

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

सर्व श्री आर.सी. शर्मा, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष ।
**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.2662/M/2013
(निर्धारण वर्ष / Assessment Year; 2009-10)

DCIT-3(2) 6 TH FLOOR, AAYAKAR BHAVAN, M.K. ROAD MUMBAI-400020	<u>बनाम</u> / Vs.	KDA Enterprises Pvt. Ltd. 1203-06, ARCADIA 195, BACBAY RECLAMATION, NARIMAN POINT MUMBAI- 400021 PAN: AAACCK7312C
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Revenue by : Smt. S. Padmaja (DR)
Assessee by : Shri Farookh Irani (AR)

सुनवाई की तारीख/Date of Hearing : 22.01.2015
घोषणा की तारीख /Date of Pronouncement : 11.03.2015

आदेश / ORDER

Per R.C. Sharma, J.M. :

This appeals filed by the Revenue is directed against the order of Learned CIT(A) dated 28.1.2013 for the assessment year 2009-10, in the matter of order passed u/s.143(3) of I.T.Act, 1961. Following grounds have been taken by the Revenue :-

Grounds of appeal;

"1.Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the addition of Rs. 161,86,77,034/- being receipt without consideration, without appreciating the fact that the same was covered under the ambit and scope of 'income' u/s 2(24) of the LT Act."

"2. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the addition of Rs. 161,86,77,034/-, without appreciating the fact that the same was covered under the ambit and scope of 'income from other sources' u/s 56(1) of the I.T Act."

"3. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the addition of Rs. 161,86,77,034/-, without appreciating the fact that the said receipts cannot be categorized as 'gifts' claimed to be exempt from taxation."

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in holding the receipts without any consideration as "gift" in the absence of 'Natural Love and Affection' without appreciating the fact that 'Natural Love and Affection' is crucial element of any transaction to qualify as gift."

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in relying on the provisions of section 25 of Companies Act and section 80G of the I.T Act and holding that a company can make gift, without appreciating the fact that these are specific provisions stipulated by statute for specific purposes and therefore, the same cannot be applied in generality and to the facts under consideration."

"6. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in not holding that any receipt without corresponding liability, being recurring and periodical in nature, which is not specifically exempt under the statute, shall fall within the ambit of definition of income as stipulated by law under section 2(24) of the I.T. Act 1961."

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in holding that provisions of Section 56(2) empower the assessee to receive so called corporate gift without paying any tax on it, without appreciating the fact that sec. 56(2) is exemplary and specific, which does not redundant the generality of the provisions of Section 56(1)."

8. "Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting an addition of Rs. 161,86,77,034/-, without appreciating the fact that if such interpretation was to be accepted, it will legalise the transfer of funds from one corporate to another without any consideration and without payment of any taxes by the recipient, which will be against the scheme laid out by legislature u/s 2(24) r.w sec. 56(1) of the I. T. Act 1961. "

9. "Without prejudice to the above, if at any stage it is held that above receipts of Rs. 161,86,77,034/- were not to be taxable u/s 56(1) of the I.T Act, the deponent pleads alternate ground of appeal as hereunder:

"Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in holding that receipt of Rs. 161,86,77,034/- by the assessee was not taxable u/s 28(iv) of the I.T Act, without appreciating the fact that same was covered under the ambit and scope of 'benefit' arising from business as contained in that subsection. "

"9. Whether on the facts and circumstances of the case and in law, the Ld. CIT

(A) was justified in deleting the addition of Rs. 161,86,77,034/- to the book profits u/s 115JB of the I. T Act without appreciating the fact that such receipts will have to be taken as income and credited into P & L a/c as per Schedule VI of the Companies Act."

10. "the appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."

11. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. Rival contentions have been heard and record perused. Facts in brief are that during the year under consideration i.e. F.Y.2008-09, assessee received Rs.161,86,77,034/-, from four concerns and claimed it as gifts received from these concerns. The names and other details of the four concerns from whom the amounts have been received are as follows :-

Sl. No	Name of the Corporate Donor	PAN	Address	Amount(Rs.)	Source
1	Amur Trading Pvt. Ltd.	AAACR2647D	505, Dalamal House, Nariman Point, Mumbai	42,90,52,221	Dividend receivable by donors from Reliance Industries Ltd. on their share holdings are directly transferred to the assessee
2	Madhuban Merchandise Pvt. Ltd.	AABCM9540M	505, Dalamal House, Nariman Point, Mumbai	44,50,38,399	
3	Tresta Trading Pvt. Ltd.	AAACR2649P	505, Dalamal House, Nariman Point, Mumbai	42,78,44,222	
4	Ornate Traders Pvt. Ltd.	AAACO0856D	505, Dalamal House, Nariman Point, Mumbai	31,67,42,192	

3. The assessee has claimed that the amount received are gifts received from the said four concerns. It is claimed that the amounts have been received directly from Reliance Industries Ltd. on account of the dividend receivable by the said four concern against their shareholding in Reliance Industries Ltd. It is on the directions of the four concerns that their dividend were directly credited to the bank account of the assessee. The assessee also claimed that all the four concerns have passed resolutions in the meeting of Board of Directors for making the said gifts and similarly the assessee company has also passed a resolution by the board of directors for receiving the gifts. It is also claimed that all the four donor concerns are also authorized by Memorandum and

Articles of Association for making such gifts and the assessee company is authorized for receiving such gifts. Accordingly, the assessee claimed that all the four donor concerns are also authorized by Memorandum and Articles of Association for making such gifts and the assessee company is also authorized for receiving such gifts. Accordingly, the assessee claimed that the identity of the donor companies, their source of funds for gifts and the nature of transaction are clearly established. Therefore, assessee has claimed that these receipts are not taxable because these are capital receipts and any such gift is not taxable in case of companies, whereas, the A.O. held that these receipts cannot be categorized as gifts or transactions which are specifically exempt from taxation and further held that these cannot be categorized as dividend income in the hands of the assessee. Hence, these receipts are taxable as income from other sources in the hands of the assessee and accordingly made an addition of Rs.1,61,86,77,034/- to the returned income of the assessee. The assessee has disputed it. Claiming that these are genuine gifts and the amounts received are capital receipts which are not taxable. In support of its claim the assessee filed submissions dated 31/8/12, which are as follows:

1. The Appellant is a Private Limited Company incorporated under companies Act, 1956. The Appellant is engaged in the business of investment. The Appellant is regularly assessed to tax with Dy. Commissioner of Income Tax -3(2), Mumbai(hereinafter referred to as AO). The books of accounts of the Appellant are audited under Companies Act - 1956 by the statutory auditor. The Return of Income for A. Y. 2009-10 Was filed on 29.09.2009 declaring total income of Rs.16,60,86,020/- under normal provisions of the Act and book profit of Rs. 48,41,71,580/- u/s 115JB of the Act. The return was processed u/s 143(J) of the J. T Act on 25.10.2010. Subsequently the case was selected for scrutiny and notice U/S 143(2) and 142(J) of the I T. Act were issued and served on the Appellant. The .Authorized Representative of the Appellant attended from tune to tune and submitted the requisite details. Regular Assessment U/s 143(3) was completed by the A.o. vide his order dt.11.11.2011 determining total taxable income at Rs.178,47,63,054/- under normal provisions of the Act and book profit of Rs. 210,28,48,614 u/s 115JB of the Act. The addition made by the AO is disputed in appeal before your Honour.

The brief facts relating to additions/ disallowances made by the AO and disputed in appeal are as under:

2. The Appellant is a private limited company engaged in the business of Investment. During the year under consideration it received gifts aggregating to Rs.161,86,77,034/- from four companies viz. Amur Trading Private Ltd., Medhuban Merchandise Private Ltd., Tresta Trading Pvt. Ltd. and Ornate Traders Pvt. Ltd. All the above four companies are shareholder of Reliance Industries Limited [Reliance Industries] and receive dividend income from Reliance Industries. The Appellant and all the above four companies are Private Limited companies and are governed by their respective Memorandum and Articles of Associations.' The Memorandum of Associations of the Appellant and all the above four companies provides for the receiving/giving of gift respectively. The Clause 30 of Memorandum of Associations of the Appellant provided as follows:

"To make and/or receive donations, gifts or income to or from such persons, institutions or Trusts, whether in cash or any other assets as may be thought to benefit the company or any other object of the company or otherwise expedient and also to remunerate any person or corporation introducing or assisting, in any manner the business of the company subject to the applicable provisions of Companies Act, 1956."

Similarly clause 21 of Memorandum of Associations of M/s. Madhuban Merchandise Private Limited (one of the above four donor company) provides as follows:

"To make and/or receive donations, gifts or income to or from such persons, institutions or Trusts and in such cases and Whether of cash or any other assets as may be thought to benefit the company or any other objects of the company or otherwise expedient and also to remunerate any person or corporation introducing or assisting. in any manner the business of tile company"

"Resolved That pursuant to the provisions of Section 206 and other applicable provisions of the Companies Act, 1956, the Company do hereby instruct and authorize Reliance Industries Limited (RI£), to pay over directly, to KDA Enterprises Private Limited, the dividend for the year 2007-08 in respect of 3.42,33, 723 equity shares of RIL held by the Company.

Resolved Further That Shri. Manoharlal B. Chaturvedi and Shri Vijay R. Gupta, Director of the Company, be and are hereby severally authorized to take all such other steps as may be necessary and/or incidental thereto to give effect to this resolution."

In pursuance to above, the donor company vide its letter dt.19.06.2006 had given irrevocable instruction u/s 205 r.w.s. 206 of the Companies Act to Reliance Industries to pay dividend directly to the Appellant. The corresponding resolution was also passed by the Appellant at the Board Meeting held on 12.06.2008 accepting the gift. The extract of the resolution passed by the Appellant is as follow:

"Resolved That the company do accept gift amounting to Rs. 44,50,38,399/- from Madhuban Merchandise Private Limited, the Transferor Company.

Resolved Further That the Company do receive delivery of the same from the Transferor Company for completing the gift.

Resolved Further That Smt. KD Ambani and Shri D.N Chaturvedi, Directors of the company, be and are hereby severally authorized to do, perform and execute all acts, deeds, matters and things as may be necessary, proper or expedient to give effect to this resolution and for matters connected herewith and incidental hereto."

Similar such resolutions were also passed by the other four companies in their respective extra ordinary general meetings and board meetings. Consequently, the Appellant received gift of Rs.16,1,86,77,034/- from above four companies during the year, as under:

<i>Name of the Company</i>	<i>Amount of Gift (Rs)</i>
<i>Amur Trading Private Limited</i>	<i>42,90,52,221</i>
<i>Madhuban Merchandise Private Limited</i>	<i>44,50,38,399</i>
<i>Tresta Trading Private Limited</i>	<i>42,78,44,222</i>
<i>Ornate Traders Private Limited</i>	<i>31,67,42,192</i>
<i>Total</i>	<i>161,86,77,034</i>

As the gift received by the Appellant from corporate bodies is in the nature of Capital receipt, the Appellant credited the gift of Rs.1,61,86, 77,034/- to Capital reserve Account in its books of accounts.

During assessment proceedings the AO raised the query with respect to gift received by the Appellant from corporate bodies, their treatment in books of accounts of the Appellant and its taxability. In response the Appellant filed all the relevant details before the AO during assessment proceeding. The Appellant submitted that all the donor companies are shareholders of Reliance Industries Limited and receives dividend income from Reliance Industries. The donor companies had given irrevocable instructions to Reliance Industries to pay dividend directly to Appellant. The receipt of dividend was debited to bank account and credited to Capital reserve Account of the Appellant. The Appellant submitted that the Gift is in the nature of capital receipt and is not required to be credited to 'Profit and Loss Account' of the Appellant. The Appellant further submitted that it has prepared its books of accounts as per the requirement of the Companies Act - 1956 and same has been audited and approved by the statutory auditor and a/so adopted by the shareholders in Annual general Meeting of the Appellant. The Appellant therefore submitted that since the accounts are prepared as per the companies Act, no adjustment is required to be made to the book profit u/s 115JB on account of gift received by the Appellant. In this regard the Appellant filed detailed submission vide its letter dt.4.11.2011 before the AO during the assessment proceeding. However the AO for the reasons recorded in the. assessment order did not accept the contention of the Appellant and added gift received of Rs.161,86,77,034/- to the total income of the Appellant. The AO further added the amount of gift received of Rs.161,86,77,034/- to the book profit u/s 115 JB of the Appellant.

3. In this connection the Appellant at the outset objects to the additions of Rs.161,86, 77,034/- made by the AO to the income under normal provisions of the Act and books profit u/s 115JB of the Act. The Appellant submits that the additions made by the AO to the total income and books profit is solely on account of suspicion, assumptions, surmises and without the authority of the law and on misconception of law. The order passed by the AO is bad in law and shall be quashed forthwith.

The Appellant at the outset submits that, the gift of Rs.161,86, 77,034/- received by the Appellant from Corporate bodies are in the nature of capital receipt and is not taxable under any of the provisions of the Income Tax Act - 1961. The Appellant submits that the Income Tax Act - 1961[hereinafter referred to as Act] is an act passed by the Parliament to levy tax on 'income' of an assessee. Thus what is subjected to tax under the Act is only the 'income' of the assessee and not each and every receipt of an assessee. The Appellant submits that where the other receipts not in the nature of income are intended to tax under the Act, the legislature has specifically made provisions for taxability of such receipts in the statute itself like section 45, section 56(v), 56(vi), 56(vii) etc. The Appellant submits that section 4 of the Act is the charging section which reads as under:

"4. (1) Where any Central Act enacts that income - tax shall be charged for any assessment year at any rate or rates, income - tax at that rate or those rates shall be charges for that year in accordance with, and subject to the provisions including provisions for the levy of additions income - tax of, this Act in respect of the total income of the previous year of every person;

Provided that where by virtue of any provisions of this Act income - tax is to be charged in respect of the income of a period other than the previous year, income - tax shall be charged accordingly. "(Emphasis Supplied) Thus as per section 4 of the Act income tax shall be charged 1.11 respect of total income of an assessee. The Act defines the term 'total income' under section 2(45) which reads as under:

"2(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;{(Emphasis Supplied)

Section 5 of the Act provides for scope of total income chargeable to tax in India on the basis of receipt, accrual and deemed to be received and accrued in India. In view of above the Appellant submits that the charging section of the Act specifically provides for taxation of 'income' of an assessee. The Appellant therefore submits that for a receipt to be taxable under the provisions of" the Act it must necessarily be in the nature of an income or its taxability should have been specifically provided by the statute. The Appellant submits that Section 2(24) of the Act defines 'income: The definition of 'income' provided in section 2(24) although an inclusive definition, but it specifically provides the income which are intended to be taxed under the provisions of the Act. Even the income in the nature of capital gain as per section 45, and gifts received as per section 56(2)(v), (vi), (vii) etc are included in the definition of income. The Appellant therefore submits that under the Income Tax Act only the receipts which are in the nature of 'income' are subjected to tax. The Appellant therefore submits that any other receipts which are not in the nature of "income" are not liable to tax under the provisions of the Act.

The Appellant submits that gift of Rs.161,86, 77,034/- received from corporate bodies are all the nature of capital receipts. The gift received from corporate bodies do not come under the ambit of income as contemplated U/S 2(24) of the Act or any other provisions of the Act. The Appellant submits that gift received are a voluntary payments made by the donors to the Appellant. Neither the Appellant has any legal right to claim the gift from the donor nor donor have any legal or contractual obligations to give gift to the Appellant. The gift received is a voluntary payments made by the donor, without consideration to the Appellant. The Appellant submits that the gift received has nothing to do with the business of the Appellant so as to constitute its income from business or a revenue receipt in the nature of income. The Appellant therefore submits that the Gift received is in the nature of a capital receipt not Hable to tax under the Income Tax Act.

The Appellant further submits that as per section 14 of the Act, income of an assessee must be classified under the following heads of income viz "Salaries": "Income from house property": 'Profit and gains of business or profession", "Capital gain" and "Income from other sources". The Appellant submits that the provisions of the Act provides for what can be constituted/considered as income under the various heads of income. Thus income of an assessee shall be chargeable to tax only if it falls under any heads of income. In this connection the Appellant submits that the gift received is neither in the nature of Salary nor in the nature of income from house property. The Appellant further submits that by no stretch of imagination it can be said that the Appellant is engaged in the business of receiving gifts from corporate bodies: hence the gift can also not be considered as the income from business of the Appellant. The Appellant further submits that as the gift has no relation to any capital asset, the same can also not be considered as capital gain for the Appellant. With respect to income from other source, the Appellant submits that income of every kind which is not chargeable to tax under any head of income are subjected to tax under the residuary head of income j.e. income from other sources. However again what is subjected to tax under the provisions of section 56 is income of revenue nature. The Appellant further submits that gift was always treated as non taxable capital receipt in the hands of the receipts till 31.03.2005. Thereafter the legislature vide Finance (No.2) Act, 2004 w.e.f 1.04.2005 inserted clause (v) to sub section (2) of section 56 of the Act so as to include any sum of money received from any person, other than exception provided in that section, by an individual or Hindu Undivided Family was made subjected to tax. The scope of the said section was further narrowed down by raising the limit of receipt from Rs.25,000/- to Rs.50,000/-' with effect from 1.04.2006. The said section was amended from time to time by amending the limit of receipts and nature of transaction but the applicability of the said section was restricted only to an individual or Hindu Undivided Family. The Appellant therefore submits that when the legislature intended for bringing to tax net the gift received by an assessee it has specifically provided so by enacting the law. The Appellant therefore submits that as per section 56(2)(v) the gift...c; received by an individual and HUF only are made liable to tax. Thereafter for the first time two other category of assesseees were added with effect from 1.06.2010 by Finance Act, 2010 in clause (viii) of section 56(2) of the Income Tax Act, 1961. These two categories of the assesseees are '8 firm" and "a company". However, the parliament restricted the taxability to receipt in the form of shares of an unlisted company without consideration or without sufficient consideration. Thus even after this amendment,

shares of listed companies received as gift was not covered and accordingly not subjected to tax. The Appellant therefore respectfully submits that certain gifts are made taxable from time to time by various well thought and well intended amendments in the Act and all the definition regarding taxability of gift (i.e. receipt of assets without sufficient or without any consideration) are inclusive and only those instance of gifts are required to be taxed and not all gifts. This is so, more particularly, because all gifts are capital receipt in nature and only certain gifts are made taxable. The Appellant submits that provisions of section 56(2)(v), (vi), (vii), and (viii) specifically covers the instances of gifts which are taxable under the provision of the Act: and all other gifts received by an assessee other than those covered in above sections are not chargeable to tax being capital in nature.

In this connection the Appellant rely upon the following judicial pronouncements wherein the hon'ble courts have held that gift capital receipts without considerations are not in the nature of income and hence the same can not be charged to tax under the provisions of the Income Tax Act.

1) *HH Maharani Shri Vijaykuverba Saheb of Morvi & Anr Vs. CIT [49 ITR 594](Bombay):*

"There is no doubt that under the Indian IT Act even payments, which are voluntarily made may constitute "income" of the person receiving them. It is not necessary that in order that the payments may constitute "income"; they must proceed from a legal source: in that if the payments are not made the enforcement of the payments could be sought by the payee in a Court of law. It does not, however, mean that every voluntary payment will constitute "income". Thus, voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation may constitute "income" although if the payments were not made the enforcement thereof cannot be insisted upon. These payments constitute "income" because they are referable to a definite source, which is the office, profession, vocation or occupation. It could, therefore, be said that such a voluntary payment is taxable as having an origin in the office, profession or vocation of the payee, which constitutes a definite source for the income. What is taxed under the India IT Act is income from every source (barring the exceptions provided in the Act itself) and even a voluntary payment, which can be regarded as having an origin, which a practical man can regard as a real source of income, will fall in the category of income; which is taxable under the Act. Where, however, a voluntary payment is made entirely without consideration and is not traceable to any source, which a practical man may regard as real source of his income, but depends entirely on the whim of the donor, cannot fall in the category of "income". What we have to see, therefore, in the present case, is whether the payment made by the son Maharaja to the father Maharaja, though voluntary, could be regarded as having an origin in what might be called the real source of come. On the facts found in the present case, we cannot say that the payments would be referable to any such source. The Department has not been able to show any material on record, from which such a conclusion can be drawn"

2) *CIT Vs. Pran Jihan Jaitha [52 ITR 108] (Calcutta):*

"8. It WIJJ thus be seen that the basic reason for bringing such compensation into the net of taxation is that the parties had expressly agreed that the money that would be received would represent profits. It was inherent in such policies that the assessee expected to earn profit but was prevented from doing so by some overriding reason and, therefore, an amount was paid in lieu of profits. It is comparable to the class of cases I have mentioned above where the business continues but by some overriding reason profit cannot be earned. The situation in the present case is, however, entirely different. Even if there was any doubt as to what exactly the payment of Rs. 5 lakhs represented, it is now laid at rest by the findings of fact that have been placed before us upon remand. The company itself has admitted that the payment was made as a personal gift to the assessee. It may have been calculated on the possible loss that had been suffered, but it is obvious that there was no question of any legal liability on the part of the company to pay or any legal right on behalf of the assessee to receive payment. It was paid as a personal gift in consideration of the long association of the assessee and his firm with the shipping' company for a number of decades. It was entirely prompted by generosity, and there is no reason to equate the payment with the payment that the assessee could have received from an insurance company if it had a "consequential loss policy" of the nature described above. That being so, I think that the Tribunal had come to the correct conclusion that this amount of Rs. 5,00,000 was not a revenue receipt and could not be assessed for taxation."

3) *Lachit Films Vs. CIT [195 ITR 402]Gauhati):*

"In section 2(24) of the Income-tax Act, 1961, it is declared that 'income' includes such and such which are enumerated therein. In section 2(24), grant-in-aid has not been included as an income or revenue receipt. Therefore, considering the use of the word "include" in section 2(24), the word "income" shall be construed as comprehending not only those which section 2(24) declares that they shall include but also such a thing as it signifies according to its natural import. Since section 2(24) has not declared that grants-in-aid shall include, the word "revenue" it shall be construed as comprehending what it signifies according to its natural import. In relation to a business undertaking, the word "revenue" connotes incomings of the undertaking which are products of the normal working of the undertaking. The giving of financial aid or subsidy is at the discretion of the Government. Therefore, the grants-in-aid received by the assessee, a producer of films, from the Government is a financial aid or subsidy given by the Government with a view to encourage the film industry and is not a product of the normal business activities and such grant-in-aid is not a revenue receipt liable to be included in the total income of the assessee.

4) *Padmaraje R. Kadambande Vs. CIT [195 ITR 877](Supreme Court):*

"Held, reversing the decision of the High Court, that the payment under proviso (d) to section 15(J) of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, was a purely discretionary payment. Neither the fact that the appellant applied for a grant for maintenance allowance nor the periodicity was conclusive. Regard had to be had only to the nature and quality of the payment. The appellant lost her right to the allowance under the Huzur order and, therefore, on an application by way of compassion, the payment was made. The mere fact that, after the order was made under section 15(J), it became an enforceable right was not

relevant, There was no compulsion on the part of the Government to make the payment: nor was the Government obliged to make the payment since it was purely discretionary. The payment made by the Government was voluntary: it had no origin in what might be called the real source of income. The fact that proviso (d) to section 15(1) of the Bombay Act enabled the appellant to seek payment was far from saying that it was a source. It could not afford any foundation for such a source. It was a compassionate payment for such length of period as the Government might, in its discretion order. The amounts received by the appellant during the financial years in question were capital receipts and, therefore, not income within the meaning of section 2(24) of the income tax Act, 1961.

5) CIT Vs. Ramdeo Samadhi (J60 ITR 179K Rajasthan)

"The ingredients of "income" are: (i) it must be a periodical monetary return, (ii) coming in with regularity or expected regularity, (iii) from definite sources, and (iv) excluding a receipt in the nature of a mere windfall.

It is well-settled that in order to become a vocation, an activity need not be organized and a single act may amount to carrying on a business, profession or vocation. In the case of a voluntary payment, no tax can be levied on it, if it had been made for reasons purely personal to the donee and unconnected with his office or vocation, while it will be taxable if it was made because of the office or vocation of the donee. Before a particular amount can be characterised as an income, there should be its definite source which should be an identifiable one may be an individual or an institution, or a body of people or any other source."

6) Mehboob Productions Private Ltd. Vs. CIT [106 ITR 758(Bombay)]:

"Income is a monetary return expected by the assessee for the labour and/or skill bestowed, and/or capital invested by him,' coming in from a definite source, which need not be a legal source, in the sense that the failure to pay the same need not be enforceable in a court of law: and excluding a receipt "in the nature of" a mere windfall, which would mean a windfall in regard to its very nature and not in regard to its extent or quantum.

When talking of a windfall receipt in connection with the consideration of the question whether such receipt would be income or not, one has to restrict the concept of such a windfall to a case where the unexpectedness of the advantage pertains to the factum of receipt and not to the quantum of receipt. What we are considering as "windfall" is some unexpected receipt not in the contemplation of" the assessee and not directly attributable to or occurring by way of its business profits. On the other hand, where there was clear expectation, though small, of receiving such advantage or profit, then it cannot be properly regarded as windfall merely because the advantage of receipt is much more than could have been reasonably anticipated."

While on the subject we submit that in the case of CIT Vs. Groz- Beckert Saboo Ltd. [116 ITR 125] the Hon'ble Supreme Court has an occasion to consider the gift of raw material being stock in trade received by a company and its taxability under the Act. The Hon'ble Supreme Court has held that the gift of stock in trade received

constituted a capital receipt in the hands of an assessee and on its conversion to stock in trade the market value as on the date of receipt of gift has to be allowed as deduction against the computation of taxable profit. The Supreme Court thus held the gift received being capital in nature and hence no chargeable to tax: on the contrary the market value of gift received was allowed as deductible expense while computing the total taxable income.

In view of our above submission and various judicial pronouncements relied upon the Appellant submits that the gift of Rs.161,86, 77,034/- received by the Appellant from corporate bodies are in the nature of capital receipt not liable to tax under the provisions of the Income Tax Act.

4. Now, coming to the AO's observation in the assessment order, the Appellant submits that the assessment order passed by the AO is solely on the basis of suspicion, surmises and on misconception of law. The Appellant submits that the AO framed the entire assessment order on misconception of law that a company being an artificial judicial person cannot give gift to another company. The AO further observed that for giving gift there has to be natural love and affection between the donor and donees.

The Appellant submits that the above observations of the AO are self drawn conclusions/observations of AO without the authority of law. In this connection the Appellant submits that the Appellant and donors being Private Limited Companies are governed by the Companies Act. Section 82 of the Companies Act provides that shares in a company is a moveable asset. The section 82 of the Companies Act reads as under:

"82. The shares or debentures or other interest of any member in a company shall be moveable property, transferable in the manner provided by the article of the company.

The Appellant submits that as submitted hereinabove in earlier paras of our submission the Memorandum and Article of Associations of both the appellant donee and all the four donor companies contains provisions to receive/ make gifts respectively. Hence there is no impediment for Appellant donee or donor companies under the Companies Act to make / receive dividend as gift.

Now coming to the term 'Gift' the Appellant submits that the Income Tax Act does not define the term 'Gift'. Gift is defined under section 122 of the Transfer of Property Act - 1882, which reads as under:

"122. "Gift" defined - "Gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

Further section 5 of the Transfer of Property Act defines the term "Transfer of Property" as under:

"5. "Transfer of Property" defined - In the following sections "transfer of property" means an act by which a living person conveys property, in present or ill future, to one or more other living person or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals ."

The Appellant therefore submits that section 122 of the Transfer of Property Act provides for making of a gift and permits transfer of moveable or immovable property but without any consideration. As submitted earlier the shares or interest in a company is a moveable asset as per the Companies Act. Further as per section 5 of the Transfer of Property Act, a company is a living person, competent to transfer a property 88 per the Act and therefore the Appellant submits that the Transfer of Property Act permits a limited company to be a donor. In view of above the Appellant submits that the under the law there is no impediment to a Private Limited company from making/receiving a gift of shares or interest in company and same is permitted as per the various provisions of the Companies Act and Transfer of Property Act. The Appellant further object to the findings of the AO that prerequisite of gift is that it should be out of natural love and affection. The Appellant strongly submits that none of the provisions of the Acts reproduced hereinabove anywhere states that the gift should be out of natural love and affection. The Appellant submits that the only condition stipulated by the Act lor a gift is that it should be made voluntarily and without consideration by one person to another person. The courts time and again have held that the love and affection does not constitute a consideration when the gift is given by a donor to donee and the gifts given has been held to be gift without consideration. The Appellant therefore submits that the observations of the AO in assessment order totally misconceived and without the authority of law.

Apart from above, with respect to observations of the AO that a company being an artificial person cannot not make gift, the Appellant further respectfully submits that the statute even the taxing statue has recognized that the gift can be given by a company. In this connection the Appellant submits that the Gift Tax Act, 1958 (now repealed) provided as under:

a) Section 2(iii) of the Gift Tax Act, 1958 defines

"(iii) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes-

(a) every person in respect of whom any proceeding under this Act has been taken for the determination of gift-tax payable by him or by any other person or the amount of refund due to him or such other person;

(b) every person who is deemed to be an assessee under this Act:

(c) every person who is deemed to be an assessee in default under this Act;"

b) Section 2(xviii) of the Gift Tax Act, 1958 defines

"(xviii) "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons whether incorporated or not;"

c) Section 2(vii) of the Gift Tax Act, 1958 defines

"(vii) the expressions "company"; "Indian company" and "company In which the public are substantially interested" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act"

d) Section 2(17) of the Income-tax Act, 1961 defines

"(17) "Company" means -

(i) any Indian company, or

(ii) any body corporate incorporated by or under the laws of a country outside India, or

(iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (II of 1922), or which is or was assessable or was assessed under this Act as a company or any assessment year commencing on or before the 1st day of April, 1970, or

(iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company

Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971 or on or after that date) as may be specified in the declaration"

The Appellant submits that the provisions of Gift Tax Act even though repealed clearly has recognized the company a Juridical person as a donor and made it an assessable entity under the Act. The Appellant therefore submits that as can be evident from the above it is amply clear that the legislature in its wisdom wherever thought fit has provided by even through taxing statutes that a Company can make/receive gift. The Appellant therefore submits that the observations of the AO in assessment order are erroneous and without the authority of law.

5. The Appellant further submits that the AO in assessment order has recorded several findings on the basis of assumptions and surmises throughout the order so as to draw a pre-meditated conclusion which are as under:

1) Page 7, para 6: "Since receiving a cash gift by a company from another set of companies is not only a very unusual and atypical but also a curious transaction. This sort of transaction is generally not heard of and raises serious doubts."

The Appellant submits that the above observations of the AO are based on suspicion and surmises without there being any basis. The Appellant submits that an unusual transaction which the AO has not generally heard of does not in any manner suggest that the transactions are not genuine or not permissible under the provisions of the Act or all, the receipt irrespective of its nature becomes an income liable to tax under Act. The Appellant further submits that in any way the doubt or suspicion of the cannot in any way convert a capital receipt into the nature of revenue receipt liable for tax under the Act. In this connection the Appellant rely upon the Judgment in the case

of Income Tax Officer Vs. Komal Kumar Bader [33 SOT 58](Jaipur) wherein the Hon'ble ITAT has held as under:

"Only an Income can be taxed under IT Act and income is defined under s. 2(24). An asset cannot be termed as any sum as used in various sub-cl. of s. 2(24) or an 'income' and therefore, agriculture land which was gifted cannot be taxed as income. It is not covered by and heads of income given in s. 14 and therefore, neither agriculture land nor agriculture income is chargeable to tax under any heads of income. The application of provisions of s. 56(i) therefore, cannot be upheld in the present case. Now coming to the genuineness of the gifts, as agreed. the donor and donee though are not related by blood or marriage but are old family friends. The donor's husband donee's father are old college friends and close family relationship is proved by various photographs attached with the written submission. The fact that both then are directors in a company also establishes their friendship. Just because both are directors in one company and have business relationship cannot establish that some underhand consideration would have changed hands. It is long back held by the Hon'ble Supreme Court in the case of KP. Verghese that Revenue is to prove that some underhand consideration was paid. Similarly, making assumption will not prove the transaction sham. It is customary to give gifts on birth of a child, marriage and other social or religious occasions. However, it is not necessary that a gift can be given only on a specific occasion. Once donor expressed her intention to give gift and by registering the land in favour of donee, expressed her intention and by getting registered in his name, the donee accepted the gift and in absence of any material with the AO to prove that any consideration was paid in lieu of the gift, all the ingredients of a gift are fulfilled."

2) Page 8, Para 6.1: "Three elements are essential in determining whether or not a gift has been made, a) delivery. b) donative intent, and c) acceptance by the donee."

The Appellant submits that all the above essentials stated by the AO are duly been fulfilled by the Appellant and all the four donors of gifts. With respect to delivery the Appellant submits that the dividend has actually been received by the Appellant in its bank account which conclusively proves the delivery of the gift from donor to donee i.e. the Appellant. With respect to donative intent, the Appellant submits that all the four donors have passed a resolution in the meeting of shareholders and board of Directors that they intend to transfer the dividend on shares of Reliance Industries held by them to the Appellant donee as gift. The Appellant therefore submits that the donative intent to transfer the dividend as gift is clear from the resolution passed by the donors. With respect to acceptance by the donee the Appellant submits that it has duly passed a resolution in the meeting of shareholder and board of directors duly conveying their acceptance to the gift. The Appellant therefore submits that all the essential requisites of gifts stated by the AO in assessment order have in fact duly been fulfilled by the Appellant and no adverse conclusion can be drawn in the case of the Appellant.

3) Page 8, para 6.2: "From the above it can be said that a gift can only be between two living persons or natural persons. The sine qua non of the gift is that the transaction is without any consideration and out of natural love and affection, as held in various judicial pronouncements. Since company is an artificial legal

person, so there cannot be any natural love & affection by a company or between the companies. Hence, a transaction of gift cannot be said to be valid or legally tenable between companies or where one of the parties is a company."

Page 8, para 6.3: It may be noted that a gift is something given out of love and affection and similarly donation is something given out of compassion. The giver and the recipient of the gift have to be persons who are bestowed with the feeling of love and affection. So, a company or a body corporate can never give or receive a gift. Gifts are generally given and received by Individuals. Similarly a company or a body corporate cannot generally receive a donation, because there can never be a cause of compassion or charity in the case of a company,"

The Appellant submits that the AO has based his entire order on the ground that the company cannot give/receive gift and natural love and affection is the prerequisite for giving / accepting gift between the parties. The Appellant submits that as stated in earlier paras of our submission the only conditions for making a valid gift is that it is a voluntary transfer of property without consideration by one person to another. The Appellant submits that the Transfer of Property Act does not contain any provisions which provide that natural love and affection is a condition for making a valid gift. The Appellant submits that observations of the AO with respect to natural love and affection as a condition for making a valid gift is without the authority of law and actually the law does not contain any such conditions. The Appellant submits that it has already submitted that various provisions of the Transfer of Property Act provide that the company is a living person and can validly transfer a property by way of gift. The same was also provided in the erstwhile Gift Tax Act wherein the company was included in the definition of person who are subjected to Gift Tax Act.

Hence the observation of the AO that the company cannot make / receive the gift is totally baseless and against the specific provisions of the Act. The Appellant further submits: that the AO in his assessment order at various places observes that, This sort of transactions is generally not heard of, 'gifts are generally given and received by individuals etc. The Appellant submits that these observations of the AO clearly suggest that the AO has based his order solely on assumptions and surmises. The Appellant submits that when there are specific provisions in the Act with respect to treatment of gifts, no general conclusions can be drawn. The Appellant therefore submits that above observation of the AO clearly proves that the AO framed the assessment order in disregard to the provisions of the law on the subject and without bringing any contrary material on record.

4) Page 8, Para 6.4.; "Section 25 of the Indian Contract Act, 1872. lays down that a contract without consideration is void ab initio, except for an agreement in writing registered under the provision of Registration Act, 1908 and such agreement is on account of natural love and affection. Therefore a claim of gift by a company is not sustainable as there can never be any love and affection by or between an artificial juridical person.

The Appellant submits that it agrees with the AO that section 25 of the Indian Contract Act, 1872 lays down that a contract without consideration is void except for an agreement in writing, registered under the provisions of Registration Act. The Appellant however submits that the AO has failed to take cognizance of the

explanation to section 25 of the Contract Act. The Appellant submits that legislature has appended Explanation 1 to section 25 of the Contract: Act which reads as under: "Explanation 1.- Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made. "

The Appellant therefore submits that Explanation 1 clearly provides that section 25 of the Contract Act is not applicable to the gifts made by the donor to the donee. The Appellant submits that the contract Act no where provides that such an agreement should be out of natural love and affection. The Appellant therefore submits that these observations of the AD are baseless and without application of the provision in its right perspective.

5) Page 8, Para 6.4: "Further as far as gift of the property is concerned, section 122 of the Transfer of Property Act, 1882 requires that transfer of property by way of gift must be accepted by the donee and interalia such acceptance must be made during the life time of the donor and before the donee dies. The provisions using the word like death of the done are logically in the context of a living- individual or natural person and not in the context of an artificial person."

The Appellant submits that the above observations of the AO that the company is not a living person is totally erroneous and against the specific provisions of the law. The Appellant submits that as quoted in earlier paras of or submission, section 5 of the Transfer of Property Act specifically provides that for the purpose of transfer of property 'living person' includes a company or association or body of individuals who can validly transfer a property to another person. The Appellant submits that in view of section 5 of the Transfer of Property Act the above observations of AO is totally based on assumption and against the provisions of the law.

6) Page 9, Para 7: "No gift deed whatsoever has been executed."

The Appellant submits that the Memorandum and Article of Associations of the Appellant and all the four donor companies provides for power to receive and make gifts respectively. The gifts has been made by the donor companies after passing an ordinary resolution of the shareholders and Directors of the company and same has also been accepted after passing of ordinary resolution by the shareholders and directors of the Appellant. The Appellant submits that above is a sufficient compliance of various laws for making or receiving gift by the companies. The Appellant further submits that there is no requirement under the law for making a gift deed; hence non execution of gift deed alone can not be held to be prejudicial to the Appellant and moreso treating the gift as income of the Appellant under the Income Tax Act.

7) Page 9, Para 7." In legal term the act of gift cannot be said to be have been undertaken as the donee has not given express consent to receive the alleged gift. "

The Appellant submits that the above observation of the AO is erroneous and factually not correct. As stated earlier the Appellant has accepted the gift from the donors by passing an ordinary resolution in the Extra Ordinary General Meeting of the Shareholders and also in. the meeting of the Board of Directors.

The Appellant further submits that the AO has strongly relied upon and taken shelter under the meaning of gift given in dictionary, ignoring the provisions of the Act like Transfer of Property Act, Contract Act, Gift Tax Act (even though repealed). The Appellant submits that the dictionary meaning of a provision cannot be a sole basis for converting a capital receipt into a revenue receipt liable to tax.

6. The AO in the assessment order has relied upon various judgments to tax the gift received of Rs.161,86,77,034/- the Appellant from corporate bodies. The Appellant submits that the case law relied upon D.V the AO in assessment order is distinguishable on facts and no case law relied upon by the AO has any relevance to the case of the Appellant. The AO has relied upon the following decisions:

1) Sumati Dayal Vs. CIT [2141IRR 801](SC)

In the case of Sumati Dayal (supra) the hon'ble Supreme Court has considered the surrounding circumstance and applied the test of human probabilities in deciding the case wherein the assessee has won few jackpots of horse racing in the year whereas she has no knowledge of horse racing.

2) CIT Vs. Durga Prasad More [82 ITR 540](8C):

In the case of Durga Prasad More/supra) the hon'ble supreme court found that assessee claimed certain income to be the income of his wife however he was unable to explain from what source she built up that amount: under such circumstances the hon'ble supreme court held that the income tax authorities are entitled to look into the surrounding circumstances to find out the reality.

3) CIT Vs. L.N Dalmia [207 ITR 89](Calcutta):

In the case of L.N Dalmia the hon'ble high court found that the assessee generated a paper loss which is capable of carried forward and set off against the future profit and thus would provide a cushion against the future gain. The Hon'ble High Court found that though the loss is a paper loss but it had a far reaching effect on the tax liability in future years of the therefore and therefore held that the loss was a capital loss.

The Appellant submits that the facts of the above cases and the question of law decided by the Hon'ble courts has no application to the Appellant's case. The Appellant submits that the gift received by the Appellant is in the nature of capital receipt duly supported by documentary evidence and hence cannot be deemed as revenue receipt liable to tax. The Appellant therefore submits that all the case laws relied upon by the AO in the assessment order has no relevance to the case of the Appellant and are distinguishable on facts.

In view of our above submissions and various Judicial pronouncements relied upon, the Appellant submits that the gift of Rs.161,86,77,034/- received by the Appellant from corporate bodies are in the nature of capital receipt and the same cannot be considered as income of the Appellant under any provisions of the Act and hence is not liable to tax.

4.1. During the course of appellate proceedings above, submissions of the assessee was remanded by the CIT(A) to the A.O. vide order u/s. 250(4) dated 31/8/11 which is as follows:

Assessment in this case u/s. 143(3) is completed vide order dated 11/11/11 by the A.O. in which the claim of the assessee that it has received Rs.161.86 crore as gift has been rejected and it has been assessed as income from other sources, which has been disputed by the assessment the present appeal and made submissions vide letter dated 31/8/12 with paper-book. Whereas, while making assessment the A.O. has held vide para 8 of the assessment order as follows:

"8. The transaction has been painted as a gift to escape taxation in the hands of the recipient. Apparently, the amount has been remitted to the assessee company without any consideration, but it is not possible. No one parts with even a penny without any consideration. And in the instant case, the sum is huge by any account. So there has to be a consideration underlined which is not readily visible. It may be mentioned here that due to web of cross holdings amongst the companies concerned, the exact nature or motive behind the transaction is not ascertainable and more so in the light of limited time, resources, and mandate at the disposal of the A.O. But it can be safely concluded that there is more into it than what is apparent on the face of it. Therefore, it appears that there is cross holdings amongst the companies involved in the gift and the assessee which has impact on the transaction and further there was not sufficient time and resources available with the A. O. to further inquire about the transaction and reach to a conclusion. Therefore, it is in the interest of justice that the case is remanded to the A.O. for further inquiry. Hence, the case is remanded to the A.O with the submissions and paper-book of the assessee filed on 31/8/12 with the direction to:

i. Give your comments and findings on the submissions and paper-book of the assessee dated 31/8/12.

ii. Find out and report the cross holdings between the assessee and the donor companies and report the impact of such cross holdings on the receipt of Rs.161.86 crore claimed as gift by the assessee.

iii. Find out the exact nature and motive behind the transaction of alleged gift .

The above report may be filed on or before 20/9/12 i.e. the next date of hearing.

Sd/-

(NARENDER SINGH)

Commissioner of Income-tax,

(Appeals)-4, Mumbai.

Copy to:

1. The A.O. -DG. -3(2), Mumbai, with the direction to submit the report as required, copy of the submissions and paper-book both dated 31/8/2012 are enclosed.

2. The assessee with the direction to co-operate in the remand proceedings before the A.O.

Sd/-

CIT(A)-4, Mumbai

In response to the above letter of CIT(A), the A.O. sent the remand report dated 1/10/12, which is as follows:

1. "Comments and findings on the submissions and paper-book of the assessee dated 31/08/12.

In this regard, before analyzing/drilling into the issues (raised by the assessee vide its paper book) with relevant tool of the law, the undersigned is pointing here out, with a purpose, that this case falls in such category of cases which were referred by the Hon'ble Fins nee Minister under the titles "provisions for countering tax-evasion" & "evil of tax-evesian" while presenting the Finance Act, 1964 in following manner:

"84. It is a curious paradox of our situation that while money for worthwhile investments and public purposes is in short supply, there is a great deal of unaccounted money circulating in the economy in search of further under-cover gains. What is more important, this social evil inherent in tax evasion gets doubly compounded as it necessitates greater and greater tax burdens on those who are law' abiding. Perhaps, the most important problem that faces us in regard to fiscal reforms is that of devising astute and stringent measures to meet this evil of tax-evasion so that it might be possible to distribute the burden of taxation more justly and evenly between different individuals in the same or similar walks of life. We have thought too exclusively of social justice between different classes or sections of the community and not enough of the injustice inherent In tax evasion as between members of each class or profession and as between the honest taxpayers and the dishonest evader. (emphasis supplied With a purpose) .

From the observations made by the Finance Minister regarding the evil of tax evasion in his statement in Parliament on the economic situation, on 16-12-1963.

1.1 In this background, the issues raised by the assessee, vide its submission made before CIT(A)-4, Mumbai are being analyzed as under:

[Facts gathered during the Assessment Proceedings]

1.2 During the year under consideration, the assessee company has shown increase in the Capital Reserve by Rs 161,86,77,034/- on account of alleged gifts received from following Bodies Corporate:

<i>Sr. No.</i>	<i>Name of the Corporate Donor</i>	<i>PAN</i>	<i>Address</i>	<i>Amount</i>
1	<i>Amur trading Pvt. Ltd.</i>	<i>AAACR2647D</i>	<i>505,Dalamal House,Nariman Point, Mumbai</i>	<i>42,90,52,221</i>
2	<i>Madhuban Merchandise Pvt. Ltd.</i>	<i>AABCIM9540M</i>	<i>505,Dalamal House,Nariman Point, Mumbai</i>	<i>44,50,38,399</i>
3	<i>Tresta Trading Pvt. Ltd.</i>	<i>AAACR2649P</i>	<i>505,Dalamal House,Nariman Point, Mumbai</i>	<i>42, 78, 44,222</i>
4	<i>Ornate Traders Pvt. Ltd.</i>	<i>AAACO0856D</i>	<i>505,Dalamal House,Nariman Point, Mumbai</i>	<i>31,67,42,192</i>

The above sum received by the assessee company has been credited directly to the capital reserve. The assessee company has not offered the above sum for taxation claiming it to be gift/capital receipt and hence has not routed through the profit & loss account. For treating the said receipt as gift transaction, during the course of assessment proceedings as well as before appellate proceedings, the assessee has furnished elaborate submissions. After going through said submissions, the findings of the undersigned are as under:

1.3 The first argument put forth by the assessee vide para no. 3 of page 5 of its paper book, the assessee has submitted that 'the addition made by the A. O. to the total income and book profit is solely on account of suspicion, assumptions, surmises and without the authority of law and misconception of law' is nothing but baseless allegation and is more in to the nature of teaching and preaching, which has nothing to do with the facts of the case, therefore the undersigned does not think the same to be commented upon.

1.4 The second argument put forth by the assessee is about the legislation intent about taxability. In this regard, it has discussed section 4, 5, 2(45), 2(24) and 56(2)(v),(vu), (vii) of the I T Act. 1961, which are read as under:

1.5 While discussing section 2(24), the assessee itself has admitted that the definition of income provided in the said section is inclusive one and not exclusive. Reliance is placed on following judicial pronouncements:

'Income this Act connotes a periodical monetary return 'coming in' with some sort of regularity, or excepted regularity, from definite sources - CIT v. Shaw Wallace & Co. 6 ITR 178 (PC)/Padmaraje R. Kadambande v. CIT[1992] 195 ITR 877 (SC):

The word 'income is not limited by the words 'profits' and 'gains'. Anything which can properly be described as 'income; is taxable under the Act unless expressly exempted - Maharajkumar Gopal Saran Narain Singh v. CIT [1935] 3 ITR 237 (PC).

No attempt has been made in the Act to define 'income' except to say that it includes certain things which would possibly not have been regarded as income but for the special definition. That, however, does not limit the generality of its natural meaning except as qualified in the section itself - Raghuvanshi Mills Ltd. vs. CIT [1952] 22 ITR 484 (SC)'

The word 'income' as it is used in the Income-tax Act has often been characterized by judicial decisions as formidably wide and vague and its extent and sweep are not controlled or limited by the use of the words 'profits and gains. As has been observed by Sir George Lowndes in CIT v. Shaw Wallace & Co. [1932] 2 Camp. Cas. 276, the object of the [Indian] Income-tax Act is to tax 'income: a term which it does not define. It is expanded, no doubt, into income, profits and gains, but the expansion is more a matter of words than of substance - Dooars Tea Co. Ltd. v. CAIT [1962] 44 ITR 6 (SC).

Whatever income may include or mean, it is, however, clear that it does not include fixed capital or the realising of fixed capital by turning it into some other form of capital or money - Karanpura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC).

1.6 In fact, income term in itself has a very exhaustive meaning, which can not be roped in to a particular definition or a section. The meaning of income has to be defined keeping in mind the surrounding circumstances and human probabilities. To be more precise, any event which makes a person richer and accretion of wealth results into an income in his hands until or unless the event has a corresponding liability. The legislature consciously decided not to give an exclusive definition because it was not humanly possible to record all the kinds of gains that were possible and would have been liable for taxation. This was also with a view that no tax payer should claim that any particular 'income' was not taxable because it was not explicitly mentioned in the definition of income.

1.7 In the light of above meaning of income, let us analyze the alleged gift received by the assessee. In fact, the assessee itself vide page no. 7 & 8 of its submission has stated that the gift received are a voluntary payments made by the donors to the appellant. Neither the appellant has any legal right to claim the gift from the donor nor donors have any legal or contractual obligations to give gift to the appellant. The gift received is a voluntary payments made by the donor, without consideration to the appellant. As the assessee has correctly stated that gift is a voluntary payment made by the donor and duly received by donee. Basically, if we analyze this statement, then it is gathered that the said statement is only a assertion, which for the sake of totality has to be supported by reason.

1.8 The supporting reason has to be w.r.t the question that as to why any person will make gift to any other person. Now as the meaning of gift has not been provided in the Income-tax Act, therefore the meaning' has to be borrowed from any other law or statute prevailing in land. As the Gift-tax Act has already been abolished, therefore the meaning of gift can not be borrowed from it. Here, it is pertinent to mention that gift, has been defined in Transfer of property Act 1882. Section 122 of the Transfer of property Act 1882, defines gift as under:

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made. -

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving,

If the donee dies before acceptance, the gift is void.

Thus, the contract act lays down the condition that for a genuine gift transaction, the donee has to be a living being. To be very precise, lifetime word used in the above definition connotes to natural birth and death and not artificial creation of dissolution. This interpretation also finds strength from the second sentence where

'dies' is mentioned and company cannot die. In fact, the world has not been mentioned dissolution of company. Therefore love and affection has to be there.

1.9 Dictionary defines 'gift' as "a voluntary transfer of property or of a property interest from one individual to another, made gratuitously to the recipient. The

individual who makes the gift is known as the donor and the individual to whom the gift is made is known as the donee.

Three elements are essential in determining whether or not a gift has been made,

- a) delivery;*
- b) donative intent; and*
- c) acceptance by the donee.*

1.10 Further there are two principle categories of gift, first, inter vivos means between the 'living' or from one living person to another, and second is causa mortis, means in contemplation of approaching death.

1.11 From the above definition, it can be logically concluded that a gift can only be between two living persons or natural persons. The sine qua non of the gift is that the transaction is without any consideration and out of natural love and affection. Since company is an artificial juridical person, so there cannot be any natural love & affection by a company or between companies. Hence, a transaction of gift cannot be said to be valid or legally tenable between companies or where one of the parties is a company.

1.12 It may be noted that a gift is something given out of love and affection and similarly donation is something given out of compassion. The giver and the recipient of the gift have to be persons who are bestowed with the feeling of love and affection. So, since there can not be natural love and affection between two corporate bodies, therefore a company or a body corporate can never give or receive a gift.

1.13 Gifts are generally given and received by Individuals. Similarly a company or a body corporate cannot generally receive a donation, because there can never be a cause of compassion or charity in the case of a company.

1.14 Further gift necessarily involves a contract because for a gift to be valid and complete, it has to be accepted by the donee. Section 25 of the Indian Contract Act, 1872, lays down that a contract without consideration is void ab initio, except for all agreement in writing, registered under the provision of Registration Act, 1908 and such agreement is on account of natural love and affection. Therefore a claim of gift by a company is not sustainable as there can never be any love & affection by or between an artificial juridical person.

1.15 Further as far as gift of the property is concerned, section 122 of the Transfer of Property Act, 1882 requires that transfer of property by way of gift must be accepted by the donee and inter alia such acceptance must be made during the life time of the donor and before the donee dies. The provisions using the word like the death of the donee are logically in the context of a living individual or natural person and not in the context of an artificial person. In view of the foregoing, it is not possible for a company to receive a gift.

1.16 Hence, on the basis of discussion above, it can be concluded that a company cannot be a donor or a donee of a gift since a company is an artificial juridical person and does not have senses to possess or express the emotions of natural love and affection-existence of which is the prime requirement for holding a contract of gift legally valid.

1.17 After being unsatisfied with the logics put forth, the assessee came forward with the issue of taxability of alleged gift. First of all, as discussed above, the assessee tried not to treat above gift as income, by limiting the meaning of income. After making half hearted effort, it has tried to held that the same can not be taxed under the provisions of section 56. The section is as under:

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14 items A to E.

1.18 Plain reading of above, clearly stipulates that income of " every kind, which is not chargeable to tax under any head of income are subjected to tax under residuary head of income i.e. income from other sources. Here, it is pertinent to mention that vide page no.8 of its submission, the assessee has also admitted this fact. However, while admitting, it has stated that as per this section, only income has to be taxed, while gift; is not an income.

1.19 In this regard, as already analyzed supra above that the receipt received by the assessee under reference does not falls in the criteria of gift, therefore it has to be taxed under the provisions of section 56 of the I T Act, 1961. Further, for the sake of clarity, following judicial pronouncements are being quoted, which clearly mandates that any income which does not fall in any of the specified heads, then it will fall under the provisions of section 56.

Section 56, being the residuary head of income, can be resorted to only H none of the specified heads is applicable to the income in question; it comes into operation only after the preceding heads are excluded - S. G. Mercantile Corpn. (P) Ltd. v. CIT (1972) 83 ITR 700 (SC); Bihar State Co-op. Bank Ltd. v. CIT [1960] 39 ITR 114 (SC)/CIT v. Basant Rai Takhat Singh [1933] 1 ITR 197 (PC).

Now let us analyze the position of different section quoted by the assessee in it favour and analyze whether same bears any merit in it or not.

1.20 The first point raised by the assessee vide its submission is that 'the gift was always treated as no taxable capital receipt till 31.03.2005. Thereafter the legislature vide Finance (no.2) Act, 2004 w.e.f 01.04.2005 inserted clause (v) to sub-section (2) of section 56

1.21 In this regard it is to be mentioned that till 1988, since Gift tax Act was applicable, being direct tax in nature, therefore there was no need to have specific section for the purpose of taxability in the I. T Act. However, after the abolition of Gift Tax Act, as there was no tax on gifts, therefore, this was used as a colorable device to evade taxes, therefore vide Finance (no.2) Act, 2004 w.e.f

01.04.2005 inserted clause (v) to sub section (2) of section 56, gift received by an individual and HUF was made taxable. Here, it is pertinent to mention that the only exception was made in the case of gift received from close relation, because it was held by the legislatures that as the basic condition for gift are natural love and affection' and the same can be only between close relatives. Probably this is the reason/logic, why while framing the above provision, the Legislature have only talked about individual and HUF; which is a possibility as the Legislature never thought that there can be any transaction between two companies, which is not a possibility at all and that too in the garb also celled 'gift:

1.22 Now as far as insertion of provisions of section 56(2)(viia) in the I. T Act, is concerned, it is to be noted that the said provision was inserted in the Act in order to curb the practice of routing of unaccounted money in the guise of share premium while issuing of shares and transfer of share. especially in the case of private limited companies. Therefore this section i.e. 56(2)(viia) inserted by' finance act 2010 has nothing to do with the classification of gift transaction.

1.23 Therefore, the assessee's interpretation that the gift received by a company from a company is a capital receipt does not hold good in the light of discussion made above. Now let us analyze the Judicial pronouncements submitted by the assessee supporting his claim:

	Name of the case law	Ratio	Applicability in the case of assessee under reference
1	<i>H.H. Maharani Shri Vijaykuver ba Saheb of Morvi & Anr Vs. CIT 49 ITR 594</i>	<i>Section 4 of the Income-tax Act, 1961 [Corresponding to section 3 of the Indian Income-tax Act, 1922] Income - chargeable as - Assessment years 1950-51 to 1953-54 - Whether where a voluntary- payment is made entirely without consideration and is not traceable to any source, which a practical man may regard as real source of his income, but depends entirely on whim of donor, can not fall in category of "income" - Held, yes - Deceased- assessee, who was ruler of erstwhile state, abdicated his- gadi in favour of his son After considerable time after said adduction, son made certain monthly payment as personal allowance to deceased - Whether payment in question was nothing but purely voluntary payment depending upon whim of donor and said payment did not constitute income under Act- Held, yes</i>	<i>The ratio of the case is totally different with that of the assessee under consideration. Here, the relation between the Donor and Donee is that of son and father, wherein basic condition of natural love and affection is being fulfilled while in the case of assessee under reference there is no such relation and natural love and affection. Thus, the gift given by son to his father: will not tinder the criteria of taxable income, as provided in the I. T Act, 1961. In view of the above analysis; ratio of the cited case law can not be applied in the case of assessee under reference.</i>
2	<i>CIT vs.</i>	<i>Section 28(i) of the Income-tax Act, 1961]</i>	<i>The first and foremost</i>

	<p><i>Pran Jiban Jaitha 52 ITR 108</i></p>	<p><i>[Corresponding to section 10(1) of the Indian Income-tax Act, 19221 -- Business income - chargeable as - Assessee was a partner in a firm which acted as freight brokers of a shipping company - Firm used to receive a remuneration of one per cent on freight booked but no minimum remunerations was guaranteed by company to firm if no business was carried on - With outbreak of second world war company stopped functioning in Burma and no brokerage accrued to Kim thereafter - Assessee claimed compensation for loss of business during war period - Director of shipping company released Rs. 5 Jakhs to assessee "for loss of assets l and brokerage in Burma due to enem' action" - ITO held that Rs. 5 lakhs was income in assessee s-band' which was liable to be assessed - Tribunal held that payment was motivated purely by feelings of generosity on part of shipping company having regard to assessee 's association with it for a number of decades hence, it was in nature of personal gift and not taxable in hands of assessee- whether since shipping company itself had admitted that payment was made as a personal gift, Tribunal was right in its conclusion that sum was not assessable- Held yes</i></p>	<p><i>important fact to be noted here is that the case law quoted by the assessee is too old and lot of changes in the statuette and circumstance has been taken place. Second, both the donor and donee of the refereed case law have very long business relation, which is in the nature of broker and company. The claim of the broker of compensation. on account of loss due to World War and generous payment by the company is altogether different than that of the assessee under reference, wherein there is no transaction, what to say about business transaction. Therefore the ratio of the referred case, being different with that of the assessee under consideration is together than that of the assessee under reference</i></p>
3	<p><i>Lachit Films Vs. CIT 195 ITR 402</i></p>	<p><i>The assessee firm was a producer of films and had produced an assamese film. During the relevant accounting year, certain amount was received by the assessee as grant-in-aid from the State Government. The assessee claimed that the aforesaid grant-in-aid was not a revenue receipt assessable in its hands. The ITO disallowed the assessee's claim and assessed it as its income. On appeal, the Tribunal held that the grant-in-aid was a revenue receipt assessable in the hands of the assessee.</i></p>	<p><i>It has already been elaborately discussed in the analysis made above that any grant or any such sum which has been provided by the government for social or better cause to benefit the society or public at large, will not be form of the income. In the referred case, since the credit sum is grant-in-aid, therefore, it would not be part of income. Such scenario is not there in the case of assessee under reference. Thus the ratio of case law relied by the assessee are</i></p>

			<i>different than that of assessee under reference.</i>
4	<i>Padmaraje R. Kadamba nde Vs. CIT 195 ITR 877</i>	<i>Under the Huzur Order dated 08.04.1947, the month from 1-4-1947 after the merger of Kolhapur state in the then State of Bombay. The allowance was continued for some time up to 31-7-1955. Therefore, it was discontinued because of the provisions of the Bombay merged Territories Miscellaneous Alienations Abolition Act, 1955, which was passed to abolish miscellaneous alienations of various kinds prevailing in the merged territories in Bombay. Under sub-section (1)(d) of section 15 of the said Act it was provided that a cash allowance could be paid as a compassionate payment notwithstanding the abolition of all alienations under section 4. The assessee continued to receive cash allowance as compassionate payment from 1-8-1956 on modified terms and the sanction of the same was conveyed to the assessee. For the assessment year 1963-64 and 1964-65, the assessee claimed that the amounts received by him were not assessable to income-tax as those receipts were of a capital nature. The ITO disallowed the assessee's claim and subjected the respective amounts to tax in each of the assessment years. On appeal, the AAC as well as the Tribunal. confirmed the order of the ITO. On reference, the High Court, relying on the case of HI-f Maharani Shri Vijavkuverba Saheb of Morvi v. CIT 119631 49 ITR 591 (Born.) came to the conclusion that the amounts received by the assessee during the relevant financial years were income within the meaning of section 2(24) and could not be regarded as capital receipts in the hands of the assessee. It, accordingly affirmed the view taken by the taxing authorities and the tribunal</i>	<i>The case law quoted by the assessee only supports the stand taken by the undersigned by treating the above sum as income.</i>
5	<i>CIT vs. Ramdeo Samadhi 160 ITR 179</i>	<i>The word 'income' has been defined in section 2(24) and it is an inclusive definition but income as such has not been defined in the Act. From a consideration of the judicial pronouncements in which the connotation or the word 'income' has been examined and considered, it appears that the ingredients of the income are (i) it must be a periodical monetary</i>	<i>The ratio of the case is totally different with that of the assessee under consideration. In the quoted case, the receipt/offering made at the Samadhi or R by the devotees or pilgrims,</i>

	<p>return, (ii) coming with regularity or expected regularity, (iii) from a definite source, and (iv) excluding a receipt in the nature of mere windfall. In the instant case the word pujari or priest used by the ITO was a misnomer. The descendants of R were not pujaris and priests in the sense these words were used. They were merely descendants of R looking after and managing the Samadhi of R. Apart from that, R was not a deity, though he was considered by the persons of the locality as an incarnation of God because of the qualities possessed by him and when R was not the deity in that sense of the word, his descendants were not pujaris or priests. The amounts that were offered at the Samadhi of R were merely offerings made by the followers of R as a mark of respect and reverence for him. The fact that the devotees and pilgrims of their own came to the Samadhi of R and offered amounts, these could not be said to be the periodical payments and there was no regularity of payments.</p> <p>The ITO had taken R's Samadhi as a source of income. There was no basis for that as it could not be characterised as a capital asset. Before a particular amount can be characterised as an income, there should be its definite source which should be an identifiable one, may be an individual or an institution, or a body of people or any other source. However, there was absence of definite source of income in the instant case. Again, the last ingredient of income, i.e., income should not be in the nature of mere windfall was not satisfied in the instant case. The offerings that were made at the Samadhi of R by the devotees or pilgrims were made by them at the spur of moment when they visited there. There was no prior determination. The offerings were voluntary in the shape of gifts and could not be attributed to any activity on the part of the assessee.</p> <p>Hence, none of the ingredients of the income existed in the instant case and therefore, the amount or offerings received by the descendants of R at</p>	<p>were made by them at the spur of moment when they visited there. These offerings were because of affection or faith or belief, which is totally absent in the case of assessee under reference. Therefore, the case law relied by the assessee does not hold good.</p>
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		<i>R's Samadhi could not be regarded as income from any source assessable in the hands of the assessee known as R's Samadhi</i>	
6	<i>Mehboob Productions Private Ltd. Vs. CIT 106 ITR 758</i>	<i>Section 4, read with sections 2(24) and 10(3) of the Income-tax Act, 1961 (Corresponding to section 3, read with sections 2(6c) and 4(3) (vii) of the Indian Income tax Act 1922) Income –chargeable as Assessment year 1959-60. Assessee company was doing business in production of films and one of its films was awarded certified of merit whereupon it was granted exemption from entertainment duty- As per Government resolution amounts equivalent to amounts of entertainment duty leviable on their exhibition should be paid by exhibitors to assessee produce5rs payments appeared to be entirely at discretion of Government and exemption should be withdrawn by Government even without any default on part of assessee- in pursuance of said decision assessee recovered amounts from exhibitors and theatres on account of entertainment duty which was collected from viewers and claimed that said receipt was not liable to be included in its total income-There was nothing on record to show that assessee company had produced picture with slightest expectation that same would be exempt from entertainment duty and amount collected by exhibitions by way of duty would be directed to be paid over to it by Government-whether receipts in question did not partake of that element of return which was necessary for it to constitute income and further it was of nature of windfall. Held, yes- Whether therefore, said receipts were not includible in assessee's total income. Held, yes</i>	<i>It has already been elaborately discussed in the analysis made above that any grant or any such sum, which has been provided by the government for social or better cause to benefit the society or public at large, will not be form of the income. In the referred case, since the credit sum falls in these criteria, therefore, it would not be part of income. Such scenario is not there in the case of assessee under reference. As the ratio of the case law cited by the assessee is different from that of the assessee under consideration, hence it can not be applied.</i>

1.24 In the last, the assessee has relied upon the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs. Groz beckert Saboo Ltd. 116 ITR 125*. Before making comparison of the two cases, it would be pertinent to go through the facts legal verdict of the case.

During the assessment year 1962-63, the assessee set up in collaboration with a foreign company, a factory for fabrication and manufacture of hosiery needles, and received from them consignment of machinery and along with that, certain goods free

of cost, these goods consisted partly of raw materials and partly of semi-furnished needles. These goods were brought into books by making debit and credit entries under 'Wire & strip Gift A/c and 'Semi-Processed needles Gift A/c. The assessee utilized these goods in the manufacture of finished products and sold the same in the market and the sale proceeds received by the assessee were credited in the trading account maintained in the books of account of the business, since they represented revenue receipts arising from the sale of the finished products. On the last date of

the accounting year, the assessee closed the 'Wire and Strip Gift Account' and the 'Semi-Processed Needles Gift Account' by transferring the respective sums to the credit of the 'Capital Reserve Account' and debited an aggregate sum to the trading account by making corresponding credit entries in the accounts of 'Wire and Strip' and the Semi-Processed Needles: The net effect of these entries was that the profit of the assessee was reduced. The ITO took the view that the debit was wrongly made in the trading account since no monies were expended by the assessee in acquiring the raw materials and semi-finished needles, but they were received by way of gift from foreign collaborators and hence no amount was deductible in respect of the value of these goods.

On appeals the AAC as well as the Tribunal also took the same view. On reference, the High Court held that the value of these goods could not be treated as revenue receipt because they had been received by way of gift and, in any event, even if they constituted revenue receipt they could 'in no sense be income' since they were taken out of the ambit of taxability by sub-section (3) of section 10.

1.25 The Issues raised before the Hon'ble Supreme court is as under:

Section 28(i) of Income-tax Act, 1961 - Business income - Chargeable as - Assessment year 1962-63 - Assessee set up in collaboration with foreign company a factory for fabrication and manufacture of hosiery needles - It received certain goods free of cost from foreign company which consisted partly of raw material and partly semi finished needles - Assessee claim was that while calculating profits from sale of finished goods, value of said raw materials and semi finished needles were liable to be deducted ITO held that Since no monies were expended by assessee in acquiring raw materials and semi finished needles but they were received by way gift from foreign collaborators, hence, no amount was deductible in respect of value of those goods AAC as well as Tribunal affirmed ITO's view - On reference, High Court, however, accepted assessee's claim - Whether since raw materials and semi- finished needles were introduced in business and converted into stock, their market value on date of conversion would represent cost to business which was liable to be deducted from sale proceeds of finished products in arriving at profits of assessee's business - Held yes - Whether, therefore, High Court was correct in accepting- assessee's claim - Held, yes

1.26' Above referred case law pertains to the assessment year 62-63 and has been pronounced by the Hon'ble Supreme COU'l't long back in 1978, On going through the above judicial pronouncement, it may be worthwhile to mention that I T Act, 1961 came into force from A. Y 62-63 when the law was not exactly similar as on

today's time, Thereafter sea changes have taken place in these type of legal issues and 111 between there exist no case law where assessee has taken such type of benefits, In addition to that this is an obsolete case law, which has no relevance to the fact of present case and the assessee has unfruitfully labored to compare the cited case law with his present case, Further the ratio of the cited case law is different from that of assessee under reference, A comparative analysis of the same

is as under:

a, Groz-beckert Saboo Ltd. received some raw material from collaborating foreign company (which has a definite role and pre-defined role in a joint venture) free of cost, while in the case of assessee under reference there is no such collaboration Joint-venture/partnership or any other pre-defined relationship. Therefore relation between the doner and donee in the above referred case and in the case of assessee under reference is altogether different.

b. In the case of Groz-beckert Saboo Ltd., the doner has sold machinery of substantial amount and along with that machinery it has gifted some raw material and semi finished products, while in the assessee under consideration there had not been any transaction, what to say about purchase and sale of machinery. Assessee during the remand proceedings, vide its letter dated 10th Sep, 2012, has submitted as under:

"we confirm that, since inception, except for receipt of gift, the company has not transacted with any of the above referred 4 companies or their shareholders" Therefore, the ratio of the above case can not be applied in the case of assessee under reference.

c. The issue before the Hon'ble Supreme Court was that whether raw materials and semi finished needles were introduced in business and converted into stock, their market value on date of conversion would represent cost to business which was liable to be deducted from sale proceeds of finished products in arriving at profits of assessee's business or 110t. In fact, the issue of receipt, being gift or not was never came before the Hon'ble Supreme Court as it was never disputed.

d. Further while deciding the issue in favour of the assessee, the Hon'ble High Court has relied upon section 10(3) of the IT Act 1961, which has been abated w.e.f. 01.04.2003. Therefore, the ratio of said judicial pronouncement does not hold good in present scenario.

e. Further, the basic reason (or non applicability of the above decision to the present case is that at the point of time when the Hon'ble Supreme Court delivered its decision in above referred case, the provisions of Gift Tax Act were still applicable, therefore any gift received by any person was taxed under Gift Tax Act. However, after the abolition of the said act, every receipt which does not have a corresponding Liability is taxable, except in the case of close relatives, wherein the gifts are given out of natural love and affection, as provided in the section 50(2) of the IT Act, 1981. In fact, the term gift here connotes something which is given out of natural love and affection. The new provisions were accordingly applicable only on individuals and HUF's.

f. Not- withstanding to the above, the two cases are not comparable on account of revenue impact involved in them also.

g. At this juncture, it is pertinent to mention that the Accounting standards regarding valuation of inventor^y, the guiding principles and the Jaw as per section 145 of the I. T Act, 1961 have been laid down subsequent to 1-4-1989 only.

1.27 Now, as far as the issue raised by the assessee vide its submission (under ⁱpro visions of section 56 (2), the gift received by the company does not find any place and the assessee claims that impugned sum is not taxable since it is a gift and it does not fall in any of the provision of section 56 (2) dealing with the taxability of gifts.), that there are 110 provisions in the income tax act, which prohibits that a company cannot receive gift or advance gift, is concerned, it is to be noted that

(i) The provisions of section 56 (2) are only a few specific instances transactions that are taxable and these are without prejudice to the general provisions of section 56 (1) of the IT Act. Basically, in order to curb the practice of bringing unaccounted mone^y in the books of the assessee, the act was amended and specific provisions were brought in the form of section 56 (2) to tax the gift, save from received from designated relation to the done. As specified above, since onl^y living being receive or advance gift, therefore restrictions were place in the statute that only close relative can give or receive gift, so that abuse of exemption provisions on account of gift transactions ma^y be avoided.

(ii) The argument is devoid of any merit because the law makers can make legislation on a probable and plausible transaction, as there not be any gift between companies, no legislation was made.

1.28 Further the assessee contention that with the insertion of clause (Vila) to section 56 (2) by the Finance Act 2001, two new categories were added to section 56 (2), being 'firm' and 'company' in relation to transfer of shares, and yet the transaction undertaken by the assessee is not covered is concerned, it is to be noted that

(i) The Explanatory Memorandum to Finance Act, 2010 reads as follows

"In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend s.56 to also include within its am bit transactions undertaken in shares of a company 'not being shares of a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which the public are substantially interested.)."

(ii) The said amendment has been introduced to curb the specific practice of undervaluation of sale/purchase share/acquisition of a company by another company. The introduction of the amendment does not imply that the companies can give/ receive cash gift or that companies have been included in the ambit of

transactions covering taxability of gifts.

1.29 Assessee's another argument that put forth by the assessee regarding definition of 2(vii) of the Gift Tax Act and section 2 of I.T. Act is concerned, it is to be noted that the assessee's contention in this regard is out of place and out of context, as the Gift Tax Act has since been repealed.

1.30 On account of above discussion, it is to be noted that as the amount received is not in the nature of a gift or a capital receipt and otherwise also notwithstanding the exact nature and intent, it is an extraordinary item which is required to be credited to the profit and loss account in terms of Part 1101 Schedule VI of the Companies Act, 1956. It is an item of exceptional nature.

JUDICIAL PRONOUNCEMENTS

1.31 Further a number of judicial pronouncements viz. Smt Kusum Lata Thakral v CIT [185 Taxman 237], the Hon'ble Punjab & Haryana High court, Jaspal Singh v CIT [158 Taxman 3061, the Hon'ble Punjab & Haryana High Court etc., have held that a gift is something which is given out of natural love and affection. The above judicial pronouncements are as under:

Section 69A of the Income-tax Act, 1961 - Unexplained moneys - Assessment year 2003-04 - Assessing Officer made addition to declared income of assessee by treating alleged gifts to be assessee's income from undisclosed sources - On appeal. Commissioner (Appeals) and Tribunal affirmed order of Assessing Officer by recording finding of fact that there was no relationship between donors and assessee and there was no natural love and affection and in its absence, gifts could not be accepted to be genuine - Assessee challenged order of Tribunal on ground that she should have been allowed an opportunity to cross-examine donors who denied to have given gifts - Whether even if cross-examination was allowed and donors, who had disowned making of gifts, were confronted and shown to be factually wrong, same would have made no difference as in absence of natural love and affection, gifts were not genuine - Held, yes - Whether, therefore, order of Tribunal was to be upheld - Held, yes

Smt. Kusum Lata Thakral v CIT [185 Taxman 237]

Section 68 of the Income-tax Act, 1961 - cash credits - Assessment year 1998-99 - Whether where assessee claimed to have received certain sum as gifts but failed to establish that donor had means and gift was genuine and was given out of natural love and affection, amount received as gift was to be added to income of assessee - Held, yes

Jaspal Singh v CIT/[159 Taxman 3061]

1.32 Apart from the above, it is pertinent to mention that during the remand report proceedings, the assessee has submitted that in the case of donor company name^y M/s Madhuban Merchandise Private Limited, Board of directors in their meeting held on 09.04.08 passed a resolution, extract of which

are as under.'

'Resolved That pursuant to the provisions of Section 206 and other applicable provisions of the Companies Act, 1956, the Company do hereby instruct and authorize Reliance industries Limited (RIL,), to pay over directly. to KDA Enterprises Private Limited, the dividend for the year 2007-08 in respect of 42.33,3 73 equity shares of RIL held by the Company.

Resolved Further that Shri Manoharlal B. Chaturvedi and Shri Vijay R. Gupta, Director of the Gompany, be and are hereby severally authorized to take all such other steps as may be necessary and/or incidental thereto to give effect to this resolution."

In pursuance to above, the donor company vide its letter dtd. 19.06.2006 had given irrevocable instruction u/s 205 r.w.s. 206 of the Companies Act to Reliance Industries to pay to pay dividend directly to the Appellant. The corresponding resolution was also passed by the Appellant at the Board Meeting held on 12.06.2008 accepting the gift. The extract of the resolution passed by the Appellant is as follow :

"Resolved That the company do accept gift amounting to Rs. 44 50,38,399/- for Madhuhan Merchandise Private Limited, the Transferor Company. Resolved Further That the Company do receive delivery of the same from the Transferor Company for completing the gift."

On going through the above submission that the irrevocable instruction has been given by the donor compan^y to RH, much before the extra ordinary meeting. It has been further submitted that similar pattern is there in all other donee companies also. This indicates that the donor had issued instructions for carrying out the alleged gift transaction much before the acceptance of the gift b^y the donee/recipient. Further, in the case of the assessee compan^y, such alleged gift: transactions have also been noted in other years as well.

1.33 At this juncture, it would be relevant to mention that any credit which is found to be credited in the books of accounts and which does not have any corresponding liability has to be either assessed under section 56 or under section 68 of the I. T Act, 1961. In the case of assessee under reference, the undersigned is of considered opinion that the same should be taxed under section 56. The undersigned is in complete agreement with my predecessor. who passed this assessment order regarding the stand taken while considering the alleged pit as income from other sources. However, without prejudice to the above, since credit entry is found to be credited in the books of the assessee, therefore, if any how the same can not be taxed under section 56, then it would be taxed under the provisions of section 68, which is read as under:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the source and source thereof or the explanation offered by him is not, in the opinion of the 7-9[Assessing] Officer, satisfactory. the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

1.34 In this regard, reliance is placed on judicial pronouncement of Honble Supreme Court in the case of CIT v. P Mohankala [2007] 291 ITR 278 (SC) and Sumati Dayal Vs. Commissioner of Income Tax, Bangalore [1995 Supp.(2) SCC 453)

2. The second issue, on which the remand report has been called for is as under:

Find out and report the cross holdings between the assessee and the donor companies and report the impact of such cross holdings on the receipt of Rs. 161.86 crore claimed as gift by the assessee.

2.1 In this regard the details were called for from the assessee. On account of details received by the assessee, following analysis is being made.

KDA ENTERPRISES PRIVATE LIMITED

EQUITY SHAREHOLDING AS ON 13/6/2008

S.No.	Name of Shareholder	No. of shares of Rs.10 each
1	SMT KOKILABEN D. AMBANI (JTLY WITH GAYLORD INVESTMENTS AND TRADING CO. PVT. LTD.	9900
2	SHRI MUKESH D. AMBANI	100
	TOTAL:	1000

AMUR TRADING PRIVATE LIMITED

EQUITY SHAREHOLDING AS ON 13/6/2008

S.No.	Name of Shareholder	No. of share of Rs.10 each
1	KUDRAT INVESTMENT & LEASING (INDIA) PRIVATE LIMITED	200
2.	LAZOR DETERGENTS PRIVATE LIMITED	9900
3.	MADHUBAN MERCHANDIES PRIVATE LIMITED	9871
4.	ORNATE TRADERS PRIVATE LIMITED	10002
5.	SHIKHAR TESTURISING PRIVATE LIMITED	10002
6.	TRESTA TRADING PRIVATE LIMITED	10100
	TOTAL:	50075

*MADHUBAN MERCHANDISE PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	<i>CAPABLE COMMERCIALS PRIVATE LIMITED</i>	124000
2.	<i>JOGIYA TRADERS PRIVATE LIMITED</i>	124000
3.	<i>KUNDRAT INVESTMENT & LEASING (INDIA)(P) LTD.</i>	124000
4.	<i>LAZOR DETERGENTS PRIVATE LIMITED</i>	124000
5.	<i>ORNATE TRADERS PRIVATE LIMITED</i>	124000
6.	<i>PURURAVA TRADERS PRIVATE LIMITED</i>	123000
7.	<i>RASHI TRADING COMPANY PRIVATE LIMITED</i>	124000
8.	<i>SAUMYA FINACE AND LEASING COMPANY PRIVATE LIMITED</i>	133000
	<i>TOTAL:</i>	1000000

*ORNATE TRADERS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	<i>AMUR TRADING PRIVATE LIMITED</i>	1523952
2.	<i>LAZOR DETERGENTS PRIVATE LIMITED</i>	801912
3.	<i>MADHUBAN MERCHNDISE PVT. LIMITED</i>	912096
4.	<i>PRATIKSHA FINANCE & LEASING COMPANY PVT. LTD.</i>	1308000
5.	<i>RASHI TRADING COMPANY PRIVATE LIMITED</i>	507144
6.	<i>SAUMYA FINANCE AND LEASING CO.(P.) LTD.</i>	1443744
7.	<i>TRESTA TRADING PRIVATE LIMITED</i>	1523952
	<i>TOTAL:</i>	8020800

*TRESTA TRADING PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	10000
2.	LAZOR DETERGENTS PRIVATE LIMITED	10000
3.	MADHUBAN MERCHNDISE PVT. LIMITED	9514
4.	SAUMYA FINANCE AND LEASING CO.(P.) LTD.	9514
5.	SHIKHAR TEXTURISING PRIVATE LIMITED	9514
6.	SILKINA TRADING PRIVATE LIMITED	1533
<i>TOTAL:</i>		50075

*TRESTA TRADING PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. os share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	1523952
2.	ANUCHIT TRADERS PRIVATE LIMITED	70800
3.	LAZOR DETERGENTS PRIVATE LIMITED	83000
4.	MADHUBAN MERCHNDISE PVT. LIMITED	50000
5.	SAUMYA FINANCE AND LEASING CO.(P.) LTD.	71000
6.	TRESTA TRADING PRIVATE LIMITED	27800
7.	UNICOME TRADING ENTERPRISES PVT. LTD.	71000
<i>TOTAL:</i>		425600

*JOGIYA TRADERS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	1060004

2. CAPABLE COMMERCIALS PRIVATE LIMITED	618000
3. KUNDRAT INVESTMENT & LEASING (INDIA)(P) LTD.	1018096
4. LAZOR DETERGENTS PRIVATE LIMITED	1518100
5. MADHUBAN MERCHNDISE PVT. LIMITED	475000
6. SAUMYA FINANCE AND LEASING CO.(P.) LTD.	1299600
7. TRESTA TRADING PRIVATE LIMITED	570000
8. UNICOME TRADING ENTERPRISES PVT. LTD.	1299600
<i>TOTAL:</i>	<i>7858400</i>

KUDRAT INVESTMENT AND LEASING (INDIA) PRIVATE LIMITED

EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	66200
2.	JOGIYA TRADERS PRIVATE LIMITED	85000
3.	LAZOR DETERGENTS PRIVATE LIMITED	190000
4.	MADHUBAN MERCHNDISE PVT. LIMITED	114400
5.	ORNATE TRADERS PRIVATE LIMITED	72900
6.	PURURAVA TRADERS PRIVATE LIMITED	80000
7.	SILKINA TRADING PRIVATE LIMITED	54000
8.	SUGAM TEXTURISING PRIVATE LIMITED	190000
9.	SWARAG TRADERS PRIVATE LIMITED	77500
10.	TRESTA TRADING PRIVATE LIMITED	70000
	<i>TOTAL:</i>	<i>1000000</i>

*LAZOR DETERGENTS PRIVATE LIMITED**EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AAKROSH INVESTMENTS AND LEASING P.LTD.	6575
2.	AMUR TRADING PRIVATE LIMITED	6574
3.	CAPABLE COMMERCIALS PRIVATE LIMITED	6574
4.	KUDRAT INVESTMENT AND LEASING (INDIA) P.LTD.	2378
5.	MADHUBAN MERCHNDISE PVT. LIMITED	5926
6.	TRESTA TRADING PRIVATE LIMITED	6574
7.	SMT. K.D. AMBANI JTLY SHRI M.D. AMBANI	3900
<i>TOTAL:</i>		38500

*SHIKHAR TEXTURISING PRIVATE LIMITED**EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	444150
2.	DAINTY INVESTMENTS & LEASINGS P. LTD.	253800
3.	LAZOR DETERGENTS PRIVATE LIMITED	487350
4.	MADHUBAN MERCHNDISE PVT. LIMITED	487350
5.	ORNATE TRADERS PRIVATE LIMITED	405000
6.	TRESTA TRADING PRIVATE LIMITED	487350
<i>TOTAL:</i>		2565000

*SILKINA TRADING PRIVATE LIMITED**EQUITY SHAREHOLDING AS ON 13/6/2008*

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	1156720

2. KUDRAT INVESTMENT AND LEASING (INDIA) P.LTD.	1824000
3. LAZOR DETERGENTS PRIVATE LIMITED	1156720
4. MADHUBAN MERCHNDISE PVT. LIMITED	696000
5. SAUMYA FINANCE AND LEASING CO.(P.) LTD.	440000
6. TRESTA TRADING PRIVATE LIMITED	814560
TOTAL:	6088000

**PRATIKSHA FINANCE AND LEASING COMPANY PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	321360
2.	DAINTY INVESTMENTS & LEASINGS P. LTD.	1160900
3.	KUDRAT INVESTMENT AND LEASING (INDIA) P.LTD.	1560000
4.	LAZOR DETERGENTS PRIVATE LIMITED	1160900
4.	MADHUBAN MERCHNDISE PVT. LIMITED	745940
5.	TRESTA TRADING PRIVATE LIMITED	1160900
	TOTAL:	6110000

**PURURAVA TREADERS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	324710
2.	CAPABLE COMMERCIALS PRIVATE LIMITED	1805000
3.	JOGIYA TRADERS PRIVATE LIMITED	342000
4.	LAZOR DETERGENTS PRIVATE LIMITED	1916910
5.	MADHUBAN MERCHNDISE PVT. LIMITED	2000000

6. RISHI TRADING CO. PRIVATE LIMITED	90000
7.SAUMYA FINACE& LEASING CO. P. LIMITED	1377500
8. TRESTA TRADING PRIVATE LIMITED	855380
9. UNICOM TRADING ENTERPRISES PRIVATE LIMITED	1377500
TOTAL:	10089000

RASHI TRADING COMPANY PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	1097450
2.	CAPABLE COMMERCIALS PRIVATE LIMITED	630000
3.	DAINTY INVESTMENTS & LEASINGS P. LTD.	600000
4.	LAZOR DETERGENTS PRIVATE LIMITED	1348050
5.	MADHUBAN MERCHNDISE PVT. LIMITED	748050
6.	SAUMYA FINACE& LEASING CO. P. LIMITED	1151000
8.	TRESTA TRADING PRIVATE LIMITED	369450
9.	UNICOM TRADING ENTERPRISES PRIVATE LIMITED	1151000
	TOTAL:	7095000

SAUMYA FINACE& LEASING CO. P. LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	6429923
2.	CAPABLE COMMERCIALS PRIVATE LIMITED	5427000
3.	LAZOR DETERGENTS PRIVATE LIMITED	6429923
4.	MADHUBAN MERCHNDISE PVT. LIMITED	4842874

5. ORNATE TRADERS PRIVATE LIMITED	6155520
8. TRESTA TRADING PRIVATE LIMITED	4556460
TOTAL:	33841700

AAKROSH INVESTMENTS AND LEASING PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	985150
2.	DAINTY INVESTMENTS & LEASINGS P. LTD	985150
3.	LAZOR DETERGENTS PRIVATE LIMITED	985150
4.	MADHUBAN MERCHNDISE PVT. LIMITED	915000
5.	PURURAVA TRADERS PRIVATE LIMITED	329400
8.	TRESTA TRADING PRIVATE LIMITED	985150
	TOTAL:	5185000

ANUCHIT TRADERS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	327919
2.	LAZOR DETERGENTS PRIVATE LIMITED	820000
3.	MADHUBAN MERCHNDISE PVT. LIMITED	902082
4.	SAUMYA FINANCE & LEASING CO. PVT.LTD.	1246400
5.	TRESTA TRADING PRIVATE LIMITED	820000
6.	UNICOME TRADING ENTERPRISES PVT. LTD.	631400
	TOTAL:	4747800

DAINTY INVESTMENTS AND LEASINGS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
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1. AMUR TRADING PRIVATE LIMITED	5165486
2. KUDRAT INVESTMENT & LEASING (INDIA) P. LTD	5890000
3. LAZOR DETERGENTS PRIVATE LIMITED	6282144
4. MADHUBAN MERCHNDISE PVT. LIMITED	6282144
5. SAUMYA FINANCE & LEASING CO. PVT.LTD.	6282144
6. TRESTA TRADING PRIVATE LIMITED	3162000
TOTAL:	33063918

RHINO BAGS PRIVATE LIMITED**EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	12000
2.	ANUCHIT TRADERS PVT. LTD.	18000
3.	LAZOR DETERGENTS PRIVATE LIMITED	19000
4.	MADHUBAN MERCHNDISE PVT. LIMITED	19000
5.	SAUMYA FINANCE & LEASING CO. PVT.LTD.	16000
6.	UNICOME TRADING ENTERPRISES PVT. LTD.	16000
	TOTAL:	100000

SUGAM TEXTURISING PRIVATE LIMITED**EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	211536
2.	LAZOR DETERGENTS PRIVATE LIMITED	367536
3.	MADHUBAN MERCHNDISE PVT. LIMITED	367536
4.	RASHI TRADING COMPANY PVT. LTD.	156000
5.	RAHINO BAGS PRIVATE LIMITED	66144
6.	SAUMYA FINANCE & LEASING CO. PVT.LTD.	301392

7. SWARAG TRADERS PRIVATE LIMITED	96720
8. TRESTA TRADING PRIVATE LIMITED	367536
TOTAL:	1934400

**SWARAG TRADERS PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	500000
2.	ANUCHIT TRADERS PRIVATE LIMITED	1140000
3.	CAPABLE COMMERCIALS PRIVATE LIMITED	1040000
4.	LAZOR DETERGENTS PRIVATE LIMITED	1580000
5.	MADHUBAN MERCHNDISE PVT. LIMITED	1656800
6.	SAUMYA FINANCE & LEASING CO. PVT.LTD.	1040000
7.	TRESTA TRADING PRIVATE LIMITED	623200
8.	UNICOME TRADING ENTERPRISES PVT. LTD.	1140000
	TOTAL:	8720000

**UNICOME TRADING ENTERPRISES PRIVATE LIMITED
EQUITY SHAREHOLDING AS ON 13/6/2008**

<i>S.No.</i>	<i>Name of Shareholder</i>	<i>No. of share of Rs.10 each</i>
1.	AMUR TRADING PRIVATE LIMITED	1062400
2.	LAZOR DETERGENTS PRIVATE LIMITED	1065216
3.	MADHUBAN MERCHNDISE PVT. LIMITED	973568
4.	RHINO BAGS PRIVATE LIMITED	720000
6.	SAUMYA FINANCE & LEASING CO. PVT.LTD.	720000
7.	TRESTA TRADING PRIVATE LIMITED	1065216
	TOTAL:	5606400

2.2. On going through the share holding pattern, it is evident that all the above donor companies have share holding in each other. Apart from these companies Amur trading Pvt. Ltd. Maduban Merchandise Pvt. Ltd. Tresta Trading Pvt. Ltd. and Ornate Traders Pvt. Ltd. there are another companies viz Lazor Detergents Pvt. Ltd. Rashi trading company Pvt. Ltd. Rhino Bags Pvt. Ltd., Saumya finance & leasing Co. Pvt. Ltd., etc, which have share holding in all the above four companies. It is further observed that the companies have a common address i.e. 505, Dalamal House 5th Floor, 206, Nariman Point, Mumhai, therefore they are being controlled and managed by a particular group i.e reliance Industries. Further it is evident from the share holding pattern as on 13. 062008 of Lazor Detergents Pvt. Ltd. that 3900 shares in the name of Smt. K. D. Ambani jntly Shri M. D. Ambany Total shares of the company are 38500 shares. Now if we analyze thoroughly the share holding of all the above mentioned companies, then it is observed that the cross holding are such that ultimately the control is being exercised by Smt. K D. Ambani jointly with Shri M. D. Ambani. Apart from them, all the share holders are corporate entities and if the cross-holding pattern is closely analysed then it is evident that in all these group companies the effective control is being exercised by Smt. K D. Ambani jointly with Shri M D. Ambani.

3. The third issue, on which the remand report has been called for is as under. Find out the exact nature and motive behind the transaction of alleged gift.

3.1. As far as the issue to find out the exact nature and motive behind the transaction of alleged gift is concerned, it is to be noted that immediately after the receipt of remand report letter, the assessee was request to furnish the details specified therein. However, nowhere either in during the course of assessment proceedings or remand report proceedings, the assessee has conveyed any clear and distinct motive w.r.t transaction under reference. The exact nature and motive, best known to the assessee, has never been disclosed to this office. Apparently the motive behind this transaction is to transfer mone^y from one Group Company to another without paying income tax. In fact, the motive behind the above transaction in the guise of gift transaction is nothing but to evade tax as it does not fall within the four corners of definition of gift, therefore it cannot be treated as gift.

CONCLUSION

3. In view of facts of tht case, surrounding circumstances and analysis made above, the above transaction cannot be categorized/considered as a gift transaction. In fact., whole scheme of so called gift transaction is a camouflage to circum vent the mandate off. T Act, 1961, tax-evasion and to devoid the government kitty from its gar, tan e tax.

4. The report is submitted to you for your kind perusal.

Sd/-

[ARVINDKUMAR
Deputy Commissioner of Income tax, 3(2)
Mumbai'

4. The remand report was forwarded by the CIT(A) to the assessee and assessee filed rejoinder dated 18/10/12, which is as follows:

“Rejoinder of the Appellant to the Remand Report

1. We refer to the copy of the remand Report dated 01.10.2012 of Deputy Commissioner of Income Tax-3(2) (hereinafter referred to as the A.O.) in the case of Appellant for A.Y.2009-10 provided to us by your honour for our comment.

In this connection the Appellant submits that the AO in his Remand Report has made an attempt to justify the stand taken by the then Assessing Officer while framing the order u/s.143(3) of the Act, but without bringing any cogent material on record or putting forward any additional arguments to support the issue in appeal. The AO has merely repeated the same arguments as were stated in the assessment order and elaborated the same without support of factual finding, legal provision or judicial pronouncements.

At the outset we wish to state that the AO started his remand report by quoting the observation made by the then Finance Minister (FM.) as on 16.1-⁹. 1963 With respect to "Pro visions for countering tax-evasion" and "evil of tax-evasion". The Appellant submits that the opening remark of the AO is totally out of context and unwarranted. The Appellant submits that the observations of the F.M. quoted by the AO in his Remand Report are the statement of FM in Parliament with respect to unaccounted money circulating in the econom^y and tax evasion thereof which are laudable and represents the Governments endeavor to control to control the social evil and affect fiscal reform. The Appellant submits that the observation of the AO that the "case of the Appellant falls in such category of cases which were referred by the Hon 'Me Finance Minister under the titles "provision for countering tax-evasion & "evil of tax-evasion" are highly erroneous and has nothing to do with the case of the Appellant. The AO has not brought on record any material to suggest that Appellants case falls within the categories enumerated by the FM in his speech.

It may be emphasised that the transaction under reference is tax neutral and by no stretch of imagination the same can be considered as tax evasion. The amount received by the Appellant without consideration was even otherwise not subject to tax in the hands of the donor companies as the same was the dividend exempt u/s. 10(34) of the Act. The donor companies have not claimed any tax concession or relic! In respect of the amount so given to the Appellant. Both the Appellant and the donor companies are ^Pprivate limited companies subject to the same rate of tax. No additional tax benefit has accrued either to the donor companies or to the Appellant in any manner whatsoever. Accordingly, the Appellant respectfully submits that the amount received by the Appellant without consideration cannot be considered as colorable device as portrayed by the Assessing Officer In his remand report. The transaction is tax neutral and has no revenue effect.

3. Now coming to the observation of AO in the remand report, the Appellant submits that the main points of arguments of the A O can he summarized as under:

- 1) Gift can only be made and received by a Living person (i.e. human being.) and not by the Companies being artificial person.
- 2) There has to be natural love and affection between the person giving and receiving gift.
- 3) Receipt of money without consideration is nothing but income as the definition of 'Income' is inclusive and not exhaustive.
- 4,) Section 56(1) being residual taxing provision, any income not covered under heads A to E specified in Section 14 of the Act is chargeable under the head "income from other sources"
- 5) The Credits (gifts) in the books of the Appellant can alternatively be considered as unexplained cash credit u/s 68 of the Act.
- 6) Various, judicial pronouncements relied upon and distinguished by the AO.

In this connection the Appellant submits as under.

- 1) Gift can only be made and received by a living person (i.e. human being) and not by the companies being artificial person:

The AO in para 1.8, 1.9 to 1.16 and 1.27 of the Remand Report has observed that the gift can only be made and received by a living person (i.e human being) and not by the companies which is an artificial person. In this regard the AO relied upon the - definition of Gift provided under section 122 of the Transfer of Property Act. The Appellant at the outset submits that it has already made a detailed written submission at para 4 and 5 and demonstrated that various provisions of the Transfer of Property Act recognizes that the Company can transfer a moveable or immovable property by way of gift. The Appellant rely upon the written submission filed before your honour a copy of which were also forwarded to the AO. The Appellant submits that the AO failed to appreciate that section 5 of Transfer of Property Act clearly states that "living person" includes a company. The Appellant submits that the AO conveniently- ignored the provisions of the Transfer of Property Act to draw a premeditated conclusion against the Appellant. The Appellant therefore submits that these observation of the AO are grossly wrong and shall be quashed.

2. There has to be natural love and affection between the person giving and receiving gift

The AO at para 1.11 and 1.14 of the remand report repeated the same arguments/observation as were there in the assessment order, that the gift without natural love and affection is void in view of section 25 of the Indian Contract Act. The Appellant submits that it has filed a detailed written submission in this regard before your honour and demonstrated that the gifts by a corporate body to another corporate body is a valid gift as per provisions of the Transfer of Property Act and Indian Contract Act. The Appellant submits that it has clearly mentioned in its written submission (refer page 24) that the legislature has appended Explanation I to section 25 of the Contract Act which reads as under:

"Explanation I. — Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made."

The Appellant therefore submits that Explanation I clearly provides that section 25 of the Contract Act is not applicable to the gifts made by the donor to the donee. The Appellant therefore submits that the arguments of the AO are contrary to the specific provisions of the Act and shall be quashed.

3) Receipt of money without consideration is nothing but income as the definition of 'Income' is inclusive and not exhaustive:

The AO at para^s 1.5 and 1.6 of his remand report tried to justify^y that any receipt which makes a person richer by accretion of wealth, is an income in the hands of the recipient

and is chargeable to tax under the Income Tax Act-1961. The Appellant strongly objects to the above observations of the AO. The Appellant at the outset submits that the Income Tax Act — 1961 is an act passed by the parliament to levy tax on 'income' of an assessee. Thus what is subjected to tax under the Act is only the income of the assessee and not each and every receipt of an assessee. The Appellant submits that receipts which are capital in nature or does not fulfill criteria of an income, cannot be subjected to tax unless specifically provided under the Act like section 45, section 56(v) etc of the Act. The Appellant submits that if the observations of the AO are accepted than every receipt will be liable to income tax, which certainly is neither the object of the Act nor the intention of the legislature. The Appellant submits that the observations of the AO that every receipt is an income of the assessee are against the basic object of the Act and contrary to judicial pronouncements. The Appellant respectfully submits that the income tax is leviable only on the taxable income of the assessee and hence receipts of capital nature, unless specifically charged under the Act, are outside the ambit of the Income Tax Act. In this connection the Appellant strongly rely upon para 3 of its written submission (refer pages 5 to 15) wherein the issue has been discussed in detail. The Appellant therefore submits that the above observations of the AO is contrary to the provisions of the Act and intention of the legislature and shall be quashed.

4) Section 56(1) being residual taxing provision any income not covered under heads A to E specified in Section 14 of the Act is chargeable under the head income from other sources.

The AO at pars 1.17 to 1.19 and 1.27 observed that any income not covered under the heads A to E specified in section 14 of the Act is chargeable under the head income from other sources, which is a residuary taxing provision. The AO therefore held that the gift received by the Appellant is chargeable to tax u/s 56 of the Act. The Appellant strongly objects to the above finding/observations of the AO. The Appellant submits that although section 56 is a residuary taxing provision, but what is chargeable u/s 56 is only a receipt in the nature of an 'income'. Any receipt which is not in the nature of income cannot be subjected to tax under section 56(z) or section 56(2), if not specifically provided therein.

The Appellant submits that section 56 of the Act is made applicable only to the 'income of every kind' and not to each and every receipt. Thus a receipt to be taxable even under the residuary provisions of section 56(2) of the Act must be in the nature of an 'income'. The Appellant submits that gift received by it from corporate bodies is not in the nature of an 'income' but is a capital receipt, hence section 56(L) has no role to play in the case of the Appellant.

In support of his arguments the AO has further relied upon various case laws which are clearly distinguishable on facts and in law. In all the cases relied upon by the AO, the receipts by the assessee were undoubtedly in the nature of an income and the questions before the courts was taxability of such income under particular head. On the Facts of those cases, the courts have held in these cases that these income which do not fall under specific head of income under section 14 item A to E, are chargeable to tax under the residuary provision i.e. u/s 56(1). However in the case of the Appellant the gift received by the Appellant is not in the nature of income but is a capital receipt, hence if it is respectfully submitted that none of the case relied upon by the AO has any relevance to the facts of the case of the Appellant. The Appellant therefore submits that the observations of the AO are grossly erroneous and without the proper appreciation of law.

5) The Credits (Gifts) in the books of the Appellant can alternatively be considered as unexplained cash credit u/s 68 of the Act.

The AO at para 1.33 of the remand report states that, in any case how the same can not be taxed under section 56, then it would be taxed under the provisions of section 68. The Appellant at the outset objects to the above statement of the AO. The Appellant submits that section 68 of the Act reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the Nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year (Emphasis supplied)

The Appellant submits that section 68 of the Act comes into play when any sum is found to be credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the Assessing officer satisfactory. The Appellant submits that in the case of the Appellant it has been clearly explained to the AO that the gifts were received from various corporate bodies and the same have been duly disclosed in the books of the Appellant. All the corporate bodies have confirmed to the making of gift and same have duly reflected in their books and audited accounts. The Appellant submits that the transactions and source has duly been explained to the AO. Even the AO neither in the assessment order nor in remand proceeding has doubted the nature or source of transaction. The Appellant submits that in the case of the Appellant the only dispute is with respect to whether the gift received from corporate bodies are in the nature of income which can be subjected to tax under the Income Tax Act and not the nature and source of credit in the books of the Appellant. The Appellant submits that by no stretch of imagination the gift received can be termed to be an unexplained cash credit in the books of the Appellant. The Appellant submits that the AO failed to bring any material on record so as to prove that the gift received is an income which could be chargeable to tax under the Act. The Appellant therefore respectfully submits that, under such circumstances the AO is now making a half hearted attempt some way or the other to bring the transaction to the tax net even though it is not chargeable to tax under the Act. The Appellant therefore submits that this attempt of the AO shall be discouraged which was even not the ground of the AO at the time of making assessment. The AO in support of his above proposition relied upon Supreme Court judgment in the case of CIT vs. P. Mohankala [2007] 291 ITR 278 (SC) and Sumati Dayal vs. Commissioner of Income-tax, Bangalore 11995 Supp.(2) SCC 4531. The Appellant submits that both the above cases are distinguishable on facts in law and have no relevance to the issue in appeal.

6) Various judicial pronouncements relied upon by the AO:

The AO at para 1.31 of his remand report has relied upon the judgment in the case of Smt. Kusum Lata Thakral Vs. CIT [185 Taxman 2371 and Jaspal Singh Vs. CIT [158 Taxman 3061 to draw a conclusion against the Appellant With respect to the above Judicial pronouncements referred by the AO in his remand report. the Appellant respectfully submits that the above cases are distinguishable on facts and in law. The Appellant submits that in the above cases the creditworthiness of the donors were In doubt and the donor have specifically denied of having given gifts to the donee. The Appellant therefore submits that in the above cases the questions relates to the genuineness of the gifts received by the donee and the gifts were found to be the non genuine; whereas in the case of the Appellant there is no doubt with respect to identity and creditworthiness of the donor and genuineness of the gifts. The Appellant therefore respectfully submits that the reliance by the AO on the above referred case laws are totally out of context and needs to be ignored.

4. The AO further tried to distinguish various case laws relied upon by the Appellant in its written submission on flimsy grounds. The Appellant submits that the case laws relied upon by the Appellant in its written submissions, lays down the principle on the concept of "income" i.e. what can be termed as income chargeable under the Income Tax Act-1961 and vice versa. The Appellant submits that the ratio laid down in all the case laws relied upon by the Appellant in its written submission is very much relevant to decide the issue in appeal.

The Appellant further submits that the AO tried to distinguish the judgment of Hon'ble Supreme Court in the case of CIT Vs. Groz — beckert Saboo Ltd [16 ITR 125] on the ground that it has been pronounced by the Hon'ble Supreme Court long back in 1978 and this is an obsolete case law. The Supreme Court decides the substantial question of law holds good for all the time to come unless overruled by the court or by amendment to the Act. The Appellant submits that the judgment in the Groz- beckert Saboo Ltd (supra) although is a old judgment but explains the concepts of "income" The judgment is valid from decades and till date it is held to be a good law and never been distinguished or reversed by the Hon'ble Court.

The AO further stated at pare 1.26(1) that "the two cases are not comparable on account of revenue impact involved in them also." The Appellant strongly objects to the above observations of the AC). The Appellant vehemently submits that the revenue involved in the case cannot be a ground for deciding the issue. The Appellant respectfully submits that the courts decided the case based on the provisions

of the Act and in the Interest of justice. The Appellant submits that the revenue involved in the case has never been a criteria for a court to decide the issue. The decisions of the courts are equally applicable to all the cases where the issue is same whatever be the revenue involved thereto. The Appellant therefore submits that since the revenue involved in both the cases are not comparable cannot be a distinguishable factor for application of the principal laid down by the Apex Court.

5. The AO further at para 1.21 has observed that, 'Probably this is the reason/logic, why while framing the above provision, the Legislature have only talked about individual and HUF, which is a possibility as the **Legislature never thought that there can be an' transaction between two companies**, which is not a possibility at all and that too in the garb of so called gift " (Emphasis supplied)

Further at Para 1.27 (ii) the AO observed that, "The argument is devoid of any merit because the law makers can make legislation on a probable and plausible transaction, as there cannot be any gift between companies, no legislation was made.

The Appellant respectfully submits that the above observations of the AO are erroneous and solely based on suspicion wherein the AO raises doubt on the competence of the legislature. The Appellant respectfully submits that the legislature has made suitable legislations as and when required to give effect to its objective. The Appellant submits that gift by one corporate body to another is not an unknown transaction to the legislature or public at large. The Appellant submits that in the past the legislature has enacted the Gift Tax Act -- 1958 ('although repealed since 1998) wherein it has recognized the Company i.e. a body corporate as an assessee for the purpose of Gift Tax Act. **Section 2(xvii)** of the Gift Tax Act defined person as under:

(Xviii) 'person" includes a Hindu Undivided Family or a company or an association or a body of individuals or persons whether incorporated or not."

The Appellant therefore submits that the gift by a corporate body to another corporate body is not an unknown phenomenon as claimed by the AO in his remand report. The Appellant therefore submits that had the legislature intended to bring the gifts by one corporate body to another corporate body within the ambit of Income Tax Act, it would have certainly provided for the same in the statute itself. The Appellant therefore submits that the above observations of the AO in remand report is solely based on assumptions, conjectures and surmises and has no bearing in deciding the case.

As regards details of shareholding pointed out by the AO at **Para 2**, it is respectfully submitted that none of the shareholders of the companies giving gift are shareholders of the Appellant. Only one of the shareholder of the Appellant i. e. Smt. KB. Ambani is shareholder of one Lazor Detergent Private Limited, holding only 10.13% of shares. Based on this fact the AO submitted that all the companies are being controlled and managed by a particular group and its ultimate control is being exercised by **Smt. K.D. Ambani**. It is respectfully submitted that by no stretch of imagination it can be presumed that person holding just 10.13% in only one of the shareholder of shareholders of company giving gift can control all the companies. In any view of the matter this aspect of the AO's observation is not relevant to decide the issue in appeal as the taxability of the gift does not depend upon the shareholding pattern of a company.

The facts of the case are summarised as under:

1. The Appellant and all four donors are Private Limited Company.
2. Reference of "during the lifetime of the donor" in Section 122 of the Transfer of Property Act applicable to Company also since Section 5 of the Transfer of Property Act, 1882 provides that "living person" includes company. Accordingly "during lifetime of the donor" in the case of a company should be read as "during life time of individual /company etc.

3. *Company can receive and make gift is established by the following:*

a) *Living person "includes company as explained above*

b) *Natural love and affection is not the only factor as per Explanation 1 to Section 25 of the Indian Contract Act, 1872.*

c) *Company was assessee under Gift Tax Act, (now repealed)*

d) *Hon'ble Supreme Court approves the ratio and accounting treatment when Company receives gift in CIT Vs. Groz - becker Saboo Ltd 1116 ITR 1251*

4. *The Appellant has received money without consideration and money being movable property the transfer is completed by delivery.*

5. *Only three essential elements determines whether or not gift has been made viz, a) delivery, b) donatives intent and c) acceptance b^y donee. In the present case, The Appellant has received the amount through bank i.e. delivery is complete, Donative intent has been expressed b^y the donors / grantors by giving mandate to Reliance Industries Limited and The Appellant has accepted the gift by deposit in its bank account and accounting the same accordingly. Thus all the three tests are fulfilled. Accordingly gift is valid.*

6 *Source of the amount received by the Appellant and the credit worthiness of the donor companies are duly explained.*

7. *Amount received b^y the Appellant without consideration is a Capital Receipt and rightly credited to Capital Reserve Account and accordingly is not in the nature of income.*

8. *Section 56 is not applicable to the money received by a company without consideration.*

In view of our submissions and various judicial pronouncements relied upon, the Appellant submits that the gift of Rs. 161,86,77,0371- received by the Appellant from corporate bodies are in the nature of capital receipt and the same cannot be considered as income of the Appellant under any provisions of the Act and hence the additional to total income made by the AO shall be deleted."

4.4 Subsequently, assessee filed its affidavit along with the affidavits of the four donor companies in support of its claim. The assessee also filed copy of a judgment of Honble ITAT, Mumbai, 'D' Bench, in the case of MIs. D.P. World Pvt. Ltd. vs. DCIT-2(1), Mumbai, and the copy of the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Nadatur Tour Holdings & **Investment** Pvt. Ltd., in support of its claim. All the affidavits and the Judgments were forwarded by CIT(A) to the A.O. vide letter dated 6/12/12 for report as follows;

*"Sub : Appeal in the case of
KDA. Enterprises Pvt. Ltd. - A. Y 2009-10 –
I.T-27/DC.3(2)/2011-12*

The assessee has filed five affidavits, from a Director of KDA Enterprises Pvt. Ltd., and from directors of four other companies who have claimed to have made gifts to the assessee-company. The affidavits are dated 30/11/12, copies of all the five affidavits are enclosed. The assessee has also relied on the recent judgments of Karnataka High Court in the case of CIT vs. M/s. Nadatur Holdings & Investments Pvt. Ltd. and of Hon 'Me ITAT Mumbai, in the case of D.P. World Pvt. Ltd. vs. DCIT, copies of both the orders as filed by the assessee are enclosed.

2. You are required to give your comments on the affidavits filed by the assessee and the decisions of Hon'ble Karnataka High Court and Hon'ble ITAT, Mumbai, relied by the assessee.

3. The above report may be filed on or before 14/12/12 i.e. the next date of hearing.

Sd/-
(NARENDER SINGH)
Commissioner of Income-tax
(Appeals)-4, Mumbai.

Copy to:

The Addl.CIT, Rg.3(2), Mumbai.

Sd/-
C.I.T.(A) -4, Mumbai."

5. In reply to the above letter of CIT(A) dated 6/12/12, the A.O. forwarded his comments vide letter dated 3/1/03, which are reproduced below:

*"Sub: Appeal in the case of M/s ICDA Enterprise Pvt. Ltd –
assessment year 2009-10*

Ref; Appeal No. CIT611-4/IT-27,DC.3(2)/2011-12 -

In continuation to this office letter dated 13/12/2012, as directed, kindly find enclosed herewith remand report as under:

1. *As per the enclosures attached with your letter dated 06.12.12, five affidavits have been received. The content of these affidavits have been made available to the A. O. during the course of the assessment proceedings and remand report proceedings, which has been duly analyzed during the respective proceedings. The only difference between the details submitted before the assessing officer and (CIT (A) is that before assessing officer they have been submitted in letter format While before CIT(A), it has been filed in affidavit format in a stamp paper.*

2. *Now, as far as the issue w.r.t judicial pronouncement of Hon'ble ITAT, Mumbai, in the case of D.P. World Pvt. Ltd. vs. DCIT and Karnataka High Court in the case of CIT vs. nadatur Holding & Investments Pvt. Ltd. is concerned, the ratio laid down in said cases is not applicable to that of assessee's case under reference, as the facts of the case relied upon are different than that of the assessee. Case wise analysis of the same is being made as under.*

2.1 *The judgment of Hon'ble ITAT, Mumbai in the case of DP World Pvt Ltd. vs. DCIT is altogether different than that of the assessee under reference. In the case of DP World Pvt. Ltd. vs. DCTT the shares of company (which is the owner of three residential flats at Hill Park) were gifted (by the shareholder) to ultimate holding company, so that case decided by the ITAT, no income accrued or arose because it is an internal matter between subsidiary and holding company.*

So in the cited case, whether it is gift or any other transfer, it hardly matters.

There the Hon'ble Tribunal analyzed the facts that existed in the U.K. and have approved action of Assessee on negative criteria that the department has not

brought anything contrary to the clauses of gift/transfer.

further at page no. 7 paragraph 15 of the ITA 7' order, the Hon'ble ITA T themselves have admitted, "although there are other decisions to the contrary however these decisions may not strictly hold good since the GTA has been deleted w.e.f. 01.10.1998 and section 4767L' of the Act continues in its original form This paragraph itself suggests that enough analysis has not been done on contrary decisions and the decision is circumscribed within the short perimeter of decision of GTA and section 476ii) of IT Act. In all fairness, a restricted interpretation should not cloud the present distinguishable case staring proper and equitable analysis. To be more exact in the disputed case before CIT(A), the companies who were supposedly donor and donee are altogether two different and distinct corporate entities, where in the case of donor company a receipt of dividend exempted in its hand which may not be exempted suomoto in the hands of recipient company, without proper mandate and proper application of law. As such the case cited by the assessee before CIT(A) compares very odd and is fully distinguishable doesn't merit even a persuasive value.

2.2 In case of CIT vs. Nadatur Holdings & Investments Pvt. Ltd., the issues before Honble Karnataka High Court was that "whether the income arising from sale of shares is Capital Gain or Business Income, while in the case of assessee under reference, there is nothing of such sort." Thus the ratio of above judicial; pronouncement can't be applied in the case of assessee under reference.

3. Here it is to be noted when the gift has not been defined in any statute, the normal connotation used in the common life has to be taken. It is beyond comprehension that for any transaction to be of gift" in nature, the basic and foremost condition is that of 'natural love & affection" is absent. In the absence of this particular emotion any transaction without having any corresponding liability will be either charity for the bigger cause or good cause. Thus any receipt which is credited in the books of accounts and which does not have a corresponding liability and natural love & affection can't be a gift. All such receipts have to be compulsorily and mandatorily routed through profit and loss account. As the assessee company under reference has not done so, therefore, it can't evade taxes in the guise of so called gift" receipt.

4. In view of the above analysis, the decisions relied upon by the assessee company are rejected in toto as the facts and circumstances of said cases is altogether different from that of the assessee under reference. Similarly affidavit filed by the assessee also contains nothing new, therefore, have not been commented.

Yours faithfully

*Sd/-
[ARVINN KUMAR)
Deputy Commissioner of Income-tax
3(2), Mumbai."*

6. The comments of the A.O. were forwarded to the assessee and assessee filed the rejoinder vide letter dated. 22/1/13 as follows:

"1. We refer to the copy of the letter dated 03.01.2013 of Deputy Commissioner of Income Tax-3(2) thereafter referred to as the A.O.) in the case of Appellant for A. Y 2009 - 10 provided to us by your honour for our comment.

The Appellant submits that the AO in his letter dated 03.01.2013 has submitted

that the following cases relied upon by the Appellant has no relevance to the facts of the present case:

- 1. Decision of Mumbai ITAT, Dⁱ Bench in the case of DP World Private Limited and*
- 2.. Decision of Karnataka High Court in the case of Nad,9tur Holdings & Investments Private Limited.*

While differentiating the case laws relied upon by the Appellant, as regards decision of Mumbai ITA T, D' Bench in the case of DP World Private Limited he observed as under:

- 1. In the case of DP World Pvt. Ltd. vs. DCIT, the shares of company (which is the owner of three residential flats at Hill Park) were gifted (by the shareholder) to ultimate holding company.*
- 2. No income accrue of arise because it is internal matter between subsidiary and holding company.*
- 3. Accordingly, whether it is gift or any other transfer. it hardly matters.*
- 4. The decision is circumscribed within the short perimeter of decision of Gift Tax Act and Section 47(iii) of the IT Act.*

It is respectfully submitted that the .62cts of DP World Private Limited are as under:

- 1. The assessee, DP World Private Limited received shares of Hill Park representing three residential flats at Hill Park from M/s. British India Steam Navigation Co. (BISNCL)*
- 2. Both assessee and Mts. .BISNCL are 100% subsidy of Peninsular & Oriental Steam Navigation Co., UK.*
- 3. Peninsular & Oriental Steam Navigation Co., UK. is 100% subsidy of DP World Ltd., a Dubai.*
- 4. In the light of the above fact, the /10 asked the assessee to explain why the receipt of the flats at Hill park should not be treated as income in its hand u/s. 56(1) of the Act.*
- 5. The assessee filed a detailed reply dt. 2.12.2010 explaining the nature of transaction and claimed that the transaction is a gift of shares and therefore it is a capital receipt in the hands of the assessee.*
- 6. The AO was of the opinion that a gift cannot be logically made by one artificial juridical entity to another because the basic condition of love and affection for making gifts does not exist between such artificial entities which are emotion neutral.*
- 7. Accordingly AO taxed the income under the head 'Income from other sources' u/s 56(7) of the Act.*

In view of the above facts, with due respect, it is submitted that the AO has proceeded on the basis of incorrect facts as the transaction in the instant case was not between ha/ding and subsidiary company but it was between two fellow subsidiary companies. The AO further proceeded to narrate that the decision is circumscribed within the short perimeter of decision of Gift Tax Act and Section 47(iii) of the IT Act. It is respectfully submitted that application of provisions of Section 476th), if at all, to be seen, it will be in the case of ,141s. British India Steam Navigation Co., the transferor and not in the case of DP

World Pvt. Ltd., the transferee.

The substantial ground of AO while making addition and considering gift as income was the Company being artificial person, there cannot be love and affection among artificial persons and accordingly the money received is not gift but the same is income, the AO, in his submission, contentiously ignored following observations of Hon'ble ITAA at

Para 13 which is summarised as under:

"There is no requirement in the Transfer of Property Act that a 'gift' can be made only between natural persons out of natural love and affection which means that as long as a donor company is permitted by its Memorandum /Articles of Association to make a 'gift' it can do so."

Para 16 which is summarised as under:

'the definition given u/s 122 of the TPA has to be accepted, meaning thereby that meaning of gift reflect non -element of love and affection."

Para 17 which is summarised as under.'

It would not be out of place to mention that a combined reading of Sec. 82 of the Companies Act; Section 5 and Section 122 of the TPA suggest that a company can validly transit's the shares by way of gift, provided where Memorandum /Articles of Association of the donor company permits the same

The AO further mentioned that receipt of dividend cannot be given exemption in the hands of Appellant. It is respectfully submitted that Dividend is source of fund out of which the gift is given as far as the companies giving gift is concerned. However, the Appellant has never claimed that the receipt is exempt as the same is dividend. The claim of the Appellant is that it has received gift and the same is capital receipt and is not subject to tax. Thus the claim of Appellant is-'

1. It has received a gift (and not dividend)

It is capital receipt (and not exempt income).

While narrating his disagreement, as regards decision of Karnataka High Court in the case of Nadatur Holdings & investments Private Limited he observed as under:

1. The issue before Hon'ble Karnatak High Court was that "whether income arising from sale of shares is capital gain or business income, while in the case of assessee under reference, there is nothing of such sort.

It is respectfully submitted the Appellant relied on the facts and various observations of Honble High Court and facts of Nadatur Holdings & Investments Private Limited are as under:

1. Two Directors of the Nadatur Holdings & Investments Private Limited, i.e. NS.Raghavan and his wife Jamna Raghavan gifted 25000 shares of Infosys Technologies Limited.

2. *The Assessee treated those shares as investment and on sale, computed income from Capital Gain.*

3. *The Assessing Officer by his order dated 24-2-2003 has assessed the same as income from profit and gain of business.*

4. *While doing so*

a. *the Assessing Authority doubted the • transaction of gift stating that in a transaction of gift, the principal element is natural love and affection to the donee.*

b. *The company is an artificial juridical person, which is identified by the owner's i.e., share holders who are themselves are the Directors of the Company, such love and affection to a artificial, juridical person is imaginary High Court, while dealing with the issue noted the observation of AO which as under:*

1. *The gift is in accordance with law and there is no bar for the Directors gifting their holdings in favour of the Company.*

2. *The finding of the Assessing Authority that the gift is not genuine is totally contrary to law.*

After noting the observation of CIT(A), it held that:

There is no bar for gifting the equity shares to its company As per the definition of gift, the gift means transfer by one person to another of existing moveable or immovable property made voluntarily and without consideration and includes deemed transfer or conversion of any property.

We find nothing wrong in gifting the shares in favour of the company by its shareholders.

Thus the Appellant relied on the observation of Honble High Court that the Company can receive gift.

In view of our above submission and various judicial pronouncements relied upon the Appellant submits that gift received by the Appellant of Rs.161,86,77,034/- is a capital receipt and has correctly been credited to capital reserve by the Appellant in its books of account,' hence being a capital receipt the same is not taxable under the provisions of the Income Tax Act. Further the gift received has correctly been credited to capital reserve account and the same cannot be added to book profit u/s 115JB of the Act in absence of any such adjustment specifically provided in the section."

7. After considering assessment orders, remand reports and the rejoinders filed by assessee, the CIT(A) deleted the addition made on account of gifts after having the following observations :

5. *I have considered the facts of the case and submissions of the assessee. The assessee has claimed to have received gifts from four concerns totaling to Rs.1,61,86,77,034/-, details of which has been given earlier in this order. For claiming any amount to have been received as gift, assessee has to prove the following three elements:*

i. *Identity of the do-nor*

ii. *Capacity of the donor or the source of the amount gifted*

iii *The genuineness of the transaction*

- 5.1 *The identity of all the four concerns who have made gifts to the assessee is given along with their name, PAN, address and other detail and, therefore, the identity of these concerns is proved. Even the A.O. has not disputed the identity of any of these concerns. With regard to source or capacity also there is no dispute, because assessee has received these gifts, directly on account of the dividends of donor companies from Reliance Industries Ltd., as per the directions of the donor companies. Even the shareholding of the donor companies in Reliance Industries Ltd. is not in dispute and, therefore, there is no dispute as for as the identity and capacity/source of gifts are concerned.*
- 5.2 *The only dispute relates to the genuineness of the transaction. The A.O. has held in the assessment order and in remand report, that it is a dubious transaction and such gifts are used as means for bringing the unaccounted money into the books of the assessee by avoiding tax payment and it is further held that the assessee has ulterior motives, whereas, the exact nature or motive behind the transactions are not ascertainable with the limited time and resources available to the A.O. The A.O. has also claimed that the companies are not capable of giving gifts, because there is no love and affection which is required for gift transactions. It is also claimed that the gifts are not evidenced by deeds and they have not been accepted. These issues are discussed as follows:*
- 5.3 *The suspicion or the presumption of the AO that the transaction of gift is dubious and to bring in books the unaccounted money is contrary to the facts of the case, because in this case, admittedly the gifts have been received on account of the dividend of the donor companies from Reliance Industries Ltd. therefore, the Reliance Industries Ltd. have paid necessary dividend distribution tax on dividend distribution and, therefore, such money received by the assessee is not unaccounted money, whereas, it has been properly accounted for and necessary taxes paid, therefore, there is no case of introducing unaccounted money in the books of account of the assessee-company. Even otherwise, more doubt or suspicion cannot be the basis for making any addition or rejecting the claim of the assessee. Doubt and suspicion may lead to inquiry or investigation and, therefore, A.O. should have brought out facts or evidences contrary to the claim of the assessee on record, either during assessment proceedings or remand proceedings. Whereas, A.O. has not been able to bring out any other fact or evidence contrary to the claim of the assessee even after being allowed further -opportunity and time by way of remanding the case to him. Therefore, A.O. could not refute the claim of the assessee on the basis of any contrary fact or evidence. Hence, the claim cannot be rejected merely on the basis of doubt and suspicion. The additions cannot be made or decision cannot be taken on the basis of suspicion, assumptions, surmises, doubts or misconceptions, as has also been held by Hon'ble judicial authorities in many cases, out of which few are as follows:-*

(i) *Omar Salay Mohamed Sait. vs. CIT - 37 ITR 151 (SC).*

- (ii) *Bhogilal H. Patel vs. CIT -- 74 ITR 692 (Born).*
- (iii) *German Remedies Ltd. vs. DCIT- 285 ITR 26 (Born).*
- (iv) *Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288 (SC).*
- (v) *Dhakeshwari Cotton Mills Ltd. vs. CIT- 26 ITR 775 (SC).*
- (vi) *Gordhandas Hargovandas & Anr. vs. CIT - 126 ITR 560 (Born).*
- (vii) *ITO vs. W.D. Estate Pvt. Ltd. - 45 ITD 473 (Bombay 'E' Bench)*
- (viii) *Bhilai Motors vs. CI^T. 167 ITR 147 (MP).*
- (ix) *N.V. Philips Gloeilempenfabriekem vs. CIT 172 ITR 541 (KOL)*

5.4. *With regard to the motive behind the transactions, assessee has calimed them as gifts and, therefore, it is for the AO to bring on record any contrary motive or facts to refute the claim of the assessee. AO has stated in para 8 of the assessment order that it could not ascertain the exact nature or motive behind the transaction because of limited time and resources available, whereas, the case was remanded to the A.O. and an opportunity was again given with the specific direction to find out the nature and motive behind these transactions or gifts, whereas, A.O. could not find out any other motive behind such transactions and. merely claimed in the remand report that assessee has not furnished any clear and distinctive motive with regard to these transactions and the exact nature and motive is best known to the assessee. But merely blaming the assessee that it is not furnishing the correct motive is putting the cart before the horse. Assessee has claimed clearly and categorically that it has received these amounts as gifts and, therefore, it is for the A.O. to bring on record any other contrary motive and if he fails to do so then there is no alternative but to accept the claim of the assessee that these are gifts. A.O. has stated in the remand report that motive appears to be transfer of money from one company to another without payment of tax, but in case of gifts the asset is naturally transferred from donor to donee and taxes will be levied as applicable and therefore, there is nothing wrong or unusual in the gift transactions of the assessee. Therefore, in view of the facts and circumstances of the case it cannot be said that there is any other motive behind these transactions other than gifts.*

5.5 *The A.O. has held that these transactions cannot be treated as gifts because there are no gift deeds and because they have not been specifically accepted, whereas, there is no such legal requirement for making a gift. Even by simple delivery the gift can be made of an amount or cheque or other movable property. Whereas, in the case of the assessee, letters certifying the gifts with corresponding resolution of their board have been furnished before the A.O. During appellate proceedings assessee has also filed affidavits from all the four donor companies, certifying the gifts. Assessee has also filed its affidavit for certifying the receipt of gifts. Receipt of gift as well as making of gift are authorized by respective Memorandum and Articles of Association of the companies and the assessee. Gifts have been accepted by the assessee by adopting a resolution by the Board of Directors. Therefore, it cannot be said that these amounts are not gifts merely on the basis that there are no gift deeds or acceptance.*

5.6 Coming to the two issues, whether companies can make gift or not and whether natural love and affection is necessary for gift or not. Assessee has claimed that the companies are competent to make and accept gifts and no natural love and affection is necessary. In this regard, besides its arguments, assessee has relied on the decision of Hon'ble TAT in the case of D.P. World Pvt. Ltd. vs. DCIT ITA No. 3627 and 38411Mum12012, Mumbai 'D' Bench, order dated 12/10/12. In fact, this is the order of Hon'ble ITAT against my own order as CIT(A). The issues involved in this case were similar to the issue involved in the case of the assessee under consideration. In brief the facts of D.P. World's case are that one company gifted three flats by way of gifting shares of the concerned housing society to another company and both the companies were subsidiary of a third company, whereas, there was no business transaction between the donor and donee companies. The A.O. rejected the claim of gift and assessed the value of such flats as declared in Wealth Tax return by the assessee company, under the head 'income from other sources'. Whereas, CIT(A) found that it is not taxable under the head income from other sources, but held it taxable under the head business income u/s. 28(iv) of I.T. Act, at the amount at which stamp duty has been paid. Whereas, Hon'ble ITAT held that the companies are competent to make gifts and further held that the gifts made of the three flats is neither taxable under the head income from other sources, nor under the head business income u/s. 28(iv) and held that the receipt is a capital receipt not taxable. Besides relying on the judgment of Hon'ble ITAT in the case of D.P. World Pvt. Ltd., because the facts of the cases are similar, the assessee has further claimed that the decision is binding on the CIT(A)-4, Mumbai, because it pertains to the same charge of CIT(A)-4, Mumbai. Therefore, the relevant portion of the Hon'ble ITAT on the issue of requirement of natural love and affection and competency of companies to make gift are reproduced below:

“8. It is not uncommon that transfer of shares between corporate groups takes place for internal reorganization. Such a transfer may trigger capital gains ramifications in India since the shares of an Indian company are situated in India and when the transferor is a non-resident, the deeming provisions of Sec.9(i)(i) of the Act, 1961 come into play. However Sec. 47(iii) contains list of transactions which are not treated as transfers for the purposes of Sec. 45 of the Act. Sec. 47(11.) of the Act relates to transfer of a capital asset under a gift, will or an irrevocable trust. The following issues arise in the application of Sec. 47(11.) of the Act in a corporate reorganization involving transfer of shares of an Indian Company without consideration

(a) Since the term "Gift" is not defined in the Act, which provisions should be ascribed to it and

(b) Can a company being a corporate entity make a gift?

9. As gift is not defined under the Act, the Sale of Goods Act, Companies Act and the Indian Contract Act, a reference is made to the Gift Tax Act, 1958 (1958-79) and the Transfer of Property Act, 1882 (TPA).

10. GTA was in force with respect to gifts made till 1st October, 1998. Section 2 (xii) of the GTA defined gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration

in money or moneys worth and includes the transfer or conversion of any property referred to in section 4 deemed to be a gift under that section. Transfer of property for inadequate consideration was Inter alia treated as deemed as gift. This is similar to section 56(vii)(v) of the I. T Act which under certain circumstances, treat the difference between the fair market value of the movable property (including shares of closely held company) and the consideration for the transfer as in come from other sources of the recipient of such movable property.

11. *Section 5 of the TPA provides that transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act. It also provides that 'living persons' includes a company of association or body of individuals, whether incorporated or not but nothing herein contained shall affect any law for the time being in force relating to transfer to property to or by companies, associations or bodies of individuals.*
12. *Section 122 of the TPA, dealing with gift, defines the same as transfer of certain existing movable or immovable property, made voluntarily and without consideration, by one person, called the donor to another called the donee and accepted by or on behalf of the donee.*
13. *A perusal of the aforesaid provisions of the TPA indicate that there do not seem to be any restriction on the corporate transfer of shares by way of gift provided it is made voluntarily and without consideration. In other words, there is no requirement in the TPA that a 'gift' can be made only between natural persons out of natural love and affection which means that as long as a donor company is permitted by its Articles of Association to make a 'gift', it can do so. Sec 82 of the Companies Act, 1956 also provide that shares in a company constitute movable property transferable in the manner provided by its Articles of Association.*
14. *Now the question arises whether the meaning of 'gift' as per Gift Tax Act could be imported for the purpose of Sec. 47(i) of the Act. In the case of CIT Vs Sliyam Narain Mehrotra (1981) 122 ITR 313 (Cal), the High Court inter alia observed that the expressions similar to Sec. 47(i) of the Act was present in the erstwhile Sec. 12B of the Indian Income Tax Act, 1922 i.e. even before the GTA came into force. This observation of the Honble High Court suggest that meaning of 'gift' as per GTA should not be imported for the purpose of Sec. 47(i) of the Act.*
15. *Similar view has taken in the case of ITO Vs Burag-adda Satyanarayan (1977) 106 ITR 333 640 and ACIT Vs Ranga Pai (1975) 100 ITR 413 (Kar). Although there are other decisions to the contrary however these decisions may not strictly hold good since the GTA has been deleted w.e.t: 1.10.19.98 and Sec. 47(iii) of the Act continues in its original form.*
16. *Considering the above discussion, the definition given u/s 122 of the TPA has to be accepted, meaning thereby that meaning of gift reflect non- element of love and affection. Therefore, gift of shares of an Indian Company by a foreign company without consideration has to be treated as gift within the meaning of Sec. 47(i) of the Act.*
17. *It would not be out of place to mention that a combined reading of Sec. 82 of the Companies Act, Section 5 and Section 122 of the TPA suggest that a company can*

validly transfer the shares by way of gift, provided where Articles of Association of the donor company permits the same. In case of donor is a foreign company, the relevant corporate/commercial law of the jurisdiction where the donor is based needs to be considered. In the light of the above discussion, we have no hesitation to hold that a company can gift shares and such transaction may appear as 'strange' transaction but cannot be treated as "non - genuine" transaction."

In view of the above discussion and decision of Hon'ble ITAT it is clear that the companies are competent to make and receive gifts and natural love and affection are not the necessary requirements. The only requirement for a gift by a corporate entity to another corporate entity is that they are authorized to do so by their Memorandum and Articles of Association. As mentioned earlier the assessee and the donor companies are authorized in this regard for receiving and making gifts respectively by their Memorandum and Articles of Association. The position regarding the competency of corporate entities to make and receive gifts has also been upheld in the following cases, on which assessee has relied during appellate proceedings:

(i) CIT vs Groz-Beckert Saboo Ltd [116 ITR 125]

In this case, the appellant, a company, received capital asset as gift from one of its collaborator. fn propounding its decision the Hon'ble Supreme Court did not question the validity of a corporate giving or receiving gifts.

(ii) M/s. SET]ndia Private Limited 3 ITR 454 (Mum) (Trib):

In the said case, the SET (supra) had received gift from its parents company, the said gift has been held to be non -taxable as it was in the nature of capital receipt.

(iii) Essar Technologies [ITA No 1 79,Mum/20051.

The Hon 'Mc Mumbai ITA T has not challenged the validity of one corporate gifting to another.

(iv)CIT Vs Ste warts & lloyds of India Ltd. 165 ITR 416 ('Gal):

The Hon 'bin High Court has accepted the legality of the corporate gifts.

(v) Deere & Co. 64AJ? of2010 dated 27May20]]

(vi) Goodyear Tire and Rubber Company 64AR 1006 of 2010) dated 2 May 2011

(vii) Dana Corporation 321 ITR 178 (4AR)

(viii) Amiantit International Hondings Ltd. 322 ITR 678 (AAR)

(ix)Vodafone Essar (2011 –TII-01 –HC-De-CA)

In addition to the above discussion and case laws, it is provided by the provisions of Income-tax Act itself that companies can make and receive gifts. As per section 56(2)(viia) and 56(2)(viib), gift of certain kind of shares received by a company in which the public are not substantially interested are taxable and, therefore, it is clear that the Income-tax Act, itself provides that companies can receive gifts, of course, gifts of only shares of certain kind received by certain category of companies are taxable. (The provisions of section 56(2)(viia) and (viib) are applicable w.e.f. 1/6/10 and 1/4/13 respectively). Similarly section 80G allows deduction to companies also on the donations received by the companies.

Therefore, it cannot be said that the assessee could not have received such gifts from other companies. It is clear from the Gift Tax Act, 1958, now repealed that gifts were taxable in the hands of the companies also. It is also clear from the Transfer of Property Act that companies can receive and make gifts as submitted by the assessee and discussed above and there is no requirement of any natural love and affection for making or receiving a gift by companies. Even the present Income-tax Act by way of Section 56(2)(viia) and 56(2)(viib) provides that gifts of certain kind of shares are taxable in the hands of certain category of companies. The donations and charities are made and allowed to all type of companies. Even deduction u/s 80G of income tax Act is allowed on account of donation to companies. These charities and donations, which are allowed to companies, are nothing but gifts. Even the Companies Act allows companies with charitable purpose to be registered u/s.25 of the Companies Act and such companies are naturally allowed to accept gifts and donations. Therefore, the companies are competent to receive and make gifts. All the three requirements of a valid gift, viz, identity of the donor, capacity/source and the genuineness) stands proved in the case of the assessee. All the donor companies and the assessee are authorized by their Memorandum and Articles of Association for giving and receiving gifts. Proper resolution in the Board Meeting have been passed by all the four companies for making the gift to the assessee and assessee, has also accepted the said gifts by way of adopting a resolution in the meeting of Board of Directors. Therefore, the element of gifts i.e. delivery, donative intent-4 and acceptance by the donee are present in the transactions of gifts received by the assessee.

Therefore, in view of the above discussion, submission of the assessee, case laws and in particular the decision of Hon'ble ITAT in the case of D.P. World (supra), it is held that the amounts received by the assessee-company from the said four concerns totaling to Rs.161,86,77,034/- are valid gifts.

5.7 Nature of receipts of gifts:

Though the A.O. has not disputed that the gifts are not capital receipts, whereas. A.O. has assessed them under the head 'other sources' only because the A.O. has held that these receipts are not gifts because companies cannot accept gifts and there is no love and affection, but it has already been held that these are valid gifts. But it is still relevant to discuss the nature of the gifts. The Gifts

received by the assessee are admittedly not arising during the course of business or profession of the assessee. They are not out of any compulsion on the donors. They are not on account of compensation for any source of income or any other transaction. There is no other element of income in the receipts by the assessee from the said four companies. In the case of *D.P. World (supra)*, Hon^{ble} 'TAT has held that such gifts are capital receipts. It was also held in the case of *ACIT vs. Set India Pvt. Ltd.* [2010] 3 ITR, Trib 454 (Mum), that there was no material for the Department to come to the conclusion, that there had been any element of income in the receipts. In this case, both the donor-shareholder and the assessee-company were engaged in the business of T.V. Marketing. This view is also confirmed by the decision of Hon^{ble} Supreme Court in the case of *CIT vs. Groz-Beckert Saboo Ltd.* 116 TR 125 (SC). Therefore, the receipts of these gifts by the assessee are capital receipts. This view is also supported by the following case laws as claimed by the assessee:-

- 1) *11H. Maharani Shri Vijay kuverba Saheb of Morvi & Anr Vs. CIT* [49 ITR 594](Bombay):
- 2) *CIT Vs. Pran Jiban Jaitha* [52 ITR 108] (Calcutta):
- 3) *Lachit Films vs. CIT* [195 ITR 402] (Gauhati):
- 4) *Padmaraje R. Kadambande Vs. CIT* 195 ITR 877] (Supreme Court):
- 5) *CIT Vs. Ramdeo Samadhi* [160 ITR 179](Rajasthan)
- 6) *Mehboob Productions Private Ltd. Vs. CIT* [106 ITR 7581](Bombay)
7. *CTT Vs. Groz - Beckert Saboo Ltd* [116 ITR 125]

6. **Taxability of gifts:**

Now it will be relevant to discuss whether such gifts are taxable at all under any provisions of the I.T. Act. In this regard, A.O. has assessed it under the head "income from other sources" u/s. 56 of the I.T. Act. It is also relevant to examine, if such amount can be assessed as income u/s. 28(iv) or as deemed dividend u/s. 2(22)(e) of I.T. Act or as unexplained cash credit u/s. 68 of the I.T. Act or under any other provisions of the I.T. Act, for which discussion is made as follows:

6.1 (a.) - Taxation u/s. 56 of I.T. Act as gift or as income from other sources:

The issue may be considered for taxation u/s. 56 of I.T. Act with reference to two aspects:

- (i) Whether gift received by the assessee-company is taxable as gift u/s.56 of the I.T. Act and
- (ii) Whether such gifts are taxable under the head " income from other sources" as the residuary head of income, because it may not be taxable

under any other head of the income.

The A.O. has assessed it under the head "income from other sources" holding that assessee has failed to prove that the amount received is exempt from taxation. Though no specific reason has been given by the AO. for assessing it under the head income from other sources, but it is clear from the discussion and decision of the A.O. that it has been assessed under the head "income from other sources" because it was found not taxable under any other head of income, therefore, assessed under the residuary head of income, "income from other sources."

6.2 Taxability of gift w/s. 56 of I.T. Act:

Coming to the first aspect of taxability of the gifts, after the Gift Tax Act, 1958, is repealed in 1998, there was no tax on gifts either on the donor or on the donee in any form under the Income Tax Act or any other Act. it is only with the amendment of section 56 w.e.f. 1/4/05 by Finance (No.2) Act, 2004, by introducing clause (v) in sub-section 2 of section 56 that receipt of gifts by an individual and HUF became taxable in the hands of the donee, whereas, gifts received by any other person remained out of tax net. Whereas, with the introduction of clause (viiia) and (viiib) in sub-section 2 of section 56 w.e.f. 1/6/2010 and 1/4/2013 respectively, gift of only shares of certain category of companies by certain category of companies have become taxable and any other gift received by any company through any other mode, i.e. cash, cheque, listed shares or other kind of properties, other than the said certain category of shares is not taxable till date, under any provisions of the Income Tax Act.

Even the legislative history shows that gifts received by companies other than certain kind of shares by certain category of companies mentioned under section 56(2)(viiia) and (viiib) are not taxable under Income-tax Act or any other Act. During the period, when Gift Tax Act was in existence, gifts by companies as well as by any other person were taxable under the Gift Tax Act only and there was no provision for taxing gifts under the Income-tax Act. Therefore, gifts were not separately taxed under any provisions of the Income- tax Act during the period when the Gift Tax Act was in existence and the question of taxing the gifts separately under Income-tax Act, did not arise. When the Gift Tax Act was repealed in 1998, legislature indicated its intention that the gifts will be no more taxable under the Gift Tax Act, but no corresponding change was made under the Income-tax Act and, therefore, taxability of gift remained outside the tax net for a long time until section 56(2) was amended for bringing tax on gifts received by individuals and HUFs with certain conditions with effect from 01.04.2005. Therefore, legislature again indicated its intention that certain gifts received by individuals and HUFs only will be taxed under the Income-tax, in the hands of the recipient, but gifts received by companies or any other person other than

individuals and HUFs were not brought under the tax net. With the passage of time, it was realized that certain kind of transactions of transfer of certain kind of shares by certain category of companies only further need to be taxed and accordingly the -legislature brought provisions of section 56(2)(viiia) and 56(2)(viiib) of Income-tax Act in the statute with effect from 01/06/2010 and 01.04.2013 respectively, but any other gift by companies or any other person other than individual and HUF still left outside the tax net.

Therefore, the amount received by the assessee is not taxable as gift u/s. 56 of Income Tax Act or any other provisions of the Income Tax Act.

6.3 Taxability under the head "income from other sources" u/s. 56 of I.T. Act and (b) - u/s. 28(iv) of IT. Act:

*The A.O. has assessed it under the head income from other sources. A similar issue has already been examined and decided by me **in** the case of D.P. World Pvt. Ltd., as discussed earlier, in which similar kind of gift of flats was assessed by the A.O. under the head "income from other sources" and I had decided that it is not taxable under the head income from other sources, but assessable u/s. 28(iv) of Income-tax Act, on the basis of the business connection through the holding company. Whereas, the CIT and the assessee filed appeal against my decision before Hon'ble ITAT and Hon'ble ITAT has held that such gifts are neither taxable u/s. 28(iv) of Income Tax Act nor under the head income from other sources" u/s. 56 of Income Tax Act. As discussed and decided above the gifts are in the nature of capital receipts and, therefore, they are not taxable as income unless such gifts are made taxable specifically by way of special provisions, as has been made in case of individual/HUF gifts and certain other gifts u/s. 56(2)(v), (vi), (vii), (viiia) and (viiib) of I.T. Act. Section 56 is a residuary section which -means that any other income which is not specifically taxable under any other head of income can be brought to tax under the head "income from other sources", u/s. 56 of Income Tax Act. But the necessary condition is that it must be an income before being taxed u/s. 56, whereas, as discussed and decided above, these receipts are gifts which are capital receipt in the hands of the assessee and not an income and, therefore, it cannot be taxed under residuary head of income.*

U/s. 28(iv) also certain kind of receipts which may appear to be in the nature of gifts have been made taxable, i.e. any benefit or perquisite whether convertible into money or not and arising from business or the exercise of a profession. Therefore, such perquisite, benefit or receipt which arises from the business or from exercise of a profession can only be taxed u/s. 28(iv). In the case of the assessee, admittedly, there is no business relation or business transaction between the assessee and the four donor companies from whom the gifts have been received and, therefore, the amount received from the said

four companies cannot be brought to tax u/s. 28(iv) of Income-tax Act. This issue has also been discussed by Hon'ble ITAT in the case of D.P. World Pvt. Ltd. (supra) and it has been held that such gifts are capital receipts and they are not taxable either under the head "income from other sources" or section 28(iv) of Income Tax Act. The relevant portion of the decision is reproduced below:

"19. The AO has applied the provisions of Sec. 56 and treated the value of the flats as income under the head 'income from other sources' and the La'. CIT(A) has made the addition U/S. 2860 of the Act by treating the Stamp Duty value as income from profit and gains from business and profession.

20. . We have carefully considered both the provisions. Let us first examine the provisions of sec.28(iv) of the Act relied upon by the CIT [A].

28. Profits and gains of business or profession. "The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession ""

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;"

In our humble opinion, the transaction is of a gift which is a capital receipt in the hands of the assessee and therefore it cannot be said to be a case of any benefit or perquisite arising from business. The contention of the La'. Departmental Representative that by the said - transaction the assessee has derived benefit and such benefit has arisen from the business connection of the donor and the donee, cannot be accepted as no direct nexus has been established by any tangible material brought on record by the La'. CIT IA I. Simply because both the donor and the donee happened to belong to the same group cannot ipso facto - establish that they have any business dealings. As we have held that it is a case of a valid gift which is to be treated as capital receipt in the hands of the assessee, in the absence of any specific provision taxing a Gift as a deemed business income, provisions of sec.28(iv) cannot be applied on the facts of the case. The CIT [..4] erred in taxing the value of the stamp duty as income under sec.28(iv) of the Act.

21. Now let us examine the provisions of sec 56 of the Act relied upon by the AO.

"56. Income from other sources.--(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head 'Income from other sources' if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E."

A plain reading of the above provision shows that not every receipt is taxable under the head 'Income from other sources' but only those which can be shown as 'Income' can be brought to tax under this head, if it does not fall directly under other heads of income specified in sec. 14 of the Act.

The legislature keeping in mind the Tax Planning done by the Tax Payers by resorting to Gifts, which cannot be termed as income, made certain amendments by introducing clause (v) to sec. 56(2) which reads as under :

"v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, but before the 1st day of April, 2006, the whole of such "However such amendment did not take care of the transactions involved in the instant case. The legislature further

brought amendments as under:

(vii) where an individual or a Hindu undivided family receives in any previous year, from any person or persons on or after the 1st day of October, 2009,--

(a) any sum of money, without consideration; the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum ;

(b) any immovable property –

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property ;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration,

(c) any property, other than immovable property, --

(i) without consideration; the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property ;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that where the stamp duty value of immovable property as referred to in sub- clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 506', the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 506' and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections.

Even this amendment did not cover the issues involved in the present appeal . The legislature, in its wisdom, further strengthened the provisions of sec. 56(1) by making the following amendments: (viii) where a firm or a company not being a company in which the public are substantially interested, receives, in any person or persons on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested, -

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration.'

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (viii) or clause (ix) or clause (x) or clause (xi) or clause (xii) of section 47. Explanation. - For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);

The above amendment covers the issues involved in the present appeal but the legislature in its wisdom made it applicable for the transactions effected after the 1st day of June, 2010.

Certain lacuna may have still remained to be addressed therefore the legislature did not stop here but went on to make further amendments by inserting clause (viii) as under:

(viib) where a company; not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares.

Provided that this clause shall not apply where the consideration for issue of shares is received- (i) by a venture capital undertaking from a venture capital company or a venture capital fund or (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf

Explanation. For the purposes of this clause, - -

(a) the fair market value of the shares shall be the value - -

(i) as may be determined in accordance with such method as may be prescribed ;
or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher:

However this amendment has no direct bearing on the facts of the case in hand.

22. Thus we have considered the application of the provisions of sec. 28(iv) and sec 56(1) & (2) from all the possible angles on the facts of the case, in our humble opinion the transaction involved in the present appeal is nothing but a Gift and thus it is a capital receipt not taxable under the alleged provisions of the Act. Therefore, the Assessee Succeeds and Revenue fails. Issues involved in this ground are decided in favor of the assessee and against the Revenue."

Therefore, in view of the above discussion and decision of Hon'ble ITAT in case of D.P. World (supra), the gifts received by the assessee are capital receipts and not taxable u/s.56 of Income Tax Act or section 28(iv) of Income Tax Act.

6.4 (c) -U/s. 68 of Income Tax Act:

Section 68 deals exclusively with the subject of cash credits and places burden of proof squarely on the tax-payer, where he either offers no explanation or his explanation is unsatisfactory as to the nature and source of such cash credits. In such cases, it is for the assessee to prove the identity of the person from whom the money is received and his capacity/source of payment and the genuineness of the transaction. Therefore, in the case of the assessee also, it is expected from the assessee to prove all the three elements. The identity of the donors and the source/capacity are not in dispute and they have been admitted as explained, as discussed earlier in this order. The assessee has claimed these receipts as gifts and there is no other contrary fact on record, therefore, there can be no other doubt in accepting the genuineness of the transactions also. It has been held in the case of Shankar industries vs. CIT 114 ITR 689 (Cal) that prima-facie, it is for the assessee to prove the identity of the creditor, capacity of the creditor

and genuineness of the transaction, whereas, once the assessee has adduced evidence to establish prima-facie the aforesaid, the onus shifts to the Department and, therefore, it was for the A.O. to lead evidence contrary to the claim of the assessee because the assessee has provided details and evidence with regard to all the three elements. This view is also supported by the decision of Hon'ble M.P. High Court in the case of CIT vs. Metachem industries 245 ITR 160 (MP), where it was held that once the assessee explained the credit standing in the name of its partners, then it is open to the A.O. to undertake further investigation, but assessee cannot be asked further evidences. Hon'ble Gauhati High Court has held in the case of Khandelwal Constructions vs. CIT 227 ITR 900 (Gau) that before rejecting the assessee's explanation, A.O. must make proper inquiries and in the absence of proper inquiries, addition cannot be sustained. Whereas, in the case of the assessee A.O. has made sufficient efforts, but nothing contrary to the claim of the assessee could be brought on record. Therefore, in view of the above discussion and case laws, the provisions of section 68 cannot be applied to the case of the assessee.

6.5 (d) - U/s. 2(22)(e) of Income Tax Act:

Any loan or advance paid to a substantial shareholder with 10% interest in the company or to a concern in which such substantial shareholder has substantial interest (20%) is taxable to the extent of accumulated profits u/s. 2(22)(e) of Income-tax Act. Therefore, it is necessary to examine whether the amount paid by the four companies to the assessee company can be covered u/s. 2(22)(e) of income Tax Act. It is all the more relevant because A.O. has discussed and described in detail in the remand report, shareholding pattern of the assessee and other companies. Section 2(22)(e) reads as follows:

“Dividend includes,

(a).....

.....

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum, (whether as representing a part of the assets of the company or otherwise,) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest ('hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf or for the individual benefit, of any such shareholder to the extent to which the company in either case possesses accumulated profits;

.....

.....

Explanation 3. - For the purposes of this clause, -

(a) "Concern" means a Hindu undivided family or a firm or an association of persons or a body of individuals or a company,

(b) A person shall be deemed to have a substantial interest in a concern, other than a

company. if he is, at any time during the previous, beneficially entitled to not less than twenty percent of the income of such concern.

From the above definition and discussion. it is clear that there has to be an advance or loan given by a company to a. substantial shareholder with 10°/s interest or to a concern in which such shareholder is holding not less than 20% of the voting power/shares for taxing such loan u/s. 2(22)(e). Whereas, in the case under consideration, there is no common shareholding between the assessee and the other four companies who have made the gifts. Therefore, no addition can be considered in the case of the assessee u/s. 2(22)(e) of Income-tax Act. By way of giving detail in the remand report of different companies, A.O. has tried to show a certain kind of indirect and invisible control by certain persons. But for making any such payment to be taxable u/s. 2(22)(e), direct holding of required percentage of shares is necessary. On the other hand, it has been decided by certain appellate authorities that the recipient company should have direct holding, as registered and beneficial shareholders of the company from whom the payment have been received. Same is the decision of Hon'ble ITAT in the case of ACIT vs. Bhaumik Colours Pvt. Ltd. 118 ITD 15. Similar view has been confirmed b^y Hon'ble Bombay ITAT in the case of Universal Medicares Ltd. 190 Taxman 144, which has been confirmed b^y Hon'ble Bombay High Court. Similar is the decision of Hon'ble Delhi High Court in the case of CIT vs. Ankit.ech Pvt. Ltd. ITA No.462 of 2009, order dated 11/5/11. Therefore, these receipts cannot be assessee in the hands of the assessee u/s.2(22)(e) of I.T. Act.

6.6.(e)- Under any other head or provision of Income Tax Act:

Income-tax is a tax on income and on certain other receipts which may not be income, but they are specifically made taxable under specific provisions of I.T. Act. The receipts of gifts by the assessee are in the nature of capital receipts and, therefore, these are not taxable as income. Such receipts can be taxed under specific provisions only, whereas, presently there does not exist any such provision under which such gift by companies can be taxed. Therefore, until any such provision is brought under the I.T. Act on the same lines as has been brought u/s. 56(2) for individuals and HUE's and in case of certain kind of shares by certain category of companies, such receipts remain outside the tax net.

6.7 In view of the decision, discussion, submissions of the assessee, case laws and facts of the case, the receipts by the assessee from the said four companies totaling to Rs.161,86,77,034/- are held as gifts and capital receipts which are not taxable under the head income from other sources as assessed by the A.O. or any other provision as discussed. Therefore, the addition made by the A.O. to the income of the assessee of Rs.161,86,77,034/- is deleted and the grounds of appeal of the assessee are allowed.7.

Grounds No.7 and 8:

Both the grounds relate to the same issue i.e. computation of book-profit u/s. 115JB, therefore taken together.

8. The facts of the case are that A.O. has made addition of the gifts received by the assessee to the income of the assessee, while computing the income u/s. 115JB also holding that it is credit to profit and loss A/c. as an item of exceptional nature, which has been objected by the assessee and the submissions of the assessee on this issue are as follows:

"7. The Appellant further submits that as the gift received from corporate bodies are in the nature of capital receipt, the Appellant credited the gift received of Rs.161,86,77,034/- to capital reserve account instead of crediting to Profit & Loss Account. However the AO in the assessment order observed that the gift received of - Rs.161,86,77,034/- is required to be credited to Profit & Loss Account in terms of Part II of schedule VI of the companies Act — 1956. The AO therefore added Rs.161.86,77,034/- to the books profit of the Appellant computed u/s 115JB of the Act.

The Appellant submits that Part II of schedule VI of the Companies Act sets out requirements as to Profit & Loss Account as per which the Profit & Loss Accounts:

a) Shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account: and

b) Shall disclose every material feature, including credits or receipts and debits or expense in respect of non — recurring transactions or transactions of an exceptional nature.

The Appellant submits that Part II of schedule VI, require profit and loss Account to- disclose the result of the working of the Company and any credit or receipt relating to business whether recurring or non - recurring. The Appellant submits that by no stretch of imagination receipt of gift from corporate bodies can be considered as receipt related to business. The Appellant submits that the gift received from corporate bodies are in the nature of capital receipt and hence rightly credited to capital reserve account which is in accordance with Part II and Iii of Schedule VI of the companies Act - 1956. The Appellant submits that the said Balance sheet and Profit & Loss Account are audited and approved by the Statutory Auditor. The same were adopted by the shareholders in Annual general meeting and filed with the Registrar of Companies. After such approval and adoption of the Balance Sheet of income, the AO is not the authority to correct the accounts under the companies Act. In view of above the Appellant submits that the Assessing officer has no power to disturb the Profit & Loss Account while applying the provisions of section 115JB of the Act, except as provided and under the explanation 1 to section 115JB of the Act. In this connection for the proposition regarding the power of the assessing officer to

recast the accounts, the Appellant relied upon the judgment of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. Vs. CIT 1255 ITR 273]. In this case, the Supreme Court has observed that while looking into accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with respect to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by the Companies Act, scrutinized and certified by the statutory auditors, approved by the shareholders and filed before the Registrar of the Companies who has statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In the case of Apollo Tyres the question raised before the Hon'ble Supreme Court was;

"(i) Can an AO while assessing a company for income-tax under s. 115J of the IT Act question the correctness of the P&L a/c prepared by the assessee-company and certified by the statutory auditors of the company as having been prepared in accordance with the requirements of Parts II and III of Sch VI to the Companies Act?"

The Hon'ble Supreme Court in the case of Apollo Tyres (supra) thus observed as under.

"The above speech shows that the IT authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that s. 115J, was introduced in the IT Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own account. For the said purpose, s. 115J makes the income reflected in the company's books of accounts as the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Sch. VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an AO under the IT Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and will have to be approved & by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act,

we find it difficult to accept the argument of the Revenue that it is still open to the AO to re-scrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of Companies Act. In our opinion, reliance placed by the Revenue on sub-s. (1A) of s. 115J of the IT Act in support of the above contention is misplaced. Sub-s. (1A) of s. 115J does not empower the AO to embark upon a fresh inquiry in regard to the entries made in the books of

account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy- of income-tax. Beyond that; we do not think that the said sub-section empowers the authority under the IT Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of s. 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income- tax both maintained under the same Act. If the legislature intended the AO to reassess the company's income, then it would have stated in s. 115J that "income of the company as accepted by the AO. In the absence of the same and on the language of s. 1151, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the AO while computing the income under s. 1151 has only the power of examining whether the books of account are Certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to s.115J."

Based on these observations and findings, the Supreme Court has held that the AO while computing the income under section 115J has only the power to examine whether the books of accounts are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO therefore has the limited power of making increases and reductions as provided for in the Explanation to the said section. The Appellant further submits that Explanation to section 115JB of the Act is applicable only if the item of expense or income is debited or credited to the Profit & Loss Account. The Appellant submits that when the item of expense or income is not debited or credited to the Profit & Loss Account, Explanation to section 115JB of the Act cannot apply and hence no adjustment is required under that section to the books profit. The Appellant submits that in the case of the Appellant gift of Rs.161,86,77,034/- received from corporate bodies are not credited to the Profit & Loss Account and hence no adjustment is required to the book profit declared by the Appellant u/s 115JB of the Act.

Similar such issue has come up before the jurisdiction Hon'ble Bombay High Court in the case of CIT Vs. M/s Akshay textiles & Agencies Pvt. Ltd [304 ITR 4011 wherein the hon'ble Bombay High Court has held as under:

"C. Whether on the facts and in the circumstances of the case and in law,, the Hon'ble Tribunal was correct in upholding the order of the CIT(A) in holding

that the capital gains of Rs.19,74,489 are not to be taken into account while computing the profits liable to be taxed under s.115JB of the IT Act,1961 and that the decision of the Hon'ble Bombay High Court in CIT vs. Veekaylal Investment Co. (P) Ltd. (2001) 166 CTR (Bom) 96: (2001) 249 ITR 597 (Bom) was not applicable?'

2. Insofar as question "C" our attention is invited to the judgment of the Supreme court in Apollo Tyres Ltd. vs. CIT (2002) 174 CTR (SC) 521 . (2002) 255 ITR 273 (SC). The question framed therein which is similar to the question "C" has been answered in favour of the assessee and against the Revenue. In the light of that the question of law as framed would not arise."

The Appellant further rely upon the decision of Hon'ble Bombay High Court in the case of Kinetic Motor co. Ltd. Vs. Dy. CIT [262 ITR 330] wherein the hon'ble Bombay High Court has observed that it is not open for the AO to make any adjustment to the book profits beyond what is authorized by the definition given in Explanation to section 115J of the Income Tax Act, if the accounts are certified by the auditors.

The Appellant also rely upon the decision of jurisdictional Hon'ble ITAT Mumbai in the case of The DCIT Vs. M/s Arundhati Traders Pvt. Ltd & Ors in [ITA No. 6293/Mum/2006 & others] wherein the Hon'ble Tribunal has observed as under.

"21. Where the accounts are prepared and certified by the auditors, which in -turn are approved/adopted by the shareholders of the company and are filled before the Registrar of the companies, the Assessing Officer has no powers of disturbing the profits of business as held by the hon'ble Supreme Court in Apollo Tyres Ltd. Vs. CIT (5'upra.). Only power of the Assessing Officer is to make suitable adjustments to the profits of business under the Explanation to section 115 JB of the Act. The said adjustments are relatable to the profits and gains of business carried on by the assessee. Any gain arising on sale of investments, though taxable, may necessarily be not routed through Profit & Loss Account. We uphold the order of CIT(A) that no adjustments on account of gain on sale of nits of mutual fund is to be made while working out the book profits under Section 115JB of the Act. The grounds of appeal raised by the revenue are dismissed."

The A in the assessment order relied upon the decision of Honble Hyderabad ITA T Special Bench in the case of Rain Commodities Ltd. Vs. DCIT[40 SOT 265] to drawn conclusion against the Appellant. The Appellant submits that the facts in the case of the Rain commodities Ltd. (supra) are exactly opposite to the facts of the case of the Appellant. In fact the decision in the case of Rain commodities Ltd (supra) supports the contention of the Appellant. The Appellant submits that in the case of Rain Commodities Ltd (supra) the assessee prepared its Profit & Loss account in accordance with Part II and III of Schedule VI to the companies Act, 1956 showing profit before tax at Rs. 99.42 crores. Thereupon while computing book profits under section 115Jb, the assessee deducted a sum of Rs.149.77 crores from profit before tax of Rs.99. 42 crores on the ground that the

said sum represented capital gain arising to it on account of transfer of assets to its 100 percent subsidiary company which was exempt u/s 4760. The AO thus in the case of Rain commodities Ltd (supra) proceeded to computing the book profit u/s 115JB by taking the profit shown by the assessee, as per Profit & Loss Account prepared in accordance with Part II and III of Schedule VI to the Companies Act - 1956. The Honble Tribunal on these facts held that no adjustment to book profit can be made except otherwise than that is provided in section 1 15JB of the Act.

As against the above in the case of the Appellant, the Appellant has prepared Profit & Loss Account as per Part II and III of Schedule VI of the Companies Act and considered the same profit as base for computing the book profit u/s 115JB of the Act. However the AO did not accept the contention of the Appellant and proceeded to add gift received from corporate bodies of Rs.161,86,77,034/- in the nature of capital receipt to the book profit computed u/s.115JB of the Act.

The Appellant therefore submits that the facts in the case of the Appellant and that in the case of Rain Commodities Ltd (supra) are exactly opposite to each other. However in any view of the matter, the Appellant submits that the Hon'ble Special Bench in the case of Rain Commodities Ltd (supra) has observed as under:

24. It is undisputed fact that the long-term capital gain earned by the assessee is included in the net profit determined as per P&L a/c prepared as per Part II and Part III of Sch. VI to the Companies Act. In other words it is not the case of the assessee that the capital gain earned by the assessee was not included in the net profit determined as per P&L a/c of the assessee prepared under the Companies Act. As per the audited accounts of the assessee, the statutory auditors have reported that amongst others, that in their opinion, the P&L a/c and the balance sheet are in compliance with the Accounting Standards referred to in sub s. (3C) of s. 211 of the Companies Act, and further reported that the balance sheet and P&L a/c read together with the notes thereon, give the information required by the Companies Act, 1956 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted. As per audited P&L a/c, the assessee has included long-term capital gain. In the Notes on accounts, it is nowhere mentioned and claimed that though the long-term capital gain is included in the P&L a/c. but it is not includible in the net profit in terms of provisions of Part II and Part III of Sch. VI to the Companies Act or the accounting principles accepted under the Companies Act. Hence, it is not a case of the assessee that the long-term capital gain was not includible in the P&L a/c prepared in terms of Sch. VI to the Companies Act. Only in the computation of book profit under s. 115JB of the Act, the assessee claimed exclusion of long-term capital gain which is exempt under s. 4760 of the Act. It is due to fact that the assessee claimed deduction of long-term capital gain from book profit by virtue of being exempted income in the normal provisions of the Act and not because of the reason that the same was not includible in P&L a/c prepared under Part II and Part III of Sch. VI to the Companies Act. In the circumstances, when the assessee's themselves have included the capital gains

arising from sale of subsidiary in the profit and loss the same cannot be excluded under any of the Explanations under s. 115JB. At this point it is not necessary for us to dwell upon the situation, where the assessee has directly credited the profit on sale of asset to a reserve account. The proviso to s. 115JB prescribes that the accounting policies, Accounting Standards and the method and rates of depreciation adopted for preparing the book profits under s. 115J8 shall be the same as adopted for the purpose of preparing such accounts including P&L a/c and laid before the company at its annual general meeting. Therefore whatever accounting policy adopted for the purpose of preparing the P&L a/c laid before the company should be adopted for computing book profits under s. 115JB. Capital gains on sale of shares were included in computing the profits presented before the shareholders and the same should also be included in computing book profits under s.115JB."(Emphasis Supplied)

The Appellant submits that as can be observed from above, the findings of hon'ble Special bench of Tribunal clearly supports the contention of the Appellant. The Appellant therefore submits that the gift received of Rs.161,86,77,034/- by the Appellant from corporate bodies credited to capital reserves cannot be added to the book profit u/s 115JB of the Act more particularly when such adjustment to book profit is not provided in the section.

In view of our above submission and various judicial pronouncements relied upon the Appellant submits that gift received by the Appellant of Rs.161,86,77,034/- is a capital receipt and has correctly been credited to capital reserve by the Appellant in its books of account; hence being a capital receipt the same is not taxable under the provisions of the Income Tax Act, Further the gift received has correctly been credited to capital reserve account and the same cannot be added to book profit u/s.115JB of the Act in absence of any such adjustment specifically provided in the section."

I have considered the facts of the case and submissions of the assessee. The receipts of gifts have not been credited to profit and loss A/c. by the assessee and, therefore, it can be added to the book-profit only if it is provided by the provisions of section 115JB only as has been held by Hon'ble Supreme Court in the case of Apollo Tyres Ltd. vs. CIT 255 ITR 273 (SC). The receipts totaling to Rs.161,86,77,034/- are capital receipts as discussed and decided against the earlier grounds of appeal in this order, whereas, there is no requirement of Schedule VI to credit to profit and loss A/c. any capital receipt and, therefore, assessee has rightly taken them directly to the Balance-Sheet. Section 115JB does not prescribe any such item to be added to book-profit while computing the income u/s. 115JB, the items mentioned from (a) to (i) in explanation 1 to subsection 2 of section 115JB do not include any such item by which the book-profit is to be increased. Therefore, it cannot be added to the book-profit u/s. 115JB. Hence, the addition made by the A.O. to the book-profit of Rs. 161,86,77,034/- is deleted.

10. Ground No.9:

In this ground the assessee has disputed interest u/s. 234B and 234C, which are consequential in nature and, therefore, the A.O. is

directed to recompute the same after giving effect to this order.

11. Ground No.10:

12. Mere initiation of penalty does not give rise to any cause of grievance, therefore, the ground is rejected.

13. Ground No.11:

This ground of appeal is general in nature and requires no separate adjudication. Hence, it is treated as dismissed.

14. Ground No.12:

This ground of appeal is general in nature and requires no separate adjudication. Hence, it is treated as dismissed.

15. Ground No.13;

This ground of appeal is general in nature and require no separate adjudication. Hence, it is treated as dismissed.

16. In the result, the appeal is partly allowed.”

8. Against the above order of CIT(A) , the Revenue is in appeal before us.

9. Smt. S. Padmaja, CIT(DR) appeared on behalf of the Revenue and contended that receipt of a gift by a company from another set of companies is an unusual, typical and a curious transaction . The assessee has relied on the case of DP World (P) Ltd, 26 taxmann.com 163 wherein the Mumbai Tribunal in its order dt 12.10.2012 has held that a company can validly transfer shares by way of gift, provided Articles of Association of the donor company permit the same and such gift being capital receipt is not taxable unless it falls under sec. 56(2); this was held so on a combined reading of Sec 82 of the Companies Act, Sec 5 and Sec 122 of the TPA.

10. As per ld. CIT DR this case however did not discuss computation of book profit u/s 115 JB . Further , this case only involved transfer of shares (which was held as per sec 82 of Company's Act 1956 to constitute movable property transferable in the manner provided by its Articles of Association), whereas in the instant case, the Assessee Company has received gift from four companies who have directed that their dividend receivable be credited to the Assessee Company.

10. Our attention was invited to pp 2 of CIT A's order wherein it is stated that the four donor concerns are authorised by Memorandum and Articles of Association for making such gifts and the Assessee company is authorised for receiving such gifts. As per Id. DR clause 30 of Memorandum of Associations of the Appellant and of the donor companies provided as follows:

"To make and/or receive donations, gifts or income to or from such persons, institutions or Trusts, whether in cash or any other assets as may be thought to benefit the company or any other object of the company or otherwise expedient and also to remunerate any person or introducing or assessing in any manner the business of the company subject to the applicable provisions of Companies Act 1956".

11. Ld. CIT (DR) vehemently argued that this receipt is not as per the Memorandum of Association as the benefit to the company or any object of the company is not brought out in the resolution of Board. Therefore the facts of instant case are distinguishable from those of M/s DP World.

12. Reliance was placed by CIT(DR) to the decision of AAR dated 14.8.2012 in the case of M/s Orient Green Power Pvt. Ltd., wherein it was observed that in the context of Sec 47 (i) and (iii), the gift referred to is a gift by an individual or a joint Hindu family or a Human Agency. Sec47(iii) speaks of "any transfer of a capital asset under a gift, or will or an irrecoverable trust. Execution of a will involves a human agency. A gift by a corporation to a corporation (though a subsidiary or an associate enterprise, which is always claimed to be independent for tax purpose) is a strange transaction. To postulate that a corporation can give away its assets free to another even orally can only be aiding dubious attempts at avoidance of tax payable under the Act.

13. As per Id. CITDR, the submission of assessee to the effect that gift was always treated as non-taxable receipt in the hands of recipient till 31.03.2005, till the amendment of section 56(2)(1) by Finance Act No.2 of 2004 w.e.f.

01.04.2005, is an erroneous conclusion. Sec 56 falls under Chapter IV which is on "Computation of Income from other Sources".

Sec 56 (1) reads as follows:

"Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income -tax under the head "income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E."

Therefore, income which is not exempt i.e. not to be excluded from total income shall be chargeable under the Head income from other sources.

Sec 56(2) reads as follows: "In particular ,and without prejudice to the generality of the provisions of sub-section(1) , the following incomes, shall be chargeable to income-tax under the head "income from other sources", namely.... "

14. It was further submitted by Id. CIT DR that the assessee, cannot claim that sec 56 (2) (v)(vi)(vii) and (viia) specifically covers the instances of gifts which are taxable under the provisions of the Act and all other gifts received by an assessee other than those covered in above sections are not chargeable to tax being capital in nature. This Section does not define income chargeable to tax under the head "Income from other Sources" in an exhaustive manner. It is only illustrative. Further ,the onus of showing that a particular class of income is exempt from taxation lies on the assessee, which clearly has not been discharged in the instant case.

15. With reference assessee's reliance on the decision of the SC in the case of M/s Apollo Tyres, it was submitted by Id. DR that the SC held that while computing income under section 115J, Assessing Officer has been power of examining whether books of account are certified by authorities under Companies Act maintained in accordance with Companies Act and thereafter, he has limited power of making additions and reductions as provided for in Explanation to said section. However, this was in the context when account of

assessee company were certified by auditors as having been maintained in accordance with provisions of the Companies Act. This decision was rendered in the context of Sec 115J and not Sec 115JB. Therefore, reliance on this decision is misplaced.

16. Further reliance was placed on the decision of the Special Bench, ITAT Hyderabad in *Rain Commodities Ltd (20104 ITR (T) 551 Hyderabad SB)* wherein it was held that AO, while computing book profit of a company u/s 115JB , has only power of examining whether books of account are certified by authorities under Companies Act, 1956, as having been properly maintained in accordance with Companies Act and the Assessing Officer can rewrite the P & L Account if it is discovered that P & L Account is not drawn up in accordance with Parts II and Part III of Schedule VI to the Companies Act and if accounting policies, accounting standards are not adopted for preparing such accounts. The inescapable conclusion is that the book profits have to be calculated on the net profits computed as per parts II and III, of Schedule VI to the Companies Act, 1-956 and as adjusted by the amounts mentioned in the Explanation . No further rebates or deductions after such adjustments, notwithstanding away the fact whether any income is taxable or not under the normal provisions of the IT Act has to be added to the Book Profit as an extraordinary item as per accounting standard 5 II 8. Extraordinary items should be disclosed in the statement of profit and loss as a part of net profit or loss for the period. The nature and the amount of such extraordinary items should be separately disclosed in the statement of profit and loss in a manner that its impact on current profit or loss can be perceived".

17. Reliance was also placed in the case of *M/s Sumer Builders (P) Ltd.(2012) 50 SOT 198 (Mumbai)*, wherein ITAT Mumbai held that the Assessing Officer has powers to go behind accounts of a company and see as

to whether same have been prepared in accordance with requirements of Parts II and III of Schedule VI of Companies Act, 1956; it was also held that the Assessing Officer has rightly brought profit on sale of shares to taxation under MAT provisions of 115 JB when as per Accounting Standards and requirements of Parts II and III of Schedule VI of Companies Act, 1956 it was to be credited to profit and loss account.

18. In view of above contentions, ld. DR submitted that the P & L Account shall be rewritten and book profit shall be increased by the exceptional item as per extant Accounting Standards; in this case the exceptional item is receipt from four companies of Rs. 161,86,77,034 and this shall be added to book profit for calculation of MAT u/s 115JB of IT Act.

19. On the other hand, Shri Farooq Irani, appearing on behalf of assessee, contended that the gift received by the assessee from corporate bodies was in the nature of capital receipt, which was credited by the assessee to the capital reserve account in its books of accounts. In response to AO's query the assessee has filed all the relevant details before the AO during the assessment proceedings. He further submitted that all the donor companies were shareholders of the Reliance Industries limited from which they receive dividend income. The donor companies have given irrevocable instructions to the Reliance Industries to pay dividend directly to the assessee. It was further contended that accounts were prepared as per requirement of Companies Act, 1956, which had been audited and approved by the statutory auditor and also debited by the shareholders in the annual general meeting. As per ld. AR, no adjustment was required to be made to the book profit u/s.115JB on account of gift received by the assessee. He further contended that for a receipt to be taxable under the provisions of Act, it must necessarily be in the nature of an income or its taxability should have been specifically provided by the statute.

As per Id. AR gift received by one corporate bodies from another corporate body did not come within the ambit of income as contemplated u/s.2(24) of the Act or any other provisions of the Act. The gift so received were voluntarily payments made by the donor to the assessee. As per Id. AR provisions of section 56(2)(v), (vi), (vii) and (viia) specifically covers the instances of gifts which are taxable under the provisions of the Act; and all other gifts received by an assessee other than those covered in above sections are not chargeable to tax being capital in nature. In this connection Id. AR relied upon the following judicial pronouncements wherein the hon'ble courts have held that gift/ capital receipts without considerations are not in the nature of income and hence the same cannot be charged to tax under the provisions of the Income Tax Act.

- 1) H.H. Maharani Shri Vijaykuverba Saheb of Morvi & Anr Vs. CIT [49 ITR 594](Bombay)
- 2) CIT Vs. Pran Jiban Jaitha [52 ITR 108] (Calcutta):
- 3) Lachit Films Vs. CIT [195 ITR 402](Gauhati):
- 4) Padmaraje R. Kadambande Vs. CIT [195 ITR 877](Supreme Court):
- 5) CIT Vs. Ramdeo Samadhi [160 ITR 179](Rajasthan)
- Mehboob Productions Private Ltd. Vs. CIT [106 ITR 758](Bombay):

20. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **CIT Vs. Groz– Beckert Saboo Ltd [116 ITR 125]** wherein the Hon'ble Supreme Court has an occasion to consider the gift of raw material being stock in trade received by a company and its taxability under the Act. The Hon'ble Supreme Court has held that the gift of stock in trade received constituted a capital receipt in the hands of an assessee and on its conversion to stock in trade the market value as on the date of receipt of gift has to be allowed as deduction against the computation of taxable profit. The Supreme Court thus held the gift received being capital in nature and hence not chargeable to tax; on the contrary the market value of gift received was

allowed as deductible expense while computing the total taxable income. He further submitted that the suspicion or the presumption of the A.O. that the transaction of gift is dubious and to bring in books the unaccounted money is contrary to the facts of the case, because in this case, admittedly the gifts have been received on account of the dividend of the donor companies from Reliance Industries Ltd., therefore, the Reliance Industries Ltd. have paid necessary dividend distribution tax on dividend distribution and, therefore, such money received by the Respondent is not unaccounted money, whereas, it has been properly accounted for and necessary taxes paid, therefore, there is no case of introducing unaccounted money in the books of account of the Respondent-company. Even otherwise, mere doubt or suspicion cannot be the basis for making any addition or rejecting the claim of the Respondent. Doubt and suspicion may lead to inquiry or investigation and, therefore, A.O. should have brought out facts or evidences contrary to the claim of the assessee on record, either during assessment proceedings or remand proceedings. Whereas, A.O. has not been able to bring out any other fact or evidence contrary to the claim of the assessee even after being allowed further opportunity and time by way of remanding the case to him. Therefore, A.O. could not refute the claim of the assessee on the basis of any contrary fact or evidence. Hence, the claim cannot be rejected merely on the basis of doubt and suspicion. The additions cannot be made or decision cannot be taken on the basis of suspicion, assumptions, surmises, doubts or misconceptions, as has also been held by Hon'ble judicial authorities in many cases, out of which few are as follows:-

- (i) Omar Salay Mohamed Sait vs. CIT — 37 ITR 151 (SC).
- (ii) Bhogilal H. Patel vs. CIT — 74 ITR 692 (Bom).
- (iii) German Remedies Ltd. vs. DCIT - 285 ITR 26 (Bom).
- (iv) Lalchand Bhagat Ambica Ram vs. CIT - 37 ITR 288 (SC).
- (v) Dhakeshwari Cotton Mills Ltd. vs. CIT - 26 ITR 775 (SC).

- (vi) Gordhandas Hargovandas & Anr. vs. CIT — 126 ITR 560 (Bom).
- (vii) ITO vs. W.D. Estate Pvt. Ltd. - 45 ITD 473 (Bombay `E' Bench)
- (viii) Bhilai Motors vs. CIT - 167 ITR 147 (MP).
- (ix) N.V. Philips Gloeilampenfabriekem vs. CIT - 172 ITR 541 (Kol).

21. Our attention was invited to the decision of Hon'ble Supreme Court in the case of Parimiseti Seetharamamma vs. CIT (56 ITR 532), wherein it was held as under :

“By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable, because it fall within an exemption provided by the Act, lies upon the assessee.

Where the case of the assessee is that a receipt did not fall within the taxing provision, the source of the receipt is disclosed by the assessee and there is no dispute about the truth of that disclosure, the income tax authorities are not entitled to raise an inference that the receipt is assessable to income tax on the ground that the assessee has failed to lead all the evidence in support of his contention that it is not within the taxing provision.

Govindarajulu Mudaliar v. Commissioner of Income Tax [1958] 34 ITR 807 (S.C.) distinguished.

Commissioner of Income Tax v. Calcutta Agency Ltd. [1951] 19 ITR 191 (S.C.) referred to.

A conclusion recorded by the Tribunal by wrongly throwing the burden of proof upon the assessee cannot be regarded as binding upon the High Court in a reference under section 66 of the Income tax Act.

The assessee explained that the jewellery and amounts of money received by her in the relevant years were gifts made by S. the Maharani of Baroda. Relying on the following pieces of evidence, viz. (i) her

admission that she acted as the local agent of S for disbursing salaries to the servants of S, and (ii) that in a bill issued by a garage the assessee was described as the private secretary of S, and observing that she had failed to place before the income tax authorities all the evidence in support of her contention, the Appellate Tribunal held that what was given to the assessee by S was remuneration for services rendered or to be tendered :

Held, (i) that the burden of proof was wrongly placed by the Tribunal on the assessee;

(ii) on the facts, that the two circumstances relied on by the Tribunal did not establish that what was given by S to the assessee was remuneration for services rendered or to be rendered; and that what the assessee received was not assessable to tax. ”

22. Ld. AR further submitted that as per section 56(2)(viia) and 56(2)(viib), gift of certain kind of shares received by a company in which the public are not substantially interested are taxable and, therefore, it is clear that the Income-tax Act, itself provides that companies can receive gifts, of course, gifts of only shares of certain kind received by certain category of companies are taxable. (The provisions of section 56(2)(viia) and (viib) are applicable w.e.f. 1/6/10 and 1/4/13 respectively). Similarly section 80G allows deduction to companies also on the donations received by the companies. Therefore, it cannot be said that the assessee could not have received such gifts from other companies. It is clear from the Gift Tax Act, 1958, now repealed that gifts were taxable in the hands of the companies also. It is also clear from the Transfer of Property Act that companies can receive and make gifts as submitted by the assessee and discussed above and there is no requirement of any natural love and affection for making or receiving a gift by companies. Even the present Income-tax Act by way of Section 56(2)(viia) and 56(2)(viib) provides that gifts of certain kind of shares are taxable in the hands of certain category of companies. The donations and charities are made and allowed to all type of companies. Even

deduction u/s.80G of Income-tax Act is allowed on account of donations to companies. These charities and donations, which are allowed to companies, are nothing but gifts. Even the Companies Act allows companies with charitable purpose to be registered u/s.25 of the Companies Act and such companies are naturally allowed to accept gifts and donations. Therefore, the companies are competent to receive and make gifts. All the three requirements of a valid gift, viz. identity of the donor, capacity/source and the genuineness stands proved in the case of the assessee. All the donor companies and the assessee are authorized by their Memorandum and Articles of Association for giving and receiving gifts. Proper resolution in the Board Meeting have been passed by all the four companies for making the gift to the assessee and assessee has also accepted the said gifts by way of adopting a resolution in the meeting of Board of Directors. Therefore, the element of gifts i.e. delivery, donative intent and acceptance by the donee are present in the transactions of gifts received by the assessee.

23. As per Id. AR the amount of gift was received was neither taxable under Section 56 nor u/s.28(iv) nor u/s.2(22)(e) of the I.T.Act.

24. With regard to AO's action for taxing the gifts as book profit u/s.115JB, the contention of Id. AR was that Part II of schedule VI of the Companies Act sets out requirements as to Profit & Loss Account as per which the Profit & Loss Accounts:

- a. Shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and
- b. Shall disclose every material feature, including credits or receipts and debits or expense in respect of non — recurring transactions or transactions of an exceptional nature.

As per Id. AR, Part II of schedule VI, require profit and loss Account to disclose the result of the working of the Company and any credit or receipt relating to business whether recurring or non – recurring. By no stretch of imagination receipt of gift from corporate bodies can be considered as receipt related to business. The gift received from corporate bodies are in the nature of capital receipt and hence rightly credited to capital reserve account which is in accordance with Part II and III of Schedule VI of the Companies Act - 1956. The Balance sheet and Profit & Loss Account of assessee are audited and approved by the Statutory Auditor. The same were adopted by the shareholders in Annual general meeting and filed with the Registrar of Companies. After such approval and adoption of the Balance Sheet, the AO is not the authority to correct the accounts under the Companies Act. In view of above the Assessing officer has no power to disturb the Profit & Loss Account while applying the provisions of section 115JB of the Act, except as provided under the explanation 1 to section 115JB of the Act. In this connection for the proposition regarding the power of the assessing officer to recast the accounts, the reliance was placed upon the judgment of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. Vs. CIT (255 ITR 273). In this case, the Supreme Court has observed that while looking into accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with respect to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by the Companies Act, scrutinized and certified by the statutory auditors, approved by the shareholders and filed before the Registrar of the Companies who has statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In the case of Apollo Tyres the question raised before the Hon'ble Supreme Court was:

(i) Can an AO while assessing a company for income-tax under s. 115J of the IT Act question the correctness of the P&L a/c prepared by the Respondent-company and certified by the statutory auditors of the company as having been prepared in accordance with the requirements of Parts II and III of Sch. VI to the Companies Act"

The Honible Supreme Court in the case of Apollo Tyres(supra) thus observed as under.

"The above speech shows that the IT authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that s. 115J, was introduced in the IT Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own account. For the said purpose, s. 115J makes the income reflected in the companies books of accounts as the deemed income for the purpose of a assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Sch. VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an AO under the IT Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and. will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the Revenue that it is still open to the AO to re scrutinize this account and satisfy himself that these accounts have been maintained in accordance with the provisions of Companies Act. In our opinion, reliance placed by the Revenue on sub-s. (IA) of s. 115J of the IT Act in support of the above contention is misplaced. Sub-s. (IA) of s. 115J does not empower the AO to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers. the authority under the IT Act to

probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of s. 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income-tax both maintained under the same Act. If the legislature intended the AO to reassess the company's income, then it would have stated in s. 115J that "income of the company as accepted by the AO. In the absence of the same and on the language of s. 115J, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the AO while computing the income under s. 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to s. 115J."

25. Reliance was also placed on the decision of decision of jurisdictional Hon'ble ITAT, Mumbai in the case of The DCIT Vs. M/s Arundhatl Traders Pvt. Ltd & Ors in [ITA No. 6293/Mum/2006 & others] wherein the Hon'ble Tribunal has observed as under:

"21. Where the accounts are prepared and certified by the auditors, which in-turn are approved/adopted by the shareholders of the company and are filled before the Registrar of the Companies, the Assessing Officer has no powers of disturbing the profits of business as held by the Honble Supreme Court in Appollo Tyres Ltd. Vs. CIT (Supra). Only power of the Assessing Officer is to make: suitable adjustments to the profits of business under the Explanation to section 115JB of the Act. The said adjustments are relatable to the profits and gains of business carried on by the assessee. Any gain arising on sale of investments, though taxable, may necessarily be not routed through Profit & Loss Account. We uphold the order of CIT(A) that no adjustments on account of gain on sale of units of mutual fund is to be made while working out the book profits under Section 115JB of the Act. The grounds of appeal raised by the revenue are dismissed."

26. Ld. AR finally relied on the detailed findings recorded by CIT(A) after considering the remand report and the rejoinder filed by the AO and assessee respectively and contended that order of the CIT(A) should be upheld.

27. We have considered rival contentions, carefully gone through the orders of the authorities below and material placed on record. We have also considered the remand report sent by the AO as well as the rejoinder filed by the assessee. We have also deliberated the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by Id. AR and DR during the course of hearing before us with reference to the factual matrix of the instant case. From the record we found that assessee is a private limited company engaged in the business of investment. The return for the year under consideration was filed at Rs.16.60 crores under normal provisions of Act and book profit of Rs.48.41 crores under section 115JB of the Act. During the year under consideration assessee has received gift of Rs.161.86 crores from four companies viz. Amur Trading Private Ltd., Medhuban Merchandise Private Ltd., Tresta Trading Pvt. Ltd. and Ornate Traders Pvt. Ltd. All the above four companies are shareholder of Reliance Industries Limited [Reliance Industries] and receive dividend income from Reliance Industries. The assessee and all the above four companies are Private Limited companies and are governed by their respective Memorandum and Articles of Associations.' The Memorandum of Associations of the assessee and all the above four companies provides for the receiving/giving of gift respectively. The Clause 30 of Memorandum of Associations of the assessee provided as follows:

"To make and/or receive donations, gifts or income to or from such persons, institutions or Trusts, whether in cash or any other assets as may be thought to benefit the company or any other object of the company or otherwise expedient and also to remunerate any person or corporation introducing or assisting, in any manner the business of the company subject to the applicable provisions of Companies Act, 1956."

28. Similarly clause 21 of Memorandum of Associations of M/s. Madhuban Merchandise Private Limited (one of the above four donor company) provides as follows:

"To make and/or receive donations, gifts or income to or from such persons, institutions or Trusts and in such cases and Whether of cash or any other assets as may be thought to benefit the company or any other objects of the company or otherwise expedient and also to remunerate any person or corporation introducing or assisting. in any manner the business of tile company"

29. Following is the resolution passed by the Board of Directors of donee companies :

"Resolved That pursuant to the provisions of Section 206 and other applicable provisions of the Companies Act, 1956, the Company do hereby instruct and authorize Reliance Industries Limited (RI£), to pay over directly, to KDA Enterprises Private Limited, the dividend for the year 2007-08 in respect of 3.42,33, 723 equity shares of RIL held by the Company.

Resolved Further That Shri. Manoharlal B. Chaturvedi and Shri Vijay R. Gupta, Director of the Company, be and are hereby severally authorized to take all such other steps as may be necessary and/or incidental thereto to give effect to this resolution."

In pursuance to above, the donor company vide its letter dt.19.06.2006 had given irrevocable instruction u/s 205 r.w.s. 206 of the Companies Act to Reliance Industries to pay dividend directly to the Appellant. The corresponding resolution was also passed by the Appellant at the Board Meeting held on 12.06.2008 accepting the gift. The extract of the resolution passed by the Appellant is as follow:

"Resolved That the company do accept gift amounting to Rs. 44,50,38,399/- from Madhuban Merchandise Private Limited, the Transferor Company.

Resolved Further That the Company do receive delivery of the same from the Transferor Company for completing the gift.

Resolved Further That Smt. KD Ambani and Shri D.N Chaturvedi, Directors of the company, be end are hereby severally authorized to do, perform and execute all acts, deeds, matters and things as may be necessary, proper or expedient to give effect to this resolution and for matters connected herewith and incidental hereto."

Similar resolutions were also passed by the other four companies in their respective extra ordinary general meetings.

Thus, the assessee received gift of Rs.161.86 crores from the above four companies. The gift so received was claimed as capital receipt, therefore, credited to capital reserve account in its books.

30. During the course of scrutiny assessment the AO raised query with respect to the gift received from corporate bodies. It was submitted by assessee that all the donor companies are shareholders of Reliance Industries Limited and received dividend income from Reliance Industries. The donor companies had given irrevocable instructions to Reliance Industries to pay dividend directly to assessee. The receipt of dividend was debited to bank account and credited to Capital reserve Account of the assessee. The assessee submitted that the Gift is in the nature of capital receipt and is not required to be credited to 'Profit and Loss Account' of the assessee. The assessee further submitted that it has prepared its books of accounts as per the requirement of the Companies Act - 1956 and same has been audited and approved by the statutory auditor and also adopted by the shareholders in Annual general Meeting of the assessee. The assessee therefore submitted that since the accounts are prepared as per the companies Act, no adjustment is required to be made to the book profit u/s115JB on account of gift received by the assessee. In this regard the assessee filed detailed submission vide its letter dt.4.11.2011 before the AO during the assessment proceeding. However the AO did not accept the contention of the assessee and added gift received at R.s.161,86,77,034/- to the total income of the assessee. The AO further added the amount of gift received of Rs.161,86,77,034/- to the book profit u/s 115 JB of the assessee. As per our considered view, under the Income Tax Act, 1961, what is subjected to tax under the Act is only the "income" of the assessee and not each and every receipt of the assessee, where the other receipts not in the nature of income are intended to tax, the legislature has specifically made provisions for taxability of such receipts in the statute itself like section 45, section 56(v), 56(vi), 56(vii) etc. Section 4 of the Act is the charging section which reads as under:

*“4. (1) Where any Central Act enacts that **income – tax shall be charged** for any assessment year at any rate or rates, income – tax at that rate or those rates shall be charges for that year in accordance with, and subject to the provisions including provisions for the levy of additions income – tax of, this Act **in respect of the total income** of the previous year of every person ;*

*Provided that where by virtue of any provisions of this Act **income – tax is to be charged in respect of the income** of a period other than the previous year, income – tax shall be charged accordingly.”(Emphasis Supplied)*

Thus as per section 4 of the Act income tax shall be charged in respect of total income of an assessee. The Act defines the term ‘total income’ under section 2(45) which reads as under:

*‘2(45) “total income” means the total amount of **income** referred to in section 5, computed in the manner laid down in this Act;”(Emphasis Supplied)*

Section 5 of the Act provides for scope of total income chargeable to tax in India on the basis of receipt, accrual and deemed to be received and accrued in India. In view of above the charging section of the Act specifically provides for taxation of ‘income’ of an assessee. For a receipt to be taxable under the provisions of the Act it must necessarily be in the nature of an income or its taxability should have been specifically provided by the statute. Section 2(24) of the Act defines ‘income’. The definition of ‘income’ provided in section 2(24) although an inclusive definition, but it specifically provides the income which are intended to be taxed under the provisions of the Act. Even the income in the nature of capital gains as per section 45, and gifts received as per section 56(2)(v), (vi), (vii) etc are included in the definition of income. Thus under the Income Tax Act only the receipts which are in the nature of ‘income’ are subjected to tax. Any other receipts which are not in the nature of “income” are not liable to tax under the provisions of the Act.

31. As per the provisions of law prevailing during the year under consideration, the gift received by one corporate body from another corporate bodies do not come under the ambit of income as contemplated u/s 2(24) of the

Act or any other provisions of the Act. The gift received are a voluntary payments made by the donors to the assessee. Neither the assessee has any legal right to claim the gift from the donor nor donors have any legal or contractual obligations to give gift to the assessee. The gifts received by the assessee was a voluntary payments made by the donor, without consideration to the assessee. The gift received has nothing to do with the business of the assessee so as to constitute its income from business or a revenue receipt in the nature of income.

32. As per section 14 of the Act, income of an assessee is classified under the following heads of income viz “Salaries”, “Income from house property”, “Profit and gains of business or profession”, “Capital gain” and “Income from other sources”. Provisions of the Act provides for what can be considered as income under the various heads of income. Thus income of an assessee shall be chargeable to tax only if it falls under any heads of income. Thus gift received is neither in the nature of Salary nor in the nature of income from house property. By no stretch of imagination it can be said that the assessee is engaged in the business of receiving gifts from corporate bodies; hence the gift can also not be considered as the income from business of the assessee. As the gift has no relation to any capital asset, the same can also not be considered as capital gain for the assessee. With respect to income from other source, that income of every kind which is not chargeable to tax under any head of income are subjected to tax under the residuary head of income i.e. income from other sources. However again what is subjected to tax under the provisions of section 56 is income of revenue nature. The gift was always treated as non taxable capital receipt in the hands of the recipient till 31.03.2005. Thereafter the legislature vide Finance (No.2) Act, 2004 w.e.f. 1.04.2005 inserted clause (v) to sub section (2) of section 56 of the Act so as to include any sum of money

received without consideration from any person, other than exception provided in that section, by an individual or Hindu Undivided Family was made subjected to tax. The scope of the said section was further narrowed down by raising the limit of receipt from Rs.25,000/- to Rs.50,000/- with effect from 1.04.2006. The said section was amended from time to time by amending the limit of receipts and nature of transaction but the applicability of the said section was restricted only to an individual or Hindu Undivided Family. Thus when the legislature intended for bringing to tax net the gift received by an assessee it has specifically provided so by enacting the law. As per section 56(2)(v) the gifts received by an individual and HUF only are made liable to tax. Thereafter for the first time two other category of assesseees were added with effect from 1.06.2010 by Finance Act, 2010 in clause (viia) of section 56(2) of the Income Tax Act, 1961. These two categories of the assesseees are “a firm” and “a company”. However, the parliament restricted the taxability to receipt in the form of shares of an unlisted company without consideration or without sufficient consideration. Thus even after this amendment, any other movable / immovable properties received as gift was not covered and accordingly not subjected to tax. However, certain gifts are made taxable from time to time by various well thought and well intended amendments in the Act and all the definition regarding taxability of gift (i.e. receipt of assets without sufficient or without any consideration) are inclusive and only those instance of gifts are required to be taxed and not all gifts. This is so, more particularly, because all gifts are capital receipt in nature and only certain gifts are made taxable. As provisions of Section 56(2)(v)(vi), (vii) and (viia) specifically covers the instances of gift which are taxable under the provisions of IT Act; and all other gifts received by the assessee other than those covered in other sections are not chargeable to tax being capital receipt in nature. Hon’ble Supreme Court in the case of **Padmaraje R. Kadambande Vs. CIT, 195 ITR**

877 (SC); Hon'ble Bombay High Court in case of **Mehboob Productions Private Ltd. Vs. CIT, 106 ITR 758** and in case of H.H.Maharani Shri Vijaykuverba Saheb of Morvi & Anr. Vs. CIT, 49 ITR 594, held that gifts are capital receipts when consideration are not in the nature of income and,hence, same cannot be charged to tax under the provisions of Income Tax Act.

33. From the record, we found that the identity of all the four concerns who have made gifts to the assessee was given along with their name, PAN, address and other detail and, therefore, the identity of these concerns was proved. With regard to source and capacity also there is no dispute, because assessee has received these gifts, directly on account of the dividends of donor companies from Reliance Industries Ltd., as per the directions of the donor companies. Even the shareholding of the donor companies in Reliance Industries Ltd. is not in dispute and, therefore, there is no dispute as far as the identity and capacity/source of gifts are concerned.

34. Now coming to the contention of AO with regard to the genuineness of the transaction, the A.O. has observed in the assessment order and in remand report, that it is a dubious transaction and such gifts are used as means for bringing the unaccounted money into the books of the assessee by avoiding tax payment and it is further held that the assessee has ulterior motives, whereas, the exact nature or motive behind the transactions are not ascertainable with the limited time and resources available to the A.O. The A.O. has also observed that the companies are not capable of giving gifts, because there is no love and affection which is required for gift transactions. It was also claimed by AO that the gifts are not evidenced by deeds and they have not been accepted.

35. We found that suspicion of AO that the transaction of gift is dubious and to bring into books any unaccounted money is contrary to the facts on record. Insofar as admittedly the gifts have been received on account of dividend by the donor companies from the Reliance Industries Limited. The Reliance Industries Ltd. have also paid dividend distribution tax, therefore, such money received by the assessee is not unaccounted money. The AO has not brought any evidence on record contrary to the claim of the assessee. Even during appellate proceeding, the CIT(A) has given opportunity to the AO, in the remand report also, the AO could not rebut the claim of the assessee on the basis of any contrary evidence on record. Hence, the claim of assessee cannot be rejected merely on the basis of doubt or suspicion.

36. With regard to AO's objection regarding motive behind the transaction, the A.O. has stated in para 8 of the assessment order that it could not ascertain the exact nature or motive behind the transaction because of limited time and resources available, whereas, the case was remanded to the A.O. by CIT(A) and an opportunity was again given with the specific direction to find out the nature and motive behind these transactions or gifts, whereas, A.O. could not find out any other motive behind such transactions and merely stated in the remand report that assessee has not furnished any clear and distinctive motive with regard to these transactions and the exact nature and motive is best known to the assessee. But merely blaming the assessee that it is not furnishing the correct motive is putting the cart before the horse. Whereas case of the assessee is that it has received these amounts as gifts, therefore, it is for the AO to bring on record any other contrary motive and if he fails to do so then there is no alternative but to accept the claim of the assessee that these are gifts.

37. Hon'ble Supreme Court in the case of Parimisetti Seetharamamma vs. CIT (56 ITR 532), has held as under :

“By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable, because it fall within an exemption provided by the Act, lies upon the assessee.

Where the case of the assessee is that a receipt did not fall within the taxing provision, the source of the receipt is disclosed by the assessee and there is no dispute about the truth of that disclosure, the income tax authorities are not entitled to raise an inference that the receipt is assessable to income tax on the ground that the assessee has failed to lead all the evidence in support of his contention that it is not within the taxing provision.

Govindarajulu Mudaliar v. Commissioner of Income Tax [1958] 34 ITR 807 (S.C.) distinguished.

Commissioner of Income Tax v. Calcutta Agency Ltd. [1951] 19 ITR 191 (S.C.) referred to.

A conclusion recorded by the Tribunal by wrongly throwing the burden of proof upon the assessee cannot be regarded as binding upon the High Court in a reference under section 66 of the Income tax Act.

The assessee explained that the jewellery and amounts of money received by her in the relevant years were gifts made by S. the Maharani of Baroda. Relying on the following pieces of evidence, viz. (i) her admission that she acted as the local agent of S for disbursing salaries to the servants of S, and (ii) that in a bill issued by a garage the assessee was described as the private secretary of S, and observing that she had failed to place before the income tax authorities all the evidence in support of her contention, the Appellate Tribunal held that what was given to the assessee by S was remuneration for services rendered or to be tendered :

Held, (i) that the burden of proof was wrongly placed by the Tribunal on the assessee;

(ii) on the facts, that the two circumstances relied on by the Tribunal did not establish that what was given by S to the assessee was remuneration for services rendered or to be rendered; and that what the assessee received was not assessable to tax. ”

38. With regard to the AO's objection regarding gift deed, we found that the A.O. has held that these transactions cannot be treated as gifts because there are no gift deeds and because they have not been specifically accepted, whereas, there is no such legal requirement for making a gift. Even by simple delivery the gift can be made of an amount or cheque or other movable property. Whereas, in the case of the assessee, letters certifying the gifts with corresponding resolution of their board have been furnished before the A.O. During appellate proceedings before CIT(A), assessee has also filed affidavits from all the four donor companies, certifying the gifts. Assessee has also filed its affidavit for certifying the receipt of gifts. Receipt of gift as well as making of gift are authorized by respective Memorandum and Articles of Association of the companies and the assessee. Gifts have been accepted by the assessee by adopting a resolution by the Board of Directors. After sending all these documents to the AO, the CIT(A) had called a remand report from AO, therefore, this is no violation of rule 46A also. Thus, it cannot be said that these amounts are not gifts merely on the basis that there are no gift deeds or acceptance.

39. Now, coming to the contention of AO that company cannot make a gift and that there is a lack of natural love and affection in case of gift by the company. This issue is squarely covered by the decision of the coordinate bench in case of in the case of D.P. World Pvt. Ltd. vs. DCIT ITA No. 3627 and 3841/Mum/2012, Mumbai 'D' Bench, order dated 12/10/12. The issues involved in this case were similar to the issue involved in the case of the

assessee under consideration. In brief the facts of D.P. World's case are that one company gifted three flats by way of gifting shares of the concerned housing society to another company and both the companies were subsidiary of a third company, whereas, there was no business transaction between the donor and donee companies. The A.O. rejected the claim of gift and assessed the value of such flats as declared in Wealth Tax return by the Respondent company, under the head 'income from other sources'. Whereas, CIT(A) found that it is not taxable under the head income from other sources, but held it taxable under the head business income u/s. 28(iv) of I.T. Act, at the amount at which stamp duty has been paid. However, the ITAT held that the companies are competent to make gifts and further held that the gifts made of the three flats is neither taxable under the head income from other sources, nor under the head business income u/s. 28(iv) and held that the receipt is a capital receipt not taxable. Besides relying on the judgment of ITAT in the case of D.P. World Pvt. Ltd., the assessee also relied upon the judgement of ITAT Chennai in the case of Redington (India) Limited, ITA No. 513/Mds/2014. The relevant portion of the ITAT order on the issue of requirement of natural love and affection and competency of companies to make gift are reproduced below:

“8. It is not uncommon that transfer of shares between corporate groups takes place for internal reorganization. Such a transfer may trigger capital gains ramifications in India since the shares of an Indian company are situated in India and when the transferor is a non-resident, the deeming provisions of Sec. 9(i)(i) of the I.T. Act, 1961 come into play. However Sec. 47(ii) contains list of transactions which are not treated as transfers for the purposes of Sec. 45 of the Act. Sec. 47(iii) of the Act relates to transfer of a capital asset under a gift, will or an irrevocable trust. The following issues arise in the application of Sec. 47(iii) of the Act in a corporate reorganization involving transfer of shares of an Indian Company without consideration:

- a) Since the term "Gift" is not defined in the Act, which meaning should be ascribed to it and*
- b) Can a company being a corporate entity make a gift?*

9. *As gift is not defined under the Act, the Sale of Goods Act, Companies Act and the Indian Contract Act, a reference is made to the Gift Tax Act, 1958 ('GTA) and the Transfer of Property Act, 1882 ('TPA).*
10. *GTA was in force with respect to gifts made till 1st October, 1998. Section 2 (xii) of the GTA defined gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth and includes the transfer or conversion of any property referred to in section 4 deemed to be a gift under that section. Transfer of property for inadequate consideration was Inter alia treated as deemed as gift. This is similar to section 56(2)(vii)(viii) of the I. T. Act which under certain circumstances, treat the difference between the fair market value of the movable property (including shares of closely held company) and the consideration for the transfer as income from other sources of the recipient of such movable property.*
11. *Section 5 of the TPA provides that transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act. It also provides that 'living persons' includes a company or association or body of individuals, whether incorporated or not but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.*
12. *Section 122 of the TPA , dealing with gift , defines the same as transfer of certain existing movable or immovable property , made voluntarily and without consideration, by one person, called the donor , to another called the donee and accepted by or on behalf of the donee.*
13. *A perusal of the aforesaid provisions of the TPA indicate that there do not seem to be any restriction on the corporate transfer of shares by way of gift provided it is made voluntarily and without consideration. In other wards, there is no requirement in the TPA that a 'gift' can be made only between natural persons out of natural love and affection which means that as long as a donor company is permitted by its Articles of Association to make a 'gift; it can do so. Sec 82 of the Companies Act, 1956 also provide that shares in a company constitute movable property transferable in the manner provided by its Articles of Association.*
14. *Now the question arises whether the meaning of 'gift' as per Gift Tax Act could be imported for the purpose of Sec. 47(iii) of the Act. In the case of CIT vs. Shayam Narain Mehrotra (1981) 122 ITR 313 (Cal.) the High Court inter alia observed that the expressions similar to Sec. 47(iii) of the Act was present in the erstwhile Sec. 12B of the Indian Income Tax Act, 1922 i.e. even before the GTA came into force. This observation of the Honble High Court suggest that meaning of 'gift' as per GTA should not be imported for the purpose of Sec. 47(iii) of the Act.*

15. *Similar view has taken in the case of ITO vs. Buragadda Satyanarayan (1977) 106 ITR 333 (AO) and ACIT vs. Ranga Pai (1975) 100 ITR 413 (Kar). Although there are other decisions to the contrary however these decisions may not strictly hold good since the GTA has been deleted w.e.f. 1.10.1998 and Sec. 47(iii) of the Act continues in its original form.*
16. *Considering the above discussion, the definition given u/s. 122 of the TPA has to be accepted, meaning thereby that meaning of gift reflect non- element of love and affection. Therefore, gift of shares of an Indian Company by a foreign company without consideration has to be treated as gift within the meaning of Sec. 47 (iii) of the Act.*
17. *It would not be out of place to mention that a combined reading of Sec. 82 of the Companies Act, Section 5 and Section 122 of the TPA suggest that a company can validly transfer the shares by way of gift, provided where Articles of Association of the donor company permits the same. In case of donor is a foreign company, the relevant corporate/commercial law of the jurisdiction where the donor is based needs to be considered. In the light of the above discussion, we have no hesitation to hold that a company can gift shares and such transaction may appear as 'strange' transaction but cannot be treated as non - genuine" transaction."*

40. Respectfully following decision of the coordinate bench, we hold that companies are competent to make and receive gifts and natural love and affection are not necessary requirement. Only requirement for company is to make gifts as per respective memorandum and article of association, which authorize the company for the same. Applying the proposition of law laid down in the above decision to the facts of the instant case, we found that the assessee and the donor companies are authorized in this regard for receiving and making gifts respectively by their Memorandum and Articles of Association. The position regarding the competency of corporate entities to make and receive gifts has also been upheld in the following cases, :

1. *CIT vs Groz-Beckert Saboo Ltd [116 ITR 125J.*

In this case, the appellant, a company, received capital asset as gift from one of its collaborator. In propounding its decision the Hon'ble Supreme Court did not question the validity of a corporate giving or receiving gifts.

2. *M/s. SET India Private Limited 3 ITR 454 (Mum) (Trib):*

In the said case, the SET (supra) had received gift from its parents company, the said gift has been held to be non -taxable as it was in the nature of capital receipt.

3. *Essar Technologies [ITA No 179/Mum/2005:*

The Hon'ble Mumbai ITAT has not challenged the validity of one corporate gifting to another.

4. *CIT Vs. Stewarts & Lloyds of India Ltd. 165 ITR 416 (Cal):*

The Hon'ble High Court has accepted the legality of the corporate gifts.

5. *Deere & Co. AAR of 2010 dated 27 May 2011*

6. *Goodyear Tire and Rubber Company AAR 1006 of 2010) dated 2 May 2011.*

7. *Dana Corporation 321 ITR 178 (AAR)*

8. *Amiantit International Hondings Ltd. 322 ITR 678 (AAR)*

9. *Vodafone Essar (2011-TII-01-HC-Del-(A)*

41. Furthermore, As per section 56(2)(viiia) and 56(2)(viib), gift of certain kind of shares received by a company in which the public are not substantially interested are taxable and, therefore, it is clear that the Income-tax Act, itself provides that companies can receive gifts, of course, gifts of only shares of certain kind received by certain category of companies are taxable. (The provisions of section 56(2)(viiia) and (viib) are applicable w.e.f. 1/6/10 and 1/4/13 respectively). Therefore, it cannot be said that the assessee could not have received such gifts from other companies. It is also clear from the Transfer of Property Act that companies can receive and make gifts and there is no requirement of any natural love and affection for making or receiving a gift by companies. Even the Income-tax Act by way of Section 56(2)(viiia) and 56(2)(viib) provides that gifts of certain kind of shares are taxable in the hands of certain category of companies.

42. The A.O. has assessed the amount of gifts received under the head "income from other sources" holding that assessee has failed to prove that the

amount received is exempt from taxation. Though no specific reason has been given by the A.O. for assessing it under the head income from other sources, but it is clear from the discussion and decision of the A.O. that it has been assessed under the head "income from other sources" because it was found not taxable under any other head of income, therefore, assessed under the residuary head of income i.e., "income from other sources. In the following judicial pronouncements wherein the hon'ble courts have held that gift capital receipts without considerations are not in the nature of income and hence the same can not be charged to tax under the provisions of the Income Tax Act.

1) HH Maharani Shri Vijaykuverba Saheb of Morvi & Anr Vs. CIT [49 ITR 594](Bombay:

"There is no doubt that under the Indian IT Act even payments, which are voluntarily made may constitute "income" of the person receiving them. It is not necessary that in order that the payments may constitute "income"; they must proceed from a legal source: in that if the payments are not made the enforcement of the payments could be sought by the payee in a Court of law. It does not, however, mean that every voluntary payment will constitute "income". Thus, voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation may constitute "income" although if the payments were not made the enforcement thereof cannot be insisted upon. These payments constitute "income" because they are referable to a definite source, which is the office, profession, vocation or occupation. It could, therefore, be said that such a voluntary payment is taxable as having an origin in the office, profession or vocation of the payee, which constitutes a definite source for the income. What is taxed under the India IT Act is income from every source (barring the exceptions provided in the Act itself) and even a voluntary payment, which can be regarded as having an origin, which a practical man can regard as a real source of income, will fall in the category of income; which is taxable under the Act. !Where, however, a voluntary payment is made entirely without consideration and is not traceable to any source, which a practical man may regard as real source of his income, but

depends entirely on the whim of the donor, cannot fall in the category of "income". What we have to see, therefore, in the present case, is whether the payment made by the son Maharaja to the father Maharaja, though voluntary, could be regarded as having an origin in what might be called the real source of come. On the facts found in the present case, we cannot say that the payments would be referable to any such source. The Department has not been able to show any material on record, from which such a conclusion can be drawn"

2) *CIT Vs. Pran Jihan Jaitha [52 ITR 108] (Calcutta):*

"8. It WIJJ thus be seen that the basic reason for bringing such compensation into the net of taxation is that the parties had expressly agreed that the money that would be received would represent profits. It was inherent in such policies that the assessee expected to earn profit but was prevented from doing so by some overriding reason and, therefore, an amount was paid in lieu of profits. It is comparable to the class of cases I have mentioned above where the business continues but by some overriding reason profit cannot be earned. The situation in the present case is, however, entirely different. Even if there was any doubt as to what exactly the payment of Rs. 5 lakhs represented, it is now laid at rest by the findings of fact that have been placed before us upon remand. The company itself has admitted that the payment was made as a personal gift to the assessee. It may have been calculated on the possible loss that had been suffered, but it is obvious that there was no question of any legal liability on the part of the company to pay or any legal right on behalf of the assessee to receive payment. It was paid as a personal gift in consideration of the long association of the assessee and his firm with the shipping' company for a number of decades. It was entirely prompted by generosity, and there is no reason to equate the payment with the payment that the assessee could have received from an insurance company if it had a "consequential loss policy" of the nature described above. That being so, I think that the Tribunal had come to the correct conclusion that this amount of Rs. 5,00,000 was not a revenue receipt and could not be assessed fur taxation."

3) *Lachit Films Vs. CIT [195 ITR 402]Gauhati*):

"In section 2(24) of the Income-tax Act, 1961, it is declared that "income' includes" such and such which are enumerated therein. In section 2(24), grant-in-aid has not been included as an income or revenue receipt. Therefore, considering the use of the word "include" in section 2(24), the word "income" shall be construed as comprehending not only those which section 2(24) declares that they shall include but also such a thing as it signifies according to its natural import. Since section 2(24) has not declared that grants-in-aid shall include, the word "revenue" it shall be construed as comprehending what it signifies according to its natural import. In relation to a business undertaking, the word "revenue" connotes incomings of the undertaking which are products of the normal working of the undertaking. The giving of financial aid or subsidy is at the discretion of the Government. Therefore, the grants-in-aid received by the assessee, a producer of films, from the Government is a financial aid or subsidy given by the Government with a view to encourage the film industry and is not a product of the normal business activities and such grant-in-aid is not a revenue receipt liable to be included in the total income of the assessee.

4) *Padmaraje R. Kadambande Vs. CIT [195 ITR 877](Supreme Court)*:

"Held, reversing the decision of the High Court, that the payment under proviso (d) to section 15(J) of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, was a purely discretionary payment. Neither the fact that the appellant applied for a grant for maintenance allowance nor the periodicity was conclusive. Regard had to be had only to the nature and quality of the payment. The appellant lost her right to the allowance under the Huzur order and, therefore, on an application by way of compassion, the payment was made. The mere fact that, after the order was made under section 15(J), it became an enforceable right was not relevant, There was no compulsion on the part of the Government to make the payment: nor was the Government obliged to make the payment since it was purely discretionary. The payment made by the Government was voluntary: it had no origin in what

might be called the real source of income. The fact that proviso (d) to section 15(1) of the Bombay Act enabled to appellant to seek payment was far from saying that it was a source, It could not afford any foundation for such a source. It was a compassionate payment for such length of period as the Government might, in its discretion order. The amounts received by the appellant during the financial years in question were capital receipts and, therefore, not income within the meaning of section 2(24) of the income tax Act, 1961.

5) *CIT Vs. Ramdeo Samadhi !J60 ITR 179KRajasthan)*

"The ingredients of "income" are: (i) it must be a periodical monetary return, (ii) coming in with regularity or expected regularity, (iii) from definite sources, and (iv) excluding a receipt in the nature of a mere windfall.

It is well-settled that in order to become a vocation, an activity need not be organized and a single act may amount to carrying on a business, profession or vocation.

In the case of a voluntary payment, no tax can be levied on it, if it had been made for reasons purely personal to the donee and unconnected with his ,office or vocation, while it will be taxable if it was made because of the office or vocation of the donee. Before a partlular, amount can be characterised as an income, there should be its

Define source which should be an identifiable one may be an individual or an institution, or a body of people or any other source."

6) *Mehboob Productions Private Ltd. Vs. CIT [106 ITR 758{Bombay}]:*

"Income is a monetary return expected by the assessee for the labour and/or skill bestowed, and/or capital invested by him,' coming in from a definite source, which need not be a legal source, in the sense that the failure to pay the same need not be enforceable in a court of law: and excluding a receipt "in the nature of" a mere windfall, which would mean a windfall in regard to its very nature and not in regard to its extent or quantum.

When talking of a windfall receipt in connection with the consideration of the question whether such receipt would be income or not, one has to restrict the concept of such a windfall to a case where the unexpectedness of the advantage pertains to the factum of receipt and not to the quantum of receipt. What we are considering as "windfall" is some unexpected receipt not in the contemplation of" the assessee and not directly attributable to or occurring by way of its business profits. On the other hand, where there was clear expectation, though small, of receiving such advantage or profit, then it cannot be properly regarded as windfall merely because the advantage of receipt is much more than could have been reasonably anticipated."

43. In the case of CIT Vs. Groz- Beckert Saboo Ltd. [116 ITR 125] the Hon'ble Supreme Court has an occasion to consider the gift of raw material being stock in trade received by a company and its taxability under the Act. The Hon'ble Supreme Court has held that the gift of stock in trade received constituted a capital receipt in the hands of an assessee and on its conversion to stock in trade the market value as on the date of receipt of gift has to be allowed as deduction against the computation of taxable profit. The Supreme Court thus held the gift received being capital in nature and hence not chargeable to tax on the contrary the market value of gift received was allowed as deductible expense while computing the total taxable income. In view of judicial pronouncements discussed above the gift of Rs.161,86,77,034/- received by the assessee from corporate bodies are in the nature of capital receipt not liable to tax under the provisions of the Income Tax Act.

44. Now, coming to the observation of the AO with regard to the provisions of Section 82 of the Companies Act, the assessee and donors being Private Limited Companies are governed by the Companies Act. Section 82 of the Companies Act provides that shares in a company is a moveable asset. The section 82 of the Companies Act reads as under:

"82. The shares or debentures or other interest of any member in a company shall be moveable property, transferable in the manner provided by the article of the company.

Since the Memorandum and Article of Associations of both the assessee donee and all the four donor companies contains provisions to receive/ make gifts respectively. Hence there is no impediment for assessee or donor companies under the Companies Act to make / receive dividend as gift.

45. Now, coming to the meaning of the gift, *the Income Tax Act does not define the term 'Gift'. Gift is defined under section 122 of the Transfer of Property Act - 1882, which reads as under:*

"122. "Gift" defined - "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

Further section 5 of the Transfer of Property Act defines the term "Transfer of Property" as under:

"5. "Transfer of Property" defined - In the following sections "transfer of property" means an act by which a living person conveys property, in present or ill future, to one or more other living person or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals ."

46. Section 122 of the Transfer of Property Act provides for making of a gift and permits transfer of moveable or immovable property but without any consideration. The shares or interest in a company is a moveable asset as per the Companies Act. Further as per section 5 of the Transfer of Property Act, a

company is a living person, competent to transfer a property 88 per the Act and therefore the Transfer of Property Act permits a limited company to be a donor.

47. Now, coming to the observation of the AO to the effect that a company being an artificial person cannot not make gift. Even the taxing statute has recognized that the gift can be given by a company. In this connection the relevant provisions of Gift Tax Act, 1958 (now repealed) provided as under:

a) Section 2(iii) of the Gift Tax Act, 1958 defines

“(iii) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes-

(a) every person in respect of whom any proceeding under this Act has been taken for the determination of gift-tax payable by him or by any other person or the amount of refund due to him or such other person;

(b) every person who is deemed to be an assessee under this Act:

(c) every person who is deemed to be an assessee in default under this Act;”

b) Section 2(xviii) of the Gift Tax Act, 1958 defines

“(xviii) "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons whether incorporated or not;”

c) Section 2(vii) of the Gift Tax Act, 1958 defines

“(vii) the expressions "company"; "Indian company" and "company in which the public are substantially interested" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act”

d) Section 2(17) of the Income-tax Act, 1961 defines

“(17) "Company" means -

(i) any Indian company, or

(ii) any body corporate incorporated by or under the laws of a country outside India,

or

(iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (II of 1922), or which is or was assessable or was assessed under this Act as a company or any assessment year commencing on or before the 1st day of April, 1970, or

(iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company

Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether

commencing before the 1st day of April, 1971 or on or after that date) as may be specified in the declaration"

48. We are aware of the fact that provisions of Gift Tax Act, even though repealed, clearly has recognized the company a Juridical person as a donor and made it an assessable entity under the Act. It is amply clear that the legislature in its wisdom wherever thought fit has provided by even through taxing statutes that a Company can make/receive gift. Thus, the observations of the AO in assessment order are erroneous and without any authority of law.

49. Three elements are essential in determining whether or not a gift has been made, a) delivery. b) donative intent,' and c) acceptance by the donee. All the above essentials stated by the AO are duly been fulfilled by the assessee and all the four donor of gifts. With respect to delivery of gift, the dividend has actually been received by the assessee in its bank account which conclusively prove the delivery of the gift from donor to donee. With respect to intent of donor, all four donors have passed a resolution in the meeting of shareholders and board of Directors that they intend to transfer the dividend on shares of Reliance Industries held by them to the assessee donee as gift. Thus, the donative intent to transfer the dividend as gift is clear from the resolution passed by the donors. With respect to acceptance by the donee, the assessee has duly passed a resolution in the meeting of shareholder and board of directors duly conveying their acceptance of the gift. Thus all the essential requisites of gifts stated by the AO in assessment order have been duly fulfilled by the assessee and no adverse conclusion can be drawn in the case of the assessee.

50. We found that the AO has relied on the decision reported at 214 ITR 801, 82 ITR 540, 207 ITR 89. All these decisions are distinguishable on facts.

In the instant case, the gift received by the assessee is in the nature of capital receipt duly supported by documentary evidence and hence cannot be deemed as revenue receipt liable to tax. Thus, all the case laws relied upon by the AO in the assessment order has no relevance to the case of the assessee and are distinguishable on facts.

51. We had gone through the decision relied on by the AO in case of Sumati Dayal Vs. CIT, 214 ITR 801(SC), wherein hon'ble Supreme Court has considered the surrounding circumstance and applied the test of human probabilities in deciding the case wherein the assessee has won few jackpots of horse racing in the year whereas she has no knowledge of horse racing.

52. In case of CIT Vs. Durga Prasad More [82 ITR 540](SC), Hon'ble Supreme Court found that assessee claimed certain income to be the income of his wife however he was unable to explain from what source she built up that amount: under such circumstances the hon'ble supreme court held that the income tax authorities are entitled to look into the surrounding circumstances to find out the reality.

53. In case of CIT Vs. L.N Dalmia [207 ITR 89](Calcutta), the hon'ble high court found that the assessee generated a paper loss which is capable of carried forward and set off against the future profit and thus would provide a cushion against the future gain. The Hon'ble High Court found that though the loss is a paper loss but it had a far reaching effect on the tax liability in future years of the therefore and therefore held that the loss was a capital loss.

54. Thus, it is clear that facts of the above cases and the question of law decided by the Hon'ble courts has no application to the assessee's case.

55. The AO has assessed the amount of gift so received as income from other sources u/s.56 of the I.T.Act. Taxation of gift u/s. 56 of I.T. Act as

income from other sources, may be considered with reference to the following two aspects:

- i) whether gift received by the assessee-company is taxable as gift u/s. 56 of the I.T. Act and
- ii) whether such gifts are taxable under the head "income from other sources" as the residuary head of income, because it may not be taxable under any other head of the income.

The A.O. has assessed it under the head "income from other sources" holding that assessee has failed to prove that the amount received is exempt from taxation. Though no specific reason has been given by the A.O. for assessing it under the head income from other sources, but it is clear from the discussion and decision of the A.O. that it has been assessed under the head "income from other sources" because it was found not taxable under any other head of income, therefore, assessed under the residuary head of income, "income from other sources."

56. It is only with the amendment of section 56 w.e.f. 1/4/05 by Finance (No.2) Act, 2004, by introducing clause (v) in sub-section 2 of section 56 that receipt of gifts by an individual and HUF became taxable in the hands of the donee, whereas, gifts received by any other person remained out of tax net. Whereas, with the introduction of clause (viia) and (viib) in sub-section 2 of section 56 w.e.f. 1/6/2010 and 1/4/2013 respectively, gift of only shares of certain category of companies by certain category of companies have become taxable and any other gift received by any company through any other mode, **i.e.** cash, cheque, listed shares or other kind of properties, other than the said certain category of shares is not taxable till date, under any provisions of the Income Tax Act. Even the legislative history shows that gifts received by companies other than certain kind of shares by certain category of

companies mentioned under section 56(2)(viiia) and (viiib) are not taxable under Income-tax Act or any other Act. During the period, when Gift Tax Act was in existence, gifts by companies as well as by any other person were taxable under the Gift Tax Act only and there was no provision for taxing gifts under the Income-tax Act. Therefore, gifts were not separately taxed under any provisions of the Income-tax Act during the period when the Gift Tax Act was in existence and the question of taxing the gifts separately under Income-tax Act, did not arise. When the Gift Tax Act was repealed in 1998, legislature indicated its intention that the gifts will be no more taxable under the Gift Tax Act, but no corresponding change was made under the Income-tax Act and, therefore, taxability of gift remained outside the tax net for a long time until section 56(2) was amended for bringing tax on gifts received by individuals and HUFs with certain conditions with effect from 01.04.2005. Therefore, legislature again indicated its intention that certain gifts received by individuals and HUFs only will be taxed under the Income-tax, in the hands of the recipient, but gifts received by companies or any other person other than individuals and HUFs were not brought under the tax net. With the passage of time, it was realized that certain kind of transactions of transfer of certain kind of shares by certain category of companies only further need to be taxed and accordingly the legislature brought provisions of section 56(2)(viiia) and 56(2)(viiib) of Income-tax Act in the statute with effect from 01/06/2010 and 01.04.2013 respectively, but any other gift by companies or any other person other than individual and HUF still left outside the tax net.

57. This issue has also been discussed by ITAT in the case of D.P. World Pvt. Ltd. (supra) and it has been held such gifts are capital receipts and they are not taxable either under the head income from other sources or

section 28(iv) of Income Tax Act. The relevant portion of the decision is reproduced below :-

"19. The AO has applied the provisions of Sec. 56 and treated the value of the flats as income under the head 'Income from other sources' and the Ld. CIT(A) has made the addition u/s. 28(iv) of the Act by treating the Stamp Duty value as income from profit and gains from business and profession.

20. We have carefully considered both the provisions. Let us first examine the provisions of sec.28(iv) of the Act relied upon by the CIT(A).

"28. Profits and gains of business or profession. --The following income shall be chargeable to income-tax under the head 'Profits and gains of business or profession',--

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;"

In our humble opinion, the transaction is of a gift which is a capital receipt in the hands of the assessee and therefore it cannot be said to be a case of any benefit or perquisite arising from business. The contention of the Ld. Departmental Representative that by the said transaction the assessee has derived benefit and such benefit has arisen from the business connection of the donor and the donee, cannot be accepted as no direct nexus has been established by any tangible material brought on record by the Ld. CIT [A]. Simply because both the donor and the donee happened to belong to the same group cannot ipso facto establish that they have any business dealings. As we have held that it is a case of a valid gift which is to be treated as capital receipt in the hands of the assessee, in the absence of any specific provision taxing a Gift as a deemed business income, provisions of sec.28(iv) cannot be applied on the facts of the case. The CIT[A] erred in taxing the value of the stamp duty as income under sec.28(iv) of the Act.

21. Now let us examine the provisions of sec 56 of the Act relied upon by the AO.

"56. Income from other sources. --(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head Income from other sources" if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E."

A plain reading of the above provision show that not every receipt is taxable under the head ' Income from other sources ' but only those which can be shown as 'Income ' can be brought to tax under this head , if it does not fall directly under other heads of income specified in sec. 14 of the Act.

The legislature keeping in mind the Tax Planning done by the Tax Payers by resorting to Gifts , which cannot be termed as Income , made certain amendments by introducing clause (v) to sec. 56(2) which reads as under:

"v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, ***but before the 1st day of April, 2006, the whole of such sum:" However such amendment did not take care

of the transactions involved in the instant case. The legislature further brought amendments as under:

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,--

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum ;

(b) any immovable property, - -

i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration ;

(c) any property, other than immovable property, --

i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

ii) (ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub -section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those section.

Even this amendment did not cover the issues involved in the present appeal . The legislature, in its wisdom, further strengthened the provisions of sec. 56(2) by making the following amendments:

viiia) where a firm or a company not being a company in which he public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested, -

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47. Explanation.- For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii) ;

The above amendment covers the issues involved in the present appeal but the legislature in its wisdom made it applicable for the transactions effected after the 1st day of June, 2010.

Certain lacuna may have still remained to be addressed therefore the legislature did not stop here but went on to make further amendments by inserting clause (viib) as under .'

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received--

i) by a venture capital undertaking from a venture capital company or a venture capital fund ; or

ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.-- For the purposes of this clause,--

(a) the fair market value of the shares shall be the value--

(i) as may be determined in accordance with such method as may be prescribed ; or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;

However this amendment has no direct bearing on the facts of the case in hand.

22. Thus, we have considered the application of the provisions of sec. 28(iv) and sec 56 (i) & [2] from all the possible angles on the facts of the case, in our humble opinion the transaction involved in the present appeal is nothing but a Gift and thus it is a capital receipt not taxable under the alleged provisions of the Act. Therefore, the Assessee Succeeds and Revenue fails. Issues involved in this ground are decided in favor of the assessee and against the Revenue."

58. Now, we examine taxability of gift u/s.68 of the IT Act. Section 68 deals exclusively with the subject of cash credits and places burden of proof squarely on the tax-payer, where he either offers no explanation or his explanation is unsatisfactory as to the nature and source of such cash credits. In such cases, it is for the assessee to prove the identity of the person from whom the money is received and his capacity/source of payment and the genuineness of the transaction. Therefore, in the case of the assessee also, it is expected from the assessee to prove all the three elements. The identity of the donors and the source/capacity are not in dispute and they have been admitted as explained, as discussed earlier in this order. The assessee has claimed these receipts as gifts and there is no other contrary fact on record, therefore, there can be no other doubt in accepting the genuineness of the transactions also.

59. With regard to the taxability of gift u/s.2(22)(e), we found that Any loan or advance paid to a substantial shareholder with 10% interest in the company or to a concern in which such substantial shareholder has substantial interest (20%) is taxable to the extent of accumulated profits u/s. 2(22)(e) of Income-tax Act. It is all the more relevant because A.O. has discussed and described in

detail in the remand report, shareholding pattern of the assessee and other companies. Section 2(22)(e) reads as follows:

Dividend includes,

(a)

.....

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum, (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

.....

.....

Explanation 3, - For the purposes of this clause;

- a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company;
- b) A person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous, beneficially entitled to not less than twenty per cent of the income of such concern."

60. It is clear that there has to be an advance or loan given by a company to a substantial shareholder with 10% interest or to a concern in which such shareholder is holding not less than 20% of the voting power/shares for taxing such loan u/s. 2(22)(e). Whereas, in the case under consideration, there is no common shareholding between the assessee and the other four companies who have made the gifts. Therefore, no addition can be considered in the case of the assessee u/s. 2(22)(e) of Income-tax Act.

61. The AO has also added the amount of gift received while computing book profit u/s.115JB by holding that it should be credited to the profit and loss account as an item of exception nature. As per our considered view there is no merit in AO's contention. The Supreme Court in the case of Appollo

Tyres (supra) has observed that while looking into accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with respect to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by the Companies Act, scrutinized and certified by the statutory auditors, approved by the shareholders and filed before the Registrar of the Companies who has statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In the case of Apollo Tyres the question raised before the Hon'ble Supreme Court was:

(i) Can an AO while assessing a company for income-tax under s. 115J of the IT Act question the correctness of the P&L a/c prepared by the Respondent-company and certified by the statutory auditors of the company as having been prepared in accordance with the requirements of Parts II and III of Sch. VI to the Companies Act"

The Honible Supreme Court in the case of Apollo Tyres(supra) thus observed as under.

"The above speech shows that the IT authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that s. 115J, was introduced in the IT Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own account. For the said purpose, s. 115J makes the income reflected in the companies books of accounts as the deemed income for the purpose of a assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Sch. VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an AO under the IT Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and. will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of

the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the Revenue that it is still open to the AO to re scrutinize this account and satisfy himself that these accounts have been maintained in accordance with the provisions of Companies Act. In our opinion, reliance placed by the Revenue on sub-s. (IA) of s. 115J of the IT Act in support of the above contention is misplaced. Sub-s. (IA) of s. 115J does not empower the AO to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers. the authority under the IT Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of s. 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income-tax both maintained under the same Act. If the legislature intended the AO to reassess the company's income, then it would have stated in s. 115J that "income of the company as accepted by the AO. In the absence of the same and on the language of s. 115J, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the AO while computing the income under s. 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to s. 115J."

62. Respectfully following the decision of the Hon'ble Supreme Court as discussed above, we hold that the AO while computing income u/s.115J has only power to examine whether the books of accounts are satisfied by the authorities under the Companies Act as having been maintained in accordance with the Companies Act.

63. Thus, the AO has limited power of making increase or reduction as provided in the Explanation to the said Section. Furthermore, the Explanation to section 115JB of the Act is applicable only if the item of expense or income is debited or credited to the Profit & Loss Account. However, when the item of expense or income is not debited or credited to the Profit & Loss Account, Explanation to section 115JB of the Act cannot apply and hence no adjustment is required under that section to the books profit. In the case of the assessee gift of Rs.161,86,77,034/- was received from corporate bodies were not credited to the Profit & Loss Account and hence no adjustment is required to the book profit declared by the assessee u/s 115JB of the Act.

64. Similar issue has come up before the jurisdiction Honble Bombay high Court in the case of CIT Vs. M/s Akshay textiles & Agencies Pvt. Ltd (304 ITR 401] wherein the hon'ble Bombay High Court has held as under:

"C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in upholding the order of the CIT(A) in holding that the capital gains of Rs.19,74,489 are not to be taken into account while computing the profits liable to be taxed under s. 115JA of the IT Act, 1961 and that the decision of the Bombay High Court in CIT vs. Veekaylal Investment Co. (P) Ltd. (2001) 166 ITR (Bom) 96 : (2001) 249 ITR 597 (Bom) was not applicable ?"

2. Insofar as question "C", our attention is invited to the judgment of the Supreme Court in Apollo Tyres Ltd. vs. CIT (2002) 174 CTR (SC) 521 : (2002) 255 ITR 273 (SC). The question framed therein which is similar to the question "C" has been answered in favour of the assessee and against the Revenue. In the light of that the question of law as framed would not arise."

65. Similarly, Honble Bombay High Court in the case of Kinetic Motor co. Ltd. Vs. Dy. CIT (262 ITR 330) has observed that it is not open for the AO to make any adjustment to the book profits beyond what is authorized by the definition given in Explanation to section 115J of the Income Tax Act, if the accounts are certified by the auditors. The decision of jurisdictional Hon'ble

ITAT, Mumbai in the case of The DCIT Vs. M/s Arundhati Traders Pvt. Ltd & Ors in [ITA No. 6293/Mum/2006 & others] wherein the Hon'ble Tribunal has observed as under:

'21. Where the accounts are prepared and certified by the auditors, which in-turn are approved/adopted by the shareholders of the company and are filled before the Registrar of the Companies, the Assessing Officer has no powers of disturbing the profits of business as held by the Honble Supreme Court in Appollo Tyres Ltd. Vs. CIT (Supra). Only power of the Assessing Officer is to make: suitable adjustments to the profits of business under the Explanation to section 115JB of the Act. The said adjustments are relatable to the profits and gains of business carried on by the assessee. Any gain arising on sale of investments, though taxable, may necessarily be not routed through Profit & Loss Account. We uphold the order of CIT(A) that no adjustments on account of gain on sale of units of mutual fund is to be made while working out the book profits under Section 115JB of the Act. The grounds of appeal raised by the revenue are dismissed.'

66. In the instant case, undisputed facts are that the assessee has prepared Profit & Loss Account as per Part II and III of Schedule VI of the Companies Act and considered the same profit as base for computing the book profit u/s 115JB of the Act. However the AO did not accept the contention of the assessee and proceeded to add gift received from corporate bodies of Rs.161,86, 77, 034/- in the nature of capital receipt to the book profit computed u/s 115JB of the Act.

67. It is also not disputed that the long-term capital gain earned by the assessee is included in the net profit determined as per P&L a/c prepared as per Part II and Part III of Sch. VI to the Companies Act. In other words, it is not the case of the assessee that the capital gain earned by the assessee was not included in the net profit determined as per P&L a/c of the assessee prepared under the Companies Act. As per the audited accounts of the assessee, the statutory auditors have reported that amongst others, that in their opinion, the P&L a/c and the balance sheet are in compliance with the Accounting

Standards referred to in subs. (3C) of s. 211 of the Companies Act, and further reported that the balance sheet and P&L a/c read together with the notes thereon, give the information required by the Companies Act, 1956 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted. As per audited P&L a/c, the assessee has included long-term capital gain. In the Notes on accounts, it is nowhere mentioned and claimed that though the long-term capital gain is included in the P&L a/c but it is not includible in the net profit in terms of provisions of Part II and Part III of Sch. VI to the Companies Act or the accounting principles accepted under the Companies Act. Hence, it is not a case of the assessee that the long-term capital gain was not includible in the P&L a/c prepared in terms of Sch. VI to the Companies Act. Only in the computation of book profit under s. 115JB of the Acts the assessee claimed exclusion of long-term capital gain which is exempt under s. 47(iv) of the Act. It is due to fact that the assessee claimed deduction of long-term capital gain from book profit by virtue of being exempted income in the normal provisions of the Act and not because of the reason that the same was not includible in P&L a/c prepared under Part II and Part III of Sch. VI to the Companies Act. In the circumstances, when the assessee themselves have included the capital gains arising from sale of subsidiary in the profit and loss, the same cannot be excluded under any of the Explanations under s. 115JB.

68. In view of the above discussion, assertions made by Id. AR and DR if kept in juxtaposition to the observation of the AO vis-à-vis findings recorded by the CIT(A) in the impugned order, an irresistible conclusion is that the amount of gift so received is neither taxable as income from other sources u/s. 56 nor as capital gain nor as income u/s.2(22)(e) nor u/s.115JB of the I.T.Act. The detailed findings recorded by the CIT(A) are as per material on record,

which do not require any interference on our part. Accordingly, we do not find any infirmity in the order of CIT(A).

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

Order pronounced in the open court on 11/03/2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: **11/03/2015** को की गई ।

Sd/-

संजय गर्ग / **Sanjay Garg**

न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-

(आर.सी. शर्मा / **R.C.Sharma**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई/Mumbai; दिनांक/Dated **11/03/2015**

* Patel,PS / PKM, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai