IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.7572/MUM/2019
(Assessment Year: 2014-15)

Shri Kushal Virendra Tandon 802, Rustomjee Enclave, Upper Juhu, Behind DN Nagar Police Station, Andheri West, Mumbai – 400 058	Vs.	ACIT -16(1) Room No. 439, 4th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai – 400 020

PAN No. ADXPT7623G

(Assessee)	**(Revenue)**

Assessee by : Shri Vimal Punmiya, A.R
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 29/06/2021
Date of pronouncement : 03/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-4, Mumbai, dated 17.09.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the income Tax Act, 1961 (for short 'Act', dated 27.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds before us:

"1. On the facts and circumstances of the case the ld. CIT(A) erred in confirming the.. Assessment order, passed by the Id. AO u/s143(3) assessing the total income at Rs. 1,10,50,730/- as against the income declared by the assessee of Rs.57,28,770/-.

2. On the facts and circumstances of the case the Ld CIT(A) erred in confirming the disallowance of the deduction of Rs.17,50,000/- claimed u/s 35(1)(ii) in respect of payment of Rs.10,00,000/- made to "School of Human Genetics and Pollution Health" which is unjust, illegal, arbitrary and against the facts and circumstances of the case.

3. On the facts and circumstances of the case the Ld. CIT(A) erred in confirming the disallowance of the genuine expenditure amounting to Rs.5,71,958/-

being 20% of the expenses of Rs.28,59,700/- made by the AO in view of section 37(1) and thereby treated the same for non business purpose and added the same to the total income of the Assessee.

4. On the facts and circumstances of the case the Ld. CIT(A) erred in confirming the addition of Rs.30,00,000/- made by the AO in view of section 68 and thereby treated the same as undisclosed income of the assessee and added the same to the total income of the assessee. The ld. CIT(A) erred in considering the genuine fact that the said amount of Rs.30,00,000/- was received as gift from his father.

5. The ld. CIT(A) erred in confirming the charging of interest under section 234A,234B,234C and 234D of the Income Tax Act, 1961.

6. The ld. CIT(A) erred in confirming the initiation of the penalty proceeding under Sec. 271(1)(c) of the Income tax Act 1961.

7. The assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."

2. Briefly stated, the assessee who is a film actor/model by profession had filed his return of income for A.Y. 2014-15 on 28.11.2014, declaring a total income of Rs.57,28,770/-. The return of income filed by the assessee was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. The A.O while framing the assessment made the following additions/disallowances:

Sr. No.	Particular	Amount
1.	Disallowance of the assessee's claim for deduction u/s 35(1)(ii) qua donation of Rs.10 lac given to school of human genetics and pollution health	Rs.17,50,000/-
2.	Disallowance of 20% of the expenses by attributing the same on an adhoc basis as personal expenses.	Rs. 5,71,958/-
3.	Addition of the gift received from father as an unexplained cash credit u/s 68 of the Act.	Rs. 30,00,000/-

On the basis of his aforesaid deliberations, the A.O vide his order passed u/s 143(3), dated 27.12.2016 assessed the income of the assessee at Rs.1,10,50,730/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as the contentions advanced by the assessee qua the aforesaid

issues did not find favour with the CIT(A), therefore, he upheld the additions/disallowances made by the A.O and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

6. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them in order to drive home their respective contentions. As multiple issues are involved in the present appeal, therefore, we shall hereinafter take up the same in a chronological manner.

7. We shall first address the disallowance of the assessee's claim for deduction of Rs. 17,50,000/- u/s 35(1)(ii) of the Act by the lower authorities. Admittedly, the assessee during the year under consideration had donated an amount of Rs. 10 lac to "School of Human Genetics and Pollution Health" (for short 'SHG&PH). On the basis of the aforesaid donation, the assessee had in his return of income claimed a weighted deduction of Rs.17.50 lac i.e an amount equal to one and three fourth times of the amount of donation of Rs.10 lac in terms of Sec. 35(1)(ii) of the Act. As is discernible from the records, it is an admitted fact that at the time of making of such donation SHG&PH was having a valid approval granted under the Act by the CBDT. In the backdrop of the aforesaid facts, we have to examine as to whether or not the subsequent cancellation of registration to SHG&PH, vide CBDT order dated 15.09.2016 with retrospective effect can invalidate the assesse's claim of deduction under Sec. 35(1)(ii) of the Act. For a fair appreciation of the issue under consideration we would herein cull out the 'Explanation' to Sec. 35(1)(ii) of the Act, which will have a strong bearing on the adjudication of the issue, and reads as under:

> "Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum

by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn;"

Now, in the case before us, we find that the aforesaid research institution i.e SHG&PH as on the date of giving of donation by the assessee was having a valid approval granted under the Act. On a perusal of the aforesaid 'Explanation' to Sec. 35(1)(ii) of the Act, it can safely be gathered that a subsequent withdrawal of such approval cannot form a reason to deny deduction claimed by the donor. By way of an analogy, we may herein observe that the **Hon'ble Supreme Court** in the case of **CIT Vs. Chotatingrai Tea (2003) 126 taxman 399 (SC)**, while dealing with Sec. 35CCA of the Act, had concluded, that a retrospective withdrawal of an approval granted by a prescribed authority would not lead to invalidation of the assessee's claim of deduction. On a similar footing, we find, that the **Hon'ble High Court of Bombay** in the case of **National Leather Cloth Mfg. Co. Vs. Indian Council of Agricultural Research (2000) 100 Taxman 511 (Bom)**, while dealing with an identical issue of denial of deduction under Sec.35(1)(ii) of the Act due to a subsequent withdrawal of approval with retrospective effect, had observed, that such retrospective cancellation of registration will have no effect upon the deduction claimed by the donor since such donation was given acting upon the registration when it was valid and operative. On a perusal of the aforesaid statutory provision i.e Sec. 35(1)(ii) of the Act, as well as the ratio laid down in the aforesaid judicial pronouncements, it can safely be concluded that if the assessee acting upon a valid registration/approval granted to an institution had donated the amount for which deduction is claimed, such deduction cannot be disallowed if at a later point of time the same is cancelled with retrospective effect. We have perused the aforesaid judicial pronouncements relied upon by the ld. A.R and are persuaded to accept his claim that the issue involved in the present appeal is squarely covered by the view taken by the co-ordinate benches of the Tribunal. Recently, a co-ordinate bench of Tribunal i.e **ITAT Mumbai Bench "C", Mumbai** in the case of **M/s Pooja Hardware Pvt. Ltd. Vs. The Assistant Commissioner of Income Tax-13(1)(1),**

Mumbai [ITA No. 3712/Mum/2018 dated 28.10.2019] had after relying on the earlier orders of the co-ordinate benches of the Tribunal on the issue pertaining to the allowability of deduction under Sec. 35(1)(ii) of the Act in respect of a donation given to SHG&PH by the assessee before them had vacated the disallowance of the assessee's claim for deduction under Sec.35(1)(ii) of the Act, observing as under:

> "6. We have heard the rival submissions of the parties and gone through the material on record including the cases relied upon by the parties. In the case of Mahesh C. Thakker vs. ACIT (supra), the coordinate Bench has decided the identical issue in favour of the assesse holding as under:-
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> > "6. In view of the above submissions, it was claimed that exactly on identical issues the co-ordinate Bench of this Tribunal 'B' Bench Kolkata in the case of DCIT vs. Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017 vide order dated 14.03.2018 for AY 2013-14 has considered the issue in regard to very same trust i.e. SGHPH and holds that prior to the date of donation under cancellation of registration has happened and there is absolutely no provision of withdrawal of recognition under section 35(1)(ii) of the Act. Hence, allowed the claim of the assessee by observing in Para 8.1 and 8.5 as under: -
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> > > "8.1. The brief fact pertaining to SGHPH are as under: - a) SGHPH was recognized vide Gazette Notification dated 28.1.2009 issued by the Central Board of Direct Taxes (CBDT in short), Ministry of Finance (Department of Revenue), Government of India, u/s 35(1)(ii) of the Act. b) SGHPH was also recognized as a scientific industrial research organization (SIRO) by Ministry of Science & Technology, Government of India. The renewal of recognition as SIRO by the Department of Scientific and Industrial Research under the Scheme on Recognition of Scientific and Industrial Research Organisation , 1988 was made for the period from 1.4.2010 to 31.3.2013 vide communication in F.No. 14/473/2007-TU-V dated 17.6.2010.
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> > > 8.2. At the outset, we find that the Taxation Laws (Amendment) Act, 2006 with retrospective effect from 1.4.2006 had introduced an Explanation in Section 35 of the Act which reads as under:- Section 35(1)(ii) – Explanation The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn. Hence the aforesaid provisions of the Act are very clear that the payer (the assessee herein) would not get affected if the recognition granted to the payee had been withdrawn subsequent to the date of contribution by the assessee. Hence no disallowance u/s 35(1)(ii) of the Act could be made in the instant case."

> 7. Similarly, the another co-ordinate Bench of this Tribunal, Jaipur Bench, in the case of P.R. Rolling Mills Pvt. Ltd. vs. DCIT in ITA No. 529/JP/2019 vide order dated 05.07.2018 for AY 2014-15 has considered the same Trust/ institute i.e. SHG&PG and allowed the claim of the assessee. The facts and circumstances are exactly identical in the present case also, respectfully following the decision of co-ordinate Bench, we allow the claim of deduction under section 35(1)(ii) of the Act. 8. Similar, are the facts in AY 2014-15, hence taking a consistent view we allow the claim of assessee in this year also."

> 7. The issue involved in the present case is identical to the issue involved in the case of Mahesh C. Thakker vs. ACIT. Since, this issue has been decided by the coordinate Bench in favour of the assessee in the aforesaid case, we do not find any reason to take a different view from the view already taken by the coordinate Bench. Hence, respectfully following the decision of the coordinate Bench rendered in the case of Mahesh C. Thakker vs. ACIT (supra), we allow ground No 6 & 7 of the assessee's appeal and direct the AO to allow the claim of the assessee."

In the backdrop of our aforesaid deliberations and considering the fact that the issue involved in the present appeal is squarely covered by the aforesaid orders of the co-ordinate benches of the Tribunal, we, thus, finding no justifiable reason to take a different view respectfully follow the same. Accordingly, we set-aside the order of the CIT(A) and vacate the disallowance of the assessee's claim for deduction under Sec.35(1)(ii) of Rs.17,50,000/-. The **Ground of appeal No. 2** is allowed in terms of our aforesaid observations.

8. We shall now deal with the grievance of the assessee that the CIT(A) had erred in confirming the ad hoc disallowance of an amount of Rs.5,71,958/- i.e 20% of the expenses that were claimed by the assessee to have been incurred wholly and exclusively for the purpose of his profession, but had been disallowed by the A.O on the basis of his conviction that the personal element in incurring of the said expenditure could not be ruled out.

9. On a perusal of the records, we find, that the A.O in the course of the assessment proceedings observed that the assessee had inter alia booked the following expenses in his profit and loss account for the year under consideration :

Head of Expense	Amount (Rs.)
Protein Expenses & personal care	326621

Interest on car loan and car depreciation	722532
General expenses	504246
Business Promotion	1040730
Telephone expense	265661
Total	2859790

The A.O holding a conviction that involvement of personal element in the aforesaid expenditure could not be ruled out, thus, called upon the assessee to explain as to why the same to the said extent may not be disallowed. In reply, the assessee produced the requisite details viz. bills, vouchers, and payment details to substantiate the genuineness and veracity of the aforesaid expenses, and also to drive home the fact that the same had been incurred wholly and exclusively in the normal course of his profession. However, the A.O was not persuaded to subscribe to the aforesaid claim of the assessee and rejected the same. It was observed by the A.O that as the assessee had supported his claim for the aforesaid expenses on the basis of self-raised vouchers and not on the basis of third party bills, therefore, the same did not inspire much of confidence. Apart from that, it was noticed by the A.O that some of the expenses were claimed by the assessee to have been paid in cash. Accordingly, the A.O holding a conviction that the personal element involved in the aforesaid expenses could not be ruled out, thus, on an ad hoc basis he disallowed 20% of the expenditure of Rs.27,26,801/- and worked out a disallowance of Rs.5,71,958/-.

10. On appeal, it was observed by the CIT(A) that the assessee could not substantiate his aforesaid claim of expenses on the basis of supporting material. Accordingly, not finding any infirmity in the view taken by the A.O, the CIT(A) upheld the disallowance.

11. Before us, the ld. Authorized Representative has assailed the ad hoc disallowance made by the A.O. It was submitted by the ld. A.R that the assessee in the course of the assessment proceedings had placed on record supporting documentary evidence to substantiate his aforesaid claim of expenses. In order to drive home his aforesaid claim the ld. A.R had taken us

through the copy of the ledger accounts of the various expenses, and also, the copies of the supporting vouchers that were filed in the course of the proceedings before the lower authorities, Page 47 – 99 of the Assessee's Paper book (for short 'APB'). It was submitted by the ld. A.R that the A.O had disallowed part of the aforesaid expenses on an ad hoc basis without pointing out as to what all expenses were not supported by the requisite documentary evidence. It was vehemently submitted by the ld. A.R that an ad hoc disallowance without placing on record any material to substantiate the same cannot be sustained and was liable to be struck down on the said count itself. In order to support his aforesaid contention the ld. A.R had relied upon the order of the ITAT, Kolkata in the case of Animesh Sadhu Vs. ACIT, Circle-1, Hoogly, ITA No. 11/Kol/2013, dated 12.11.2014 and that of the ITAT, Delhi in the case of ACIT, New Delhi Vs. M/s Modi Rubber Ltd. ITA No. 1952/Del/2014, dated 15.05.2018. It was submitted by the ld. A.R that in the aforesaid judgments the Tribunal had concluded that an ad hoc disallowance of expenses claimed by an assessee cannot be made. It was further observed, that if any specific expenditure is unverified or is unvouched, then, only such specific expenditure was liable to be disallowed. In the backdrop of his aforesaid contention, it was submitted by the ld. A.R that as the lower authorities had neither pointed out any such specific expenditure which the assessee had failed to substantiate on the basis of supporting material nor that which had a tinge of not having been incurred wholly and exclusively for the purpose of his business and profession, therefore, the ad hoc disallowance made by the A.O in a most arbitrary manner could not be sustained and was liable to be vacated.

12. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the assessee had failed to substantiate that the expenses booked by him in his profit and loss account were incurred wholly and exclusively in the course of his profession, therefore, the lower authorities considering the said fact a/w the fact that some of the expenses were claimed on the basis of self-raised

vouchers had thus rightly disallowed on an ad hoc basis 20% of the aforesaid expenditure.

13. We have heard the ld. authorized representatives in context of the aforesaid issue under consideration, and perused the orders of the lower authorities. Admittedly, it is a matter of fact borne from the records that neither of the lower authorities had pointed out as to what all expenses claimed by the assessee were not supported by documentary evidences, nor earmarked those which as per them did not inspire much of confidence. Also, nothing is discernible from the records which would reveal as to what all expenses the A.O was of the view had not been incurred by the assessee wholly and exclusively for the purpose of his profession. In the backdrop of the aforesaid facts, we find substantial force in the claim of the ld. A.R that devoid of any such specific finding by the lower authorities, the disallowance of the aforesaid expenses in a most arbitrary manner on an ad hoc basis could by no means be held to be justified. Our aforesaid view is fortified by the order of the ITAT, Kolkata in the case of Animesh Sadhu Vs. ACIT, Circle-1, Hoogly, ITA No. 11/Kol/2013, dated 12.11.2014 and that of the ITAT, Delhi in the case of ACIT, New Delhi Vs. M/s Modi Rubber Ltd. ITA No. 1952/Del/2014, dated 15.05.2018. We, thus, not being able to persuade ourselves to subscribe to the view taken by the lower authorities, therefore, vacate the disallowance of Rs. 5,71,958/-. The **Ground of appeal No. 3** is allowed in terms of our aforesaid observations.

14. We shall now take up the assessee's grievance that the CIT(A) had erred in concurring with the A.O and wrongly held the gift of Rs. 30 lac that was received by him from his father as an unexplained cash credit under Sec. 68 of the Act. On a perusal of the 'Capital account' of the assessee, it was observed by the A.O that the assessee had during the year under consideration claimed to have received a gift of Rs.30 lac from his father, viz. Shri. Virendra Tandon. In order to verify the authenticity of the gift transaction in question, the A.O had directed the assessee to place on record supporting

documentary evidence, viz. copy of the return of income a/w the bank statement of the donor i.e Shri. Virendra Tandon. In compliance, the assessee placed on record the copy of the return of income of his father for A.Y. 2014-15. Observing, that the return of income of Shri. Virendra Tandon for the year under consideration i.e A.Y 2014-15 revealed a paltry income of Rs.4,12,960/-, the A.O held a conviction that the assessee had failed to establish both the capacity of the donor and the genuineness of the transaction in question. Accordingly, the A.O being of the view that the assessee had failed to come forth with a proper explanation qua the transaction in question, thus, held the amount of Rs. 30 lac as an unexplained cash credit within the meaning of Sec. 68 of the Act.

15. On appeal, the CIT(A) finding no infirmity in the view taken by the A.O upheld the addition of Rs.30 lac made by him u/s 68 of the Act.

16. Before us, it was submitted by the ld. A.R that the assessee who hails from Lucknow, Uttar Pradesh is an actor/model who had bagged various titles in fashion shows and had acted in TV serials etc. It was submitted by the ld. A.R that the assessee being a struggler in the film/TV industry was during the year under consideration facing serious financial constraints. Elaborating on his aforesaid contention, it was submitted by the ld. A.R that the limited earnings of the assessee did not suffice to meet out the expenses that were necessarily required to be incurred by him for a decent survival in the industry. It was submitted by the ld. A.R that it was in the backdrop of the aforesaid serious financial crunch that the assessee's father viz. Shri. Virendra Tandon had came to the rescue of the assessee, his only son, and had out of his past accumulated savings gifted an amount of Rs. 30 lac to him. It was submitted by the ld. A.R that Shri. Virendra Tandon is a regular income-tax assessee and had filed his return of income for the year under consideration i.e A.Y 2014-15 on 31.07.2014, declaring a net taxable income of Rs. 4,12,960/-. It was submitted by the ld. A.R that Shri. Virendra Tandon had duly disclosed the gift transaction in question in his financial statements for the year under

consideration. Our attention was drawn by the ld. A.R to the 'Çapital account' of Shri. Virendra Tandon for A.Y 2014-15 wherein the gift transaction under consideration was duly accounted for by him (Page 129 of the 'APB'). It was submitted by the ld. A.R that in compliance to the directions of the A.O the assessee had in the course of the assessment proceedings furnished with him a copy of the return of income of Shri. Virendra Tandon for A.Y 2014-15. It was further submitted by the ld. A.R that the assessee had in the course of the assessment proceedings placed on record the copy of a "gift deed", dated 21.06.2013 that was executed by his father Shri. Virendra Tandon (supra), wherein the latter had provided his PAN No. and had clearly stated that he had on 21.06.2013 out of love and affection for his son i.e the assesee given an irrevocable cash gift of Rs. 30 lac to him out of his accumulated savings. In order to fortify his aforesaid contention the ld. A.R had drawn our attention to the copy of the "gift deed" at Page 112-113 of the "APB", which as certified by the ld. A.R formed part of the documents that were filed in the course of the proceedings before the lower authorities. It was submitted by the ld. A.R that both the lower authorities had failed to consider the 'gift deed', dated 21.06.2013 that was filed in the course of the assessment proceedings. Our attention was drawn by the ld. A.R to the 'Written submissions', dated 29.07.2019 that were filed with the CIT(A) [Page 134 – Para 4 of APB], wherein the assessee had specifically brought to his notice that in order to substantiate the genuineness of the gift transaction he had filed with the A.O a copy of the declaration of gift a/w a copy of the return of income of Shri. Virendra Tandon for A.Y 2014-15. It was submitted by the ld. A.R that though the fact that Shri. Virendra Tandon had given the gift in question to his son i.e the assessee was substantiated a/w the source thereof by the financial statement of Shri. Virendra Tandon wherein the gift transaction under consideration was duly disclosed in his 'Çapital a/c' for the year under consideration; as well as the clear admission made by him in the 'gift deed', dated 21.06.2013, however, both the lower authorities had summarily brushed aside the aforesaid documents and had most arbitrarily stamped the amount

of gift received by the assessee as an unexplained cash credit within the meaning of Sec. 68 of the Act. It was, thus, submitted by the ld. A.R that Shri. Virendra Tandon had not only duly disclosed the gift transaction in his financial statement for the year under consideration; but had also admitted the said gift transaction a/w the source thereof in the "gift deed", dated 21.06.2013. Further, the Ld. A.R in order to substantiate the creditworthiness of Shri. Virendra Tandon had taken us through his return of income for the year under consideration i.e A.Y.2014-15 a/w those for the preceding three years. It was submitted by the ld. A.R that Shri. Virendra Tandon who had multiple sources of income, viz. salary income, rental income, income from other sources (bank interest income and lorry hire receipts) had a gross total income of Rs. 15 lac (approx) i.e prior to statutory deductions in A.Y 2014-15, which, however, after considering the statutory deductions was scaled down to a net taxable income of Rs. 4,12,960/-. In order to drive home his aforesaid claim the ld. A.R had drawn our attention to the 'computation of income' of Shri. Virendra Tandon for the year under consideration. In the backdrop of his aforesaid contention, it was submitted by the ld. A.R that both the lower authorities had on the basis of premature observations and a prejudiced approach hushed through the matter and without considering the material available on their record and dispensing with the requisite verifications which ought to have been carried out by them, held the duly substantiated gift transaction as bogus and added the same u/s 68 of the Act. It was submitted by the ld. A.R that now when Shri. Virendra Tandon had duly disclosed the gift transaction in question in his financial statement for the year under consideration i.e A.Y 2014-15, and had also separately admitted of having gifted the amount to his son i.e the assessee a/w the source thereof in the 'gift deed', dated 21.06.2013, then, in case the A.O had any doubts as regards the authenticity of his said claim, it was incumbent on his part to have examined Shri. Virendra Tandon and taken the issue to a logical conclusion. In sum and substance, it was submitted by the ld. A.R that now when Shri. Virendra Tandon (supra) who is an existing income-tax assessee had duly disclosed

the gift transaction in his financial statement for the year under consideration, and had further once again separately admitted the gift transaction a/w the source thereof in the 'gift deed', dated 21.06.2013, then, no adverse inferences qua the genuineness of the transaction in question could have validly been drawn without placing on record any such 'material' that would have irrefutably proved the falsity of the aforesaid claim. It was vehemently submitted by the ld. A.R that the gift transaction in question cannot be held to be bogus, for the reason, that the assessee had failed to prove the source of the source of the donor i.e Shri. Virendra Tandon (supra) qua the gift transaction in question. It was submitted by the ld. A.R that the assessee had been saddled with an exorbitant tax liability pursuant to the whimsical stamping of the irrevocable gift received by the assessee out of love and affection from his father, as an unexplained cash credit within the meaning of Sec. 68 by the lower authorities.

17. Per contra, the ld. D.R. relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the assessee had failed to substantiate the authenticity of the gift transaction on the basis of irrefutable documentary evidence, therefore, the same was rightly treated as an unexplained cash credit u/s 68 of the Act.

18. We have given a thoughtful consideration to the aforesaid issue before us in the backdrop of the contentions advanced by the ld. Authorized Representatives for both the parties. As brought to our notice by the ld. A.R, it is a matter of fact borne from the record that Shri Virendra Tandon i.e the father of the assessee had duly disclosed the gift transaction in his financial statement for the year under consideration i.e A.Y 2014-15. Notably, the amount gifted by the assessee to his son is found debited in the 'Çapital A/c' of Shri. Virendra Tandon (Page 129 of APB). Apart from that, we find that the Shri. Virendra Tandon had separately by way of a 'gift deed',dated 21.06.2013 therein admitted of having given the irrevocable gift out of love and affection to his son i.e the assessee out of his accumulated savings (Page 112-113 of

APB). On a perusal of the records, we find, that Shri. Virendra Tandon (supra) is regularly being assessed with the Income-tax department. In the backdrop of the aforesaid facts, we are unable to comprehend that now when the complete credentials of Shri Virendra Tandon (supra), viz. PAN No., Income-tax returns, address, details of the A.O with whom he was being assessed etc. were available in the course of the proceedings before the lower authorities, then, in the backdrop of his clear admission both in his financial statements and the 'gift deed', dated 21.06.2013 of having gifted the amount in question to his son a/w the details of the source thereof, what stopped the A.O from examining him qua the transaction under consideration. Before us is a case where a father i.e Shri. Virendra Tandon (supra) who is a regular income-tax assessee had not only disclosed the gift transaction under consideration in his financial statements for the year under consideration i.e A.Y 2014-15, but had also separately in the "gift deed" admitted the gift transaction in question a/w the source thereof i.e his accumulated savings. Nothing in rebuttal of the aforesaid facts was brought to our notice by the ld. D.R. Be that as it may, we cannot remain oblivious of the fact that insofar the assessee before us is concerned, he had explained the 'nature' and 'source' of the cash credit i.e gift received from his father and had supported his explanation by placing on record the aforesaid documentary evidences, and thus, discharged the primary onus that was cast upon him as regards proving the gift transaction under consideration. In the backdrop of the aforesaid facts, we find substantial force in the claim of the ld. A.R that as the gift transaction in question had duly been disclosed by Shri. Virendra Tandon in his financial statement for the year under consideration i.e A.Y 2014-15, and also separately admitted by him in the 'gift deed',dated 21.06.201, therefore, it could safely or in fact inescapably be concluded that the primary onus that was cast upon the assessee to prove the 'nature' and 'source' of the amount in question credited in his books of accounts was duly discharged. Accordingly, the onus to disprove the explanation of the assessee in the backdrop of whatever material/documents he had placed on record to support the same was shifted to the A.O. Now, it

was on the basis of the aforesaid explanation of the assessee that the A.O had two recourses available with him, viz. (i). he could have summoned Shri. Virendra Tandon and examined him qua the gift transaction and also the source thereof; or (ii). he could have directed the assessee to produce Shri. Virendra Tandon so that he could examine him as regards the gift transaction in question. However, we are afraid that the A.O in all his wisdom had not opted for either of the aforesaid recourses that were available to him. On a perusal of the orders of the lower authorities, we find that at no stage the A.O had either summoned Shri Virendra Tandon i.e the donor, nor ever directed the assessee to produce him for examination in order to facilitate necessary verification qua the gift transaction in question. We would not hesitate to observe that as the assessee had discharged the primary onus that was cast upon him as regards putting forth an explanation regarding the "nature" and "source" of the cash credit in his books of accounts, therefore, the onus was shifted on the A.O to dislodge and disprove the said explanation by bringing on record any such 'material' that would have proved the falsity of the same. But then, the A.O without dislodging the explanation of the assessee had summarily held the gift transaction as bogus, for the standalone reason, that the paltry returned income of Shri. Virendra Tandon (supra) did not inspire any confidence as regards his creditworthiness to make a gift of Rs. 30 lac to his son i.e the assessee. At this stage, we may herein observe, that though the aforesaid version of the A.O at the first blush appears to be very convincing, but we are afraid that the same looses all its relevance when studied in the backdrop of the facts borne from the record. As observed by us hereinabove, the assessee had duly disclosed the gift transaction in his financial statement for the year under consideration. On a perusal of the financial statement of Shri. Virendra Tandon for A.Y 2014-15, we find, that the amount gifted by him to his son i.e the assessee is sourced out of his 'Çapital A/c'. On a careful perusal of the financial statements of Shri. Virendra Tadon to which our attention was drawn by the ld. A.R, we find that the same reveals that the assessee had over the years accumulated substantial cash in hand with him

out of which the amount in question was gifted by him to his son during the year under consideration. As is discernible from the 'balance sheets' of Shri. Virendra Tandon for three years preceding the year under consideration to which our attention was drawn by the ld. A.R, the same reveals that substantial cash in hand was available with him on the 31st day of March of the said respective years, as under:

Financial Year (year ending 31st March)	Cash in hand (available with the assessee)	Page No. (of APB)
2010-11	Rs. 23,00,310/-	Page 120
2011-12	Rs. 28,69,434/-	Page 123
2012-13	Rs. 32,98,143/-	Page 126
2013-14	Rs. 1,37,350/-	Page 129

Accordingly, on a perusal of the aforesaid details, we find, that both the financial statement of Shri. Virendra Tandon (supra) for the year under consideration i.e A.Y 2014-15, as well as his admission in the 'gift deed', dated 21.06.2013 a/w a mention of the source of the gift transaction in question i.e accumulated savings of the past, as were filed by the assessee with the A.O in the course of the assessment proceedings, therein, clearly sufficed to discharge the primary onus that was cast upon him to prove the 'nature' and 'source' of the cash credit in his books of accounts.

19. Now, coming to the observation of the lower authorities that the paltry income of Shri. Virendra Tandon neither inspired any confidence as regards his creditworthiness to make a gift of Rs. 30 lac to his son, nor the genuineness of the transaction under consideration. At this stage, we may herein observe that it has never been the claim of Shri. Virendra Tandon (supra) that he had gifted the amount in question out of his income for the year under consideration, but he had in fact clearly stated in the 'gift deed' that the same was given by him from his accumulated savings. In fact, the financial statement of Shri. Virendra Tandon for the year under consideration i.e A.Y 2014-15 puts to rest the controversy in hand. Although the A.O by referring to the returned income of Shri. Virendra Tandon, had observed, that he had a

paltry income of Rs. 4,12,960/- during the year under consideration i.e A.Y 2014-15, but while so concluding, he had lost sight of the fact that prior to the statutory/notional deductions his gross total income for the year worked out at about Rs. 15 lac (approx). Be that as it may, it is a matter of fact borne from the record that the claim of the assessee that he had received the amount in question as gift from his father i.e Shri. Virendra Tandon, which fact was duly substantiated as per the disclosure of the gift transaction by Shri. Virendra Tandon in his financial statement for the year under consideration i.e A.Y 2014-15, as well as his admission recorded in the 'gift deed', dated 21.06.2013, wherein he had in unequivocal terms admitted of having parted with the said amount as an irrevocable gift in favour of his son i.e the assessee from his accumulated past savings, had not been dislodged or rebutted by the department by placing on record any material proving to the contrary. As a matter of fact no attempt had been made by the lower authorities to disprove the genuineness and veracity of the aforesaid claim of the assessee of having received the amount in question as a gift from his father i.e Shri. Virendra Tandon. It is not the case of the department that on examination of Shri. Virendra Tandon, it was either proved that he had no such accumulated savings from where he could have gifted the amount in question to his son; or that he had at any stage retracted from his said admission. On the contrary, the disclosure of the gift transaction in question by Shri. Virendra Tandon i.e the donor in his 'Capital account' for the year under consideration a/w his clear admission in the 'gift deed', dated 21.06.2013 duly supports the claim of the assessee of having received the gift from him, which though in our considered view could not have been summarily discarded by the department, but we are afraid has been so done. Notably, there is no discussion about the 'gift deed', dated 21.06.2013 which alongwith a copy of the return of income of Shri. Virendra Tandon is stated to have been filed in the course of the assessment proceedings with the A.O. Apart from that, as submitted by the ld. A.R, that though the assessee specifically vide its "Written Submissions", dated 29.07.2019 (Page 132-135 of APB) had brought the fact

of having filed the 'declaration of gift' in the course of the assessment proceedings to the notice of the CIT(A), however, the latter too had not taken cognizance of the same. Also, as observed by us hereinabove, no reference is made by the lower authorities of the fact that Shri. Virendra Tandon had in his financial statement for the year under consideration i.e A.Y 2014-15 duly disclosed the gift transaction in question. (Page 129 of APB). Backed by the aforesaid facts, we are of the considered view that the fact that Shri. Virendra Tandon had duly admitted of having gifted the amount in question to his son i.e the assessee a/w the source thereof stands established beyond any doubt. Now, in the backdrop of the aforesaid duly substantiated admission of Shri. Virendra Tandon of having gifted the amount in question to his son, we may herein observe, that in case the department was not satisfied as regards the source of the gift transaction that was though disclosed by the donor in his financial statement for the year under consideration a/w the separate admission in the 'gift deed', dated 21.06.2013, then, it was obligated to have examined him as regards the same. At this stage, we may herein observe that in the backdrop of the dissatisfaction of the department as regards the claim of Shri. Virendra Tandon of having gifted the amount in question from his accumulated savings, it was for the department to have verified as to whether the so called accumulated funds claimed by him to have been generated over the years were from his duly explained sources that had already suffered taxes or from his secret accumulated funds. Our aforesaid conviction that amounts utilised or investments made by a person during a year can find its roots in the secret accumulated funds of the past is supported by the judgment of the Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. vs. CIT (1980) 123 ITR 457 (SC). In its aforesaid order, it was observed by the Hon'ble Apex Court that whether the cash credit can be reasonably attributed to a pre-existing fund of concealed profits or they are reasonably explained by reference to the concealed income earned in that very year is a matter of consideration in light of the facts of each case. Be that as it may, in the absence of any examination of Shri. Virendra Tandon (supra) qua the gift

transaction in question, and the source thereof, the department not having placed on record any 'material' which would have irrefutably rebutted his claim of having gifted the amount in question to his son i.e the assessee from his accumulated funds could not have summarily discarded the same. As stated by the ld. A.R, and rightly so, in case Shri. Virendra Tandon (supra) on examination would have been found to have gifted the amount in question to his son i.e the assessee out of his unexplained sources, then, the said amount ought to have been brought to tax in the hands of the said donor i.e Shri. Virendra Tandon (supra) and no adverse inferences could have validly been drawn in the hands of the assessee.

20. Adverting to the provisions of Sec. 68 of the Act, we find, that the same therein contemplates that where any sum is found credited in the books of the assessee, and the assessee offers no explanation about the source and the nature thereof; or the explanation offered by him is not, in the opinion of the assessing officer satisfactory, then, the said sum so credited may be charged to income-tax as the income of the assessee of that previous year. However, in the case before us the aforesaid requisite conditions are not found to have been satisfied. Before the A.O, the assessee had came forth with an explanation that he had received the amount in question as a gift from his father i.e Shri Virendra Tandon. Although the copy of the return of income a/w the financial statement of Shri. Virendra Tandon disclosing the source qua the gift transaction under consideration (Page 129-131 of APB), as well as the 'gift deed', dated 21.06.2013 (Page 112-113 of APB) evidencing the gift transaction in question were filed in the course of the assessment proceedings by the assessee, however, the A.O merely going by the fact that the returned income of Shri Virendra Tandon was not sufficient enough to justify the amount of gift in question had summarily discarded the same, and without bothering to take the issue to a logical conclusion by exercising the powers vested with him i.e summoning the aforesaid donor, viz. Shri Virendra Tandon and examining him qua the transaction in question in the backdrop of the documentary evidence that were filed by the assessee, had however, hushed

through the matter and on the basis of premature observations rejected the explanation of the assessee and stamped the amount in question as an 'Unexplained cash credit' within the meaning of Sec. 68 of the Act. On appeal, we find that the CIT(A) had summarily accepted the view taken by the A.O. In our considered view, the stamping by the A.O of the amount that was claimed by the assessee to have been received as a gift from his father, as an unexplained cash credit under Sec. 68 of the Act i.e without making any proper enquiry/verification cannot be sustained. Our aforesaid view is supported by the judgment of the Hon'ble High Court of Gauhati in the case of Khandelwal Constructions Vs. CIT (1997) 227 ITR 900 (Gau). In the backdrop of the facts as were involved in the case before them, it was observed by the Hon'ble High Court that the A.O without making a proper enquiry could not have held the creditors as fictitious and added the same as an unexplained cash credit within the meaning of Sec. 68 of the Act.

21. In the backdrop of our aforesaid deliberations, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. In our considered view, the A.O on the basis of half-baked facts and premature observations, and all the more without considering the material that was filed by the assessee in the course of the assessment proceedings before him, had rejected the assessee's claim of having received the gift from his father; and treated the same as an unexplained cash credit within the meaning of Sec. 68 of the Act. We cannot remain oblivious of the fact that Shri Virendra Tandon had duly disclosed the gift transaction in his financial statement for the year under consideration i.e A.Y 2014-15, and also categorically admitted in the 'gift deed', dated 21.06.2013 of having gifted the amount in question to his son. Although, we concur with the view taken by the A.O that the returned income of Shri Virendra Tandon was not substantial, however, as observed by us hereinabove, a material fact that had been lost sight of by the lower authorities is that Shri Virendra Tandon had never stated that he had gifted the amount in question out of his income for the year under consideration, but had in unequivocal terms stated that the same was given by him out of his

past accumulated savings. In our considered view, the aforesaid claim of Shri Virendra Tandon of having gifted the amount in question out of his accumulated savings by no means could have been summarily rejected by doing away with his examination qua the claim of having made the gift a/w the source thereof in the backdrop of the material that was filed in support thereof in the course of the assessment proceedings. Be that as it may, in our considered view, now when Shri Virendra Tandon had categorically admitted of having gifted the amount in question alongwith the source thereof, then, the amount so received by the assessee could not have been summarily stamped as an unexplained cash credit, for the reason, that the A.O carried certain doubts as regards the source of the source of the amount that was claimed by the assessee to have been received as a gift from him. Our aforesaid view is supported by the judgment of the Hon'ble High Court of Madhya Pradesh in the case of CIT vs. Metachem Industries (2000) 245 ITR 160 (MP). In its said order, it was observed by the Hon'ble High Court that in case of a credit entry, if the person in whose name the same appears owns the same, then, the burden cast on the assessee is discharged and it is open for the A.O to undertake further investigation with regard to that individual who had deposited the amount. It was further observed, that the assessee is only to explain that the investment had been made by the particular individual and it is not his responsibility to account for the investment made by the said person. Accordingly, now when in the case before us, it is the claim of the assessee that he had received the amount in question as a gift from his father, viz. Shri. Virendra Tandon (supra), and the latter had duly disclosed the said transaction in his financial statement for the year in question, and also separately admitted the same in the 'gift deed', dated 21.06.2013, therefore, in the absence of any 'material' dislodging or disproving the aforesaid factual position no adverse inferences qua the said transaction in question could have been drawn in the hands of the assessee and it was open for the A.O to undertake further investigation with regard to Shri. Virendra Tandon (supra).

22. In the case before us, the assessee's father i.e Shri Virendra Tandon had gifted the amount in question to his son i.e the assessee by way of financial assistance at a time when the assessee is stated to be struggling for his survival in the industry. In our considered view, utilisation of accumulated savings by a father for the purpose of financially assisting his son is not something unheard of in our society. We may herein reiterate that Shri. Virendra Tandon (supra) had categorically admitted of having gifted the amount in question to his son i.e the assessee and the authenticity of the said claim had not been disproved or dislodged by the department by placing on record any material proving to the contrary. In our considered view, in case the A.O would had fairly considered the documentary evidence that was filed by the assessee in the course of the assessment proceedings to support the genuineness of the gift transaction a/w the source thereof, then, no adverse inferences qua the gift transaction in question would have surfaced. However, in case, the A.O would had still any doubts as regards the authenticity of the sources out of which the amount was gifted by Shri. Virendra Tandon (supra), then, it was for the latter to have explained the same, and in the absence of any plausible explanation suffered the consequential taxes. We, thus, in the backdrop of our aforesaid deliberations are unable to subscribe to the view taken by the lower authorities, which we are afraid had been arrived at without considering the facts/material on record, and is glaringly bereft of the basic verifications that were required to be carried out by the A.O. Accordingly, in the backdrop of our aforesaid deliberations, as the very basis of the impugned addition of the amount of Rs. 30 lac (supra) is found to be devoid of any merit, therefore, the same cannot be sustained and is accordingly vacated. The **Ground of appeal No. 4** is allowed in terms of our aforesaid observations.

23. The assessee has assailed before us the charging of interest u/s 234A, 234B, 234C and 234D of the Act. As the charging of interest under the said respective sections is mandatory as per the judgment of the Hon'ble Supreme Court in the case of CIT vs. Anjum M. H. Ghaswala & Ors. (2001) 252 ITR 1 (SC), therefore, the A.O is directed to recompute the same while giving effect

to our aforesaid order. The **Ground of appeal no. 5** is allowed in terms of our aforesaid observations.

24. The assessee has assailed the initiation of penalty proceedings u/s 271(1)(c) of the Act. As the said ground of appeal is premature, therefore, the same is dismissed. The **Ground of appeal No. 5** is dismissed in terms of our aforesaid observations.

25. The **Grounds of appeal Nos. 1 & 6** being general are dismissed as not pressed.

26. Resultantly, the appeal of the assessee is allowed in terms of our observations recorded hereinabove.

Order pronounced in the open court on 03.09.2021

Sd/-	Sd/-
S. Rifaur Rahman	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 03.09.2021
*PS: Rohit

Copy of the Order forwarded to :
1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "H" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar.