Interest Income Concept of Real Income vs Notional Income

The Ld. AO has made an ad-hoc addition at the rate of 18% on the closing balance of the interest-free unsecured loans & advances provided by the

Appellant to Mr. Jesus Lall based on a notional arbitrary rate, (i.e., Rs 29,93,220/- being 18% of 1,66,28,990/-).

As per the AO's own admission, "The total subscribed amount as well as part of the reserve is given as advance to the same share holder" i.e. interest free funds have been used for the purpose of advancing interest free loans and hence by making notional income addition, on ad hoc basis, he has clearly overstepped his role.

It is a well settled law that what is chargeable to tax under the Income tax Act, 1961 is 'real' income, unless otherwise mentioned. Only when there is an income component that there can be any tax liability. 'Hypothetical' income can't be subjected to tax.

Allow us to draw your kind attention to the case of CIT Vs. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC) wherein it was held that "Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

Similar view has been taken in the case of Highway Construction Co. Pvt Ltd vs CIT [1993] 199 ITR 702 (Gauhati High Court) wherein it was held that "The finding of the ITO was that the assessee ought to have collected interest. If the assessee had not bargained for interest or had not collected interest the Income-tax authorities could not fix a notional interest as due or collected by the assessee. There is no provision in the Act empowering the Income-tax authorities to include in the income interest which was not due or not collected. Therefore, the inclusion of interest in the income of the assessee on notional basis was not justified."

Therefore, where the Appellant has not charged any interest on sum advanced to Mr. Jesus Lall no notional interest income adjustment can be made by the Ld. AO by way of computing notional interest @ 18% on the closing balance of loan accounts.

In support of its contention, the Appellant places reliance on the following cases; 2.3.2. Granting loans & advances without charging Interest is a commercial decision and AO cannot step in the shoes of a businessmen

The Appellant had given an advance to Mr. Jesus Lall without interest on account of commercial exigencies during the course of business. As per the

understanding between the parties, no interest is receivable by the Appellant on the said advance.

It is a settled proposition of law that in what manner an assessee should conduct his business is best left to the discretion of the assessee and the Assessing Officer cannot sit in the arm chair of the businessman to decide, what should have been the income earned. If an assessee does not bargain to earn income, then an Assessing Officer cannot compel him to earn such income and cannot assume accrual of income, based entirely on his subjective notions as what constitutes fair return on investment. In business there cannot be certainty about earning of income and therefore business income cannot be assessed on notional basis. In our respectful submission, none of the provisions of the Income Tax Act authorize the Assessing Officer to assess notional or hypothetical income.

The assessee places reliance on the case of CIT Vs. Oracle India Pvt. Ltd (ITA No. 383 of 2009) (Del) wherein it was held that "what is to be seen is that the expenditure was incurred by the assessee in the course of business and had nexus with the business of the assessee. It could not be disputed that the payment of royalty is a business expenditure, which was expended wholly and exclusively for the purpose of business of the assessee. The nature of the expenses is also not such which would fall in any of the exceptions carved out under Section 30 and 36 of the Act. Once these conditions are satisfied, the expense is to be allowed as business expenditure, and the Revenue cannot sit in the arm chair of the assessee and decide as to how affairs of the business are to be run and wasteful or excessive expenditure is to be curtailed. The question of commercial expediency is to be judged by the assessee and not by the AO."

Similar views are expressed in the following cases:

2.4. Appellant's Plea

In view of the foregoing, the Appellant most humbly prays that the Ld. AO cannot sit in the arm-chair of the businessmen and take commercial business decisions and proceed to charge interest on ad-hoc basis of Rs. 29,93,220/- being 18% of the loans & advances outstanding as at end of the year. Further, 'Notional' income can't be subjected to tax. Hence, the addition made by the Ld. AO is bad in law and liable to be deleted.

GROUND 3: PROTECTIVE ADDITION ON ACCOUNT OF DONATION

3.1 Facts of the case

During the year under review, the Appellant Company had donated its asset i.e. land at Kaman vide indenture of gift dated 15.09.2018, to a public charitable trust known as Vidya Vikas Education Trust. Copy of the said deed was attached as Annexure 8 to submission e-filed on 26.03.2024 is attached above as Exhibit 5

(Refer Pg No 226 to 236 of Paper Book).

However, the effect of such donation was accounted for in the books of the company in A.Y 2020-2021 i.e. the WDV of the said land as on 31.03.2019 of Rs. 38,64,815/- was transferred by way of donation to the Profit & Loss Account and while computing the total income for A.Y 2020-2021, the same was disallowed u/s 37 of the Act. Copy of the financial statements for the year ended 31.03.2020 reflecting the donation was attached as Annexure 9.1 to submission e-filed on 26.03.2024 is attached above as Exhibit 5 (Refer Pg No 237 to 243 of Paper Book). Copy of the ITR for AY 2020-2021 along with computation of income reflecting the disallowance of donation was attached as Annexure 9.2 to submission e-filed on 26.03.2024 is attached above as Exhibit 5 (Refer Pg No 244 to 326 of Paper Book).

3.2 Assessing Officers Contention

The Ld AO has stated in the Assessment order that, "Furthermore, in this case as per the details submitted by the assessee company one property of book value of Rs. 38,64,815/- was transferred to M/s Vidya Vikas Education Trust by virtue of a gift deed. The same gift deed is registered on 15.09.2018. The assessee company in AY 2020-21 has affected the said gift as donation to the said trust and claimed in profit and loss account. The said donation is disallowed in computation of Income for AY 2020-21. Since, the subject transaction is affected in F.Y. 2018-19, so the donation should be shown in AY 2019-20, accordingly it should be disallowed in profit and loss account. Therefore, the same addition is made in this year on protective basis.

3.3 Appellant's Contention

In the present case, the Ld. AO proposed to make a protective addition of the donation made to M/s Vidya Vikas Education Trust by virtue of a "Indenture of gift by way of donation" deed which were accounted in books of accounts as donation in AY 2020-2021, since the Ld. AO was of the view that the subject transaction is affected in F.Y. 2018-19, so the donation should be shown in AY 2019-20, accordingly it should be disallowed in profit and loss account in AY 2019-20.

The Appellant states that even if it had given effect to the donation in the A.Y 2019-2020, it would have debited the profit & loss account with a sum of Rs. 38,64,815/- and while computing the total income, the same would have been disallowed, thereby leading to no gain no loss. This was just an accounting entry having no tax implications.

Moreover, though the Ld. AO has proposed a protective addition in the hands of the Appellant for A.Y 2019-2020, no addition has been made while computing the income as can be verified from Para 5 of the Assessment Order. He has merely mentioned in the order that there is a protective addition in the hands of the Appellant.

In any case, the Appellant would like to state that a protective addition is made by the tax authorities as a precautionary measure i.e. it is done to preserve the ability to tax a certain amount of income or expense in case it is

later found to be taxable. It is a provisional addition made by the tax authorities to protect the revenue, when there is a risk of tax evasion or avoidance. i.e. if a substantive addition is made in the hands of X a protective addition is made in the hands of Y. A protective addition presupposes the existence of substantive additions; there can be no protective addition in the absence of substantive addition.

In the present case, there is no substantive addition made by the AO and hence there cannot be any protective addition.

3.4. Appellant's Plea

In view of the facts of the case the Appellant most humbly prays that there can be no protective addition in the absence of substantive addition and hence, the protective addition proposed by the Ld. AO is ought to be deleted as the same is bad in law.”

6. Further, our reference was drawn to the findings of the Ld.CIT(A), which are contained at para No. 6 of the impugned order, which read as under:

“6. Adjudication:-

6.1 I have considered the facts of the case and examined the documents uploaded by the appellant at the time of filing of appeal. The appeal is being decided as below:

6.2 GROUND 1: DISALLOWANCE OF EXPENSES U/S 37 OF THE ACT.

During assessment proceedings, the AO observed that the appellant company has not done any business during the year. It was also observed that it has incurred other expenses amounting to Rs. 3,01,988/- which consisted of audit fees, rent expenses, professional fee, property maintenance expenses and other similar expenses. Accordingly, he disallowed these u/s 37(1) of the Income Tax Act, 1961. In appeal the appellant has contested this disallowance. It has been stated that the company was formed in the year 2000. The expenses in question have been incurred to maintain its existence and corporate entity. Accordingly, it has been claimed that the same may be allowed.

I have perused the whole situation. In addition to what has been stated by the appellant, it is observed that in the balance sheet it has share premium and accumulated losses. It seems that it has been doing some business in the past, although no business has been done during the year under appeal. Moreover, the expenses are statutory expenses to maintain the identity of the company. Accordingly, these are eligible to be allowed. As such, this disallowance made by the AO is deleted and this ground of appeal is allowed.

6.2 GROUND 2: ADDITION OF NOTIONAL INTEREST INCOME UNDER THE HEAD INCOME FROM OTHER SOURCES

The second issue is regarding addition of notional interest on amount advanced to one Mr. Jesus Lall. The facts relating to this addition are that the appellant company had given interest free unsecured loan and advance to Mr. Lall. This advance continued to be there throughout the year. The AO observed that total amount of capital and reserves of the company was given as advance to a share holder holding 99.98% shares in the company. Since no interest from him was charged he computed notional interest on the amount of this advance at the rate 18% and made addition of Rs. 29,93,220/-. The appellant has contested this addition. It has been stated that only real income can be taxed and not notional or hypothetical income. Certain case laws have also been cited in its support.

I have gone through the entire issue and am inclined to accept the contention of the appellant. There is no such provision of making addition on account of notional or hypothetical income. Had the company borrowed the funds and incurred interest, then there would have been a case for making disallowance out of the same. However, the addition on account of notional income is not sustainable in any manner. Moreover, the judicial pronouncement of various Hon'ble Courts and ITAT also support the case of the appellant. Accordingly, the same are accepted and this ground of appeal of the appellant is allowed and the addition made is deleted.

6.3 GROUND 3: PROTECTIVE ADDITION ON ACCOUNT OF DONATION.

The third ground of appeal is against protective addition on account of donation. During assessment the AO observed that the appellant company had transferred some property to an educational trust by virtue of a gift deed in the past. This gift was registered on 15.09.2018 i.e. during the previous year relevant to the assessment year under appeal. However, the appellant had shown this gift in its books of account in the assessment year 2020-21 but the same was added back in the computation of income. Since the gift deed was registered during the year, the AO disallowed the same on protective basis. However, no such addition has been made in the computation part of the assessment order. In appeal the appellant has contested this action of the AO. It has been contended that no such deduction or expenditure has been claimed. Moreover, no substantive addition has been made and without that there cannot be any protective addition.

I am in agreement with the claim of the appellant. When something has not been claimed there is no question of its disallowance or addition. Moreover, in the absence of any addition in the computation of income, this so called addition is only academic and has no real value. Keeping in view of the same this ground of appeal of the appellant is allowed.”

7. We have heard the rival contentions and perused the material available on record. Firstly, as regards expenses amounting to Rs. 3,01,988/- which have been disallowed by the AO u/s. 37(1) of the Act,

we find that these expenses are in the nature of statutory audit fees, rent expenses, rates and taxes, professional fees and property maintenance expenses which have been incurred by the assessee and necessary documentation have been placed on record. The Id CIT(A) has returned a finding that these are statutory expenses which are necessarily to be incurred by the assessee to maintain its corporate existence and identity and even though no revenues have been earned by the assessee during the year, these expenses have been incurred for the purposes of assessee's business and are allowable u/s 37(1) of the Act. We are in agreement with the findings of the Id CIT(A) and do not find any justifiable basis to disturb the same and the same are hereby confirmed.

8. Now, coming to addition of Rs. 29,93,220/- on account of notional interest on advance given to Mr. Jesus Lall, the Director of the assessee company, admittedly, these advances were outstanding at the beginning of the year and no fresh advances have been given by the assessee during the year and have been advanced earlier out of share capital and free reserves of the assessee company and no interest bearing funds have been utilized for advancing these loans. It is not the case of the Revenue that the provisions of deemed dividend u/s 2(22)(e) or provisions of specific domestic transaction u/s 92BA are attracted in the instant case. The limited case of the Revenue is that the assessee has not charged any interest on such advances and accordingly notional interest @ 18% has been worked out by the AO. It is a settled legal proposition that it is only the real income which can be brought to tax in the hands of the assessee and where the assessee in its wisdom and discretion has decided to advance interest free funds to one of its directors out of its own interest free share capital and free reserves, there is no basis to determine notional interest and bring the same to tax. The Ld.CIT(A) has returned a similar finding and relied upon the decision of the Hon'ble Supreme Court in case

of Shoorji Vallabhdas (*supra*) as well as decision of the Hon'ble Gauhati High Court in case of Highway Construction Co. Pvt Ltd (*supra*). We accordingly don't find any factual and legal infirmity in the said findings of the Ld.CIT(A) and the same is hereby confirmed.

9. Lastly, in respect of protective addition of Rs. 38,64,815/- made by the AO in respect of transfer of property by way of gift to M/s.Vidya Vikas Education Trust on the basis that gift deed was registered during the previous year relevant to impugned assessment order though the assessee has reflected the said gift transaction in its books of accounts and debited its profit/loss account for the subsequent year relevant to assessment year 2020-21. Evidently, the assessee has suo-moto added back the said amount in its computation of income and has not claimed the said amount of gift while filing its return of income for assessment year 2020-21 and it has been stated by the ld AR at the Bar that the said position has been accepted by the assessee and has not been contested any further. In view of the same, where the substantive addition has already been suo-moto made and accepted by the assessee in subsequent assessment year, the protective addition deserves to be set-aside. In light of the same, we upheld the order of the Ld.CIT(A).

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

Order pronounced in the open court on 17-12-2025

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Mumbai, Dated: 17-12-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai