

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE****BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1051/Bang/2024
Assessment Year: 2018-19

Buckeye Trust No.23, Nadathur Place 8 th Main Jayanagar 3 rd Block Bangalore Karnataka 560 011 PAN NO : AADTB3305J	Vs.	PCIT-2 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Sumit Khurana, A.R. & Ms. Divya Motwani, A.R.
Respondent by	:	Sri D.K. Mishra, D.R.

Date of Hearing	:	27.11.2024
Date of Pronouncement	:	30.12.2024

O R D E R**PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:**

Present appeal of the assessee is arising from the order of ld. PCIT dated 29.3.2024 and relates to assessment year 2018-19.

Facts as coming out from the orders of Authorities below:-

2. Assessee is a private discretionary trust and was established under the provisions of Indian Trust Act, 1882 vide settlement deed dated January 23, 2018 executed between Mr. Anand Nadathur, being the Settlor and **Vervain Management Private Limited**, being the Trustee. The settlor settled investments amounting to INR 669,27,63,437 to the trust out of natural love and affection. It has filed its return of income on 30.8.2018 declaring nil income. Thereafter, the case of the assessee was selected for scrutiny and

assessment u/s 143(3) of the Act has been framed vide order dated 7.4.2021 accepting the returned income of the assessee.

2.1 In the back drops of above facts the assessee. The Id. PCIT called for the assessment records and examined the proceedings. The Id. CIT(A) after going through the case records and assessment records took a view that the order passed by the AO is erroneous and prejudicial to the interest of revenue. Accordingly, the Id. PCIT issued a notice u/s 263 of the Act on 13.3.2024 and called for the reply from the assessee. The assessee in response to the notice issued u/s 263 of the Act has filed its submissions on 18.3.2024. The submissions made by the assessee during the proceedings u/s 263 of the Act are reproduced hereunder for the sake of convenience:

3. Legal submission on applicability of section 263 of the Act

(a) Revisionary proceedings under section 263-

- i. can be initiated only if the order passed by learned AO is both erroneous, and prejudicial to the interest of the revenue.*
- ii. cannot be initiated on difference of opinion.*
- iii. is not permissible if issue examined by the learned AO even if order is silent.*
- iv. can be initiated only if the order passed by learned AO is both erroneous, and prejudicial to the interest of the revenue.*

3.1. Relevant extract of section 263 of the Act-

"The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify..."

3.2. On careful reading of section 263 of the Act, it is clear that this power can be exercised, if the order passed by the learned AO is both, erroneous, as well as prejudicial, to the interests of the revenue. As your good self would also agree, in the present case, based on the factual matrix as provided in Section 1 of the submission the issue of receipt of INR 669,27,63,437 was examined.

3.3. In support of above, the Assessee draws your good self's attention to the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 TTR 83 (SC), wherein it was held that every loss of tax cannot be said to be prejudicial to the interests of the revenue and that both the preconditions ought to be satisfied for jurisdiction under section 263 of the Act. The relevant extracts are as follows:

"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the

Revenue - recourse cannot be had to section 263(1) of the Act. There can be no doubt that the provision cannot be invoked to correct each, and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted...

The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue."

3-4. Hon'ble Supreme Court in the case of Commissioner of Income-tax (Central), Ludhiana D. Max India Ltd. [2007] 295 ITR 282 (SC), had the occasion to examine both the terms, 'erroneous' and 'prejudicial to the interests of the revenue'.

The relevant extracts are as follows –

"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law."

3.5. Further, in the judgement of the Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax, Bangalore v. Chemsworth (P.) Ltd. [2020] 119 taxmann.com 358 (Karnataka), it was held that to invoke the provisions of Section 263 of the Act, an order must be both erroneous and prejudicial to the interests of the

revenue:

"8. In the backdrop of aforesaid well settled legal principles, we may examine the facts of the case in hand. In CIT v. Sunbeam Auto Ltd. [2010] 189 Taxman 436/[2011] 332 ITR 167 (Delhi) it has been held by Delhi High Court that Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case. The question of lack of enquiry/inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income-tax under section 263 of the Act. In the instant case, the Commissioner of Income-tax has held that the enquiry conducted by the Assessing Officer is inadequate and has assumed the revisional jurisdiction. The assessee has filed all the details before the Assessing Officer and Assessing Officer has accepted the contention of the assessee that no expenditure is attributable to the exempt income during the relevant Assessment Year. Thus, while recording the aforesaid finding, the Assessing Officer has taken one of the plausible views in allowing the claim of the assessee and therefore, the Commissioner of Income-tax could not have set the Tribunal."

3.6. Further, in the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Sarvana Developers [(2016) 387 ITR 239 (Karnataka)] the proceedings under section 263 of the Act was set aside on the ground that the assessing officer had applied his mind and hence, there was no "lack of enquiry". The relevant extract of the said ruling is provided below:

"19. In the light of the Judgments discussed above, we are of the firm view that the twin test propounded by the Hon'ble Courts for invoking the provisions of Section 263 of the Act, are not satisfied in the present case. As discussed above, the CIT proceeded to initiate proceedings under Section 263 of the Act only on the ground that the Assessing Officer has not assigned any reasons for accepting the valuation of the work-in-progress declared by the Company. As per the materials placed before the Tribunal in the records pertaining to the assessment year in question, a detailed examination is made by the Tribunal, Tribunal is of the view that the Assessing Officer has applied his mind before accepting the figure declared by the Company in the work-in-progress report. Such an order cannot be held to be erroneous and prejudicial to the interest of the revenue. It is not a case of lack of inquiry'. Further inquiry ordered by the CIT would amount to fishing/roving inquiry in the matter already concluded."

(b) Revisionary proceedings under section 263-

i. cannot be initiated on difference of opinion.

3.7. In the present case, the view taken by the learned AO that the receipt of INR 669,27,63,437 by the Trust from the settlor is not taxable under section 56(2)(x) of the Act is not unsustainable in law, as it is supported by the fourth proviso to the said section, which exempts any sum of money received by a trust created or established solely for the benefit of relative of the individual.

3.8. The reason given by your goodself that fourth proviso is not applicable in a case where the beneficiary is other than relative, and as per trust deed, trustee can add any such beneficiary.

3.9. Your goodself reliance on clause 6.1 of the trust deed is misplaced. Trust deed is entered for the benefit of the family and Clause 6.1 was added with an intention to include any other beneficiary which is a family member thus would fall under the definition of relative under the Act.

3.10. Moreover, your goodself should also take into consideration the conduct of the assessee, till date the funds are used for the benefit of beneficiaries who qualify the definition of relative provided under section 56 of the Act. Clause 6.2 states that any declaration made under clause 6.1 shall be by deed, and the assessee submits that no deed had been executed to add any beneficiary which is not a relative under the Act.

3.11. Based on above, the assessee submits that revisionary proceedings cannot be initiated on difference of opinion as it fails the test of being erroneous order.

(c) Revisionary proceedings under section 263-

i. is not permissible is issue examined by the learned AO even if order is silent.

3.13. As your good self would also agree, in the present case, based on the factual matrix as provided in Section 1 of the submission the issue of receipt of INR 669,27,63,437 was examined.

3.14. The AO had duly issued a notice under section 143(2) of the Act and sought clarification on various issues, including the receipt of INR 669,27,63,437 by the Trust from the settlor.

3.15. The Trust had furnished the relevant details and documents to the learned AO, such as the trust deed, the settlement deed, the letter from the settlor, the ledger copies of capital account, bank statement, and the financial statements, partnership

deeds, financial statements of partnership firms, to explain the source, nature of the receipt, and taxability, refer section 1 of the submission.

3.16. Therefore, it cannot be said that order passed by the learned AO is erroneous and prejudicial to the interest of revenue, without making inquiries or verification or allowing any relief without inquiring into the claim. The order was based on a possible and permissible view taken by the AO in accordance with the law and facts of the case.

3.17 Based on above, it is very well evident that enquiries were conducted. Responses capturing facts and legal proposition were furnished and learned AO has taken a conscious decision of not making any addition. It is therefore humbly submitted that the very foundation of your notice to revise assessment is not supported by facts and evidence.

4. Submission on merits

All the contentions made by the Trust are on without prejudice to each other.

- (a). Receipt is not without consideration.
 - (b). Trust is not a person under section 2(31) of the Act.
 - (c). Receipt of money is from an individual by a trust created/solely established for the benefit of relative of the individual.
- (a) Receipt of INR 669,27,63,437 is not without consideration.

4.1. Section 56(2)(x) (c) states that where any person receives any property (except immovable property) whose aggregate fair market value exceeds INR 50,000 then the aggregate value is taxable as income from other source.

Relevant extract of the section reads as –

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017-

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

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

4.2 The term 'consideration' has not been defined under the Act, the same has to be understood Indian Contract Act, 1872.

Consideration as per Indian Contract Act 1872 is defined in Section 2(d) as follows:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

4.3. The meaning is elucidated by the following judicial precedent:

CGT v. K. Nagammal [1997] 226 ITR 598 (Kerala)

"In this context, it would not be out of place to see and consider as to whether such consideration has necessarily to be a monetary consideration. The term "consideration" has not been defined under the Gift-tax Act and naturally being the inevitable essence of an agreement or contract is to be found in section 2(d) of the Indian Contract Act, 1872. In this connection, by the Full Bench, this court in CGT v. Nirmala (C.K.) (Smt.) [1995] 215 ITR 156, has ruled that the word "consideration" as found in the definition of the term "gift" in the Gift-tax Act would carry the meaning assigned to it in section 2(d) of the Indian Contract Act, 1872. This was following the decision of the Bombay High Court in Keshub Mahindra v. CGT [1968] 70 ITR 1.

It would be at once seen as a result of the above decision, by barely perusing the said definition in section 2(d) that the understanding of the term "consideration" cannot get confined to money alone. The term "consideration" is that which creates a contractual relationship between the promisor and promisee in regard to the performance of promise and in regard to which the parties to the agreement or contract get related to each other. It is more than elementary that the law in regard to consideration tells us that consideration may be relating to a party other than the promisor and promisee illustratively for the benefit of a minor."

4.4. From the above, essential features of consideration are:

- i. It must move from the promisee or any other person, which means it must be given or done by the person for whose benefit the promise is made, or by any third party at the request of the promisor, with the consent of the promisee.*
- ii. It must be at the desire of the promisor, which means it must be given or done voluntarily and not under coercion, undue influence, fraud, misrepresentation or mistake.*
- iii. It may be past, present or future, which means it may be given or done before, at the time of, or after the making of the promise, as long as it is not gratuitous or without any intention to create a legal obligation. It may be an act, abstinence or promise, which means it may be a positive or negative performance, or a commitment to perform or refrain from performing something, by the promisee or*

any other person.

4.5. Further, Indian Trust Act, 1882 defines Trust as-

" A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

4.6. The position that emerges by applying the above legal meaning to the facts of the case, is as under:

The Trust itself is an obligation, each receipt is with an obligation that the same will be used for the benefit of beneficiaries.

The settlor contributed INR 669,27,63,437 to the trust, which created a corresponding legal obligation for the trust to use the funds for the benefit of the beneficiaries. This obligation constitutes a promise by the trustee to the settlor that the contribution/ corpus / funds would be distributed as intended by the settlor, and the said promise fits in the phrase "promise to do something" and "at the desire of promisor" appearing in Section 2(d) of the Indian Contract Act, 1872. Hence, the promise given by the trust to the settlor is the consideration.

4.7. Therefore, the assessee contends that your observation that the transfer was without any consideration is not supported by the facts or the law.

4.8. Based on above, the assessee submits that section 56(2)(x) of the Act is not applicable in present case.

(b) Trust is not a person under section 2(31) of the Act

4.9. Without prejudice to above submission, the assessee submits that Trust is not a person as per section 2(31) read with section 160 read with section 161. Relevant extract of the sections are reproduced as under

"2. In this Act, unless the context otherwise requires-

(31) "person" includes

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and

(vi) every artificial juridical person, not falling within any of the preceding sub clauses.

Explanation- For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

160. (1) For the purposes of this Act, "representative assessee" means

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

"161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him."

4.10. Based on the reading of section 160 and 161, the trust does not have a separate identity distinct from its beneficiaries. Thus, the trust acting in a fiduciary capacity will not qualify as person, thereby the section 56(2)(x) is not applicable as the latter section applies to a 'person' who receives specified items without consideration.

4.11. Further, wherever intent of legislature was to treat the trust as a person the same has been done by way of artificially including it in the definition itself. For example, under Central Goods and Services Tax Act, 2017, person is defined as

2. Definitions. - In this Act, unless the context otherwise requires, -

(84)-person includes

(m) trust; and

4.12. In light of the above legal analysis, we submit that the receipt by trust is essentially receipt by the relatives being beneficiary and thus clearly immune from the applicability of section 56(2)(x) and some part of the contribution constitutes receipt by the settlor himself which cannot constitute income based on the basic fundamental principle that no one can earn income from himself.

(c) Receipt of money is from an individual by a trust created/solely established for the benefit of relative of the individual.

4.13. Without prejudice to above submission, the assessee submits that the transaction would be covered under the proviso to section 56(2)(x) which inter alia provides that the section is not applicable when any sum or money is received from an individual by a trust created / solely established for the benefit of the relative of the individual.

2.2 After considering the submissions of the assessee, Id. PCIT was of the view that the AO has failed to conduct any enquiries due to which the order of the AO is erroneous and prejudicial to the interest of revenue. The relevant observations of the PCIT are as under: -

“6. In the present case, the assessment was concluded without making any modification to the return of income. However, it is seen from the trust deed at Trust has not only been created or established solely for the benefit of the relative of the individual but also other persons can be added as per clause 6. The relevant clauses of 1.6 and 6 are reproduced as under:

Clause 1.6, beneficiaries means.

- a. The Settlor*
- b. The spouse of the settlor*
- c. The children and remoter issue of the settlor*
- d. Such other objects or persons as are added under clause 6 and beneficiaries shall be construed accordingly.*

6. Power to add beneficiaries

6.1 The Trustee may, at any time during the Trust Period, declare that any person or class of persons (whether or not in existence or ascertained) or Charity shall be added to the class of Beneficiaries provided that no such person or class of persons or Charity may be or include any Excluded Person.

6.1 *In view of the above clause, it is clear that other than relatives also can be included in the beneficiaries. Hence, trust is not created or established solely for the benefit of the relatives of the individual.*

6.2 *As per the IT Act, relatives means-*

1. *In case of an individual-*

1. *Spouse of the individual;*

2. *Brother or sister of the individual;*

3. *Brother or sister of the spouse of the individual;*

4. *Brother or sister of either of the parents of the individual;*

5. *Any lineal ascendant or descendant of the individual;*

6. *Any lineal ascendant or descendant of the spouse of the individual;*

7. *Spouse of the person referred to in item (B) to (F).*

Hence, any person or class of persons (whether or not in existence or ascertained) or Charity, mentioned in the clause 6.1 does not falls under the meaning of relatives. The assessee in its reply at point no 3.9 explained that the trust deed is entered for the benefit of the family and clause 6.1 was added with an intention to include any other beneficiary which is a family member thus would fall under the definition of relative under the act. However, clause 6.1 does not represent the same intention. The clause empowers the trustee to add any person or class of persons (whether or not in existence or ascertained) or Charity to the class of Beneficiaries. Thus, the benefits are not restricted to the relatives only.

7. *In the present case the trust has received an amount of Rs.669,27,63,437/- in the form of interest in partnership firms/shares settled by the settlor in favor of the Trust. The said interest in partnership firms/investment in unlisted shares are accounted under the head 'Trust Fund' and under the head of investment in the financial statement.*

As per section 56(2)(x)(a) of the IT Act, wherein any person receives in any previous year, from any person or persons on or after the 1st day

of April 2017- any sum of money without consideration, the aggregate value of which exceeds the fifty thousand rupees, chargeable to income tax under the head of 'Income from other sources' provided that any sum of money received from an individual by a trust created or established solely for the benefit of relative of the individual (X of proviso four of 56(2)(x)).

8. As discussed in above para 6, it is clear that the trust has not been created or established solely for the benefit of relative of the individual. Hence, an amount of Rs.669,27,63,437/- received by the trust should have been brought to tax under the head "Income from other sources" as provided in section 56(2)(x)(a) of the IT Act."

2.3 Aggrieved with the order of Id. PCIT, the assessee has come up in appeal before us and has raised following grounds of appeal:

The grounds mentioned herein by the Appellant are independent and without prejudice to one another:

Grounds of appeal

A. General Ground

1. The Learned Principal Commissioner of Income Tax, Bengaluru - 2 ('Ld. PCIT') has erred in passing an order of revision under section 263 of the Income-tax Act, 1961 ('the Act') which suffers from legal defects such as being passed in violation of the provisions of the Act and is devoid of merits and is contrary to the facts on record and applicable law and as such liable to be quashed.
2. The Ld. PCIT has finalized the impugned order with improper conclusion without considering the information, arguments and evidence provided by the Appellant.

B. Validity of revisionary proceedings under section 263 of the Act

1. The impugned order passed by the Ld. PCIT is without jurisdiction as the twin conditions prescribed under section 263 of the Act i.e., the order of the Ld. AO shall be 'erroneous' and 'prejudicial to the interest of revenue', are not satisfied.
2. The Ld. PCIT erred in concluding that the assessment order passed under section 143(3) r.w.s 143(3A) and 143(3B) of the Act for impugned AY is erroneous and prejudicial to the interest of revenue, without appreciating the material on record and submissions made by the Appellant.
3. The Ld. PCIT erred in passing the impugned order, on the allegation that the Ld. AO has completed the assessment without making necessary enquiries or verifying the taxability of receipt of INR 669,27,63,437, without appreciating that the Ld. AO had duly conducted enquiries and verification on the issue.

C. Taxability of receipt of INR 669,27,63,437

1. The Ld. PCIT has, in the facts and circumstances of the case and in law, erred in disregarding the fact that the receipts of INR 667,47,38,930 out of INR 669,27,63,437 is in form of interest in partnership firms and does not qualify as property as per section 56 of the Act.
2. The Ld. PCIT has, in the facts and circumstances of the case and in law, erred in disregarding the fact that (a) the receipts of INR 669,27,63,437 is not without consideration (b) trust is not a person under section 2(31) of the Act and (c) receipt of money is from individual by a trust created or established solely for the benefit of relative of individual, hence outside the purview of section 56(2)(x) of the Act.

That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.

3. Ld. Counsel for the assessee appearing on behalf of the assessee has compartmentalized its arguments into following categories:-

- a) Validity of assumption of jurisdiction u/s 263 of the Act.
- b) The transactions involved in this case are out of the purview of section 56(2)(x) of the Act. As the trust has been established exclusively for the family members covered in the definition of relative.
- c) The money received by the trust is not without consideration as the same has been received in fiduciary capacity.
- d) The property which is transferred by the settlor is out of the purview of the expression “shares and Securities”
- e) Trust via trustees does not have any right to enjoy the receipt as owner.
- f) Provisions of section 56(2)(x) are not applicable for genuine transactions.

3.1 So far assumption of jurisdiction is concerned the counsel for the assessee has submitted that he would like to argue the case on merits instead of legal issue. Therefore, we deem it not do adjudicate this ground and the same has been dismissed as not pressed.

3.2 The counsel for the assessee next contended that even if it is presumed that the case of the assessee falls in the rigors of section 56(2)(x) of the Act, then as per the definition of “property” as given in section 56(2)(x) of the Act, the interest in partnership firm are not covered in that definition. Ld. Counsel next contended that expression “shares” used in the definition of “property” as explanation (d) to section 56(2)(Vii) of the Act.

3.3 Counsel for the assessee next contended that even if it is presumed that it is covered in the definition of “property” then the amount received by the assessee cannot be said to be an amount received without consideration. Counsel for the assessee to support this contention has further contended that the trust has received an amount of Rs.669.27 crores in Fiduciary capacity, which was overridden with an obligation to use that amount only for the benefits of the beneficiaries. Ld. Counsel for the assessee has vehemently referred to definition of “Trust” as given under Indian Trust Act and has also relied upon various judgements to buttress his arguments.

4. The ld. D.R. appearing on behalf of the revenue strongly argued that it is a case where an amount of Rs.669.27 crores has been received by the assessee without any consideration and this contention of the assessee that the same was received in the fiduciary capacity for spending for the benefits of beneficiaries only is factually incorrect in as much as it is categorically mentioned in the trust deed that this amount can be utilized for the outsiders also.

5. The core of the issue in the present appeal is the alleged taxability of the said investments in the hands of the trust u/s

56(2)(x) of the Income Tax Act, 1961 (in short “The Act”), if the answer is in affirmative then whether the order of the AO was erroneous in so far as the same is prejudicial to the interest of revenue.

Findings of the Bench-

6. We have heard the rival submissions and perused the material available on record before reaching to the conclusion we deem it appropriate to discuss certain important facts which goes to the root of the matter are summarized as under: -

- a) Mr Anand was holding two types of properties, which he has transferred to the trust. **i) interest in partnership firms of which Mr Anand was partners (details are mentioned in Trust deed) ii) unlisted shares of M/s Sivler niddel Hospitality (1754900, preference shares and 5000 equity shares). It is an undisputed fact that the settlor has transferred these two properties to the Trust for the beneficiaries-**(Reference can be made to the deed dated **31.03.2018**, annexed at Page Number- 63 to 66 of the Paper Book). Certain relevant clauses are reproduced hereunder:

“WHEREAS

.....
C. Anand is a partner in Vriddhi Partners, Unnati Partners, Tatva Partners, Nadathur Technologies and Group LifeSrping, being partnership firms (collectively referred to as the “Partnerships”). Anand, out of his natural love and affection for the beneficiaries and for the purposes of providing for the beneficiaries, is desirous of transferring his entire share and interest in the partnerships along with all attendant benefits and entitlements thereto (including amounts outstanding to his capital and current account in the Partnerships and all profits that may be due or payable to him by the Partnerships even if they are relating to a period prior to this Deed) (“Partnership Interest”) and the Unlisted shares in favour of the Trustee acting on behalf of and in its capacity as trustee of the Trust.”

“IT IS HEREBY AGREED AS FOLLOWS:

1. *In consideration of the premises and in order to effectuate the desire of Anand as set out in the indenture of the Trust dated 28th January 2018 and diverse other good causes and consideration and in consideration of the love and affection which Anand has towards the beneficiaries of the Trust, Anand hereby grants, transfers, conveys, assigns and assures unto the Trustee (acting on behalf of and in its capacity as trustee of the Trust) his entire Partnership Interest and the Unlisted Shares along with all attendant benefits and entitlements, including all amounts standing to the credit of Anand in the capital account, and all profits that are due or payable to Anand (including profits arising or relating to the period prior to execution of this Deed).”*

*“Annexure-1
Details of Unlisted shares*

<i>Sl.No.</i>	<i>Name of the Company</i>	<i>No. of equity shares</i>
<i>1.</i>	<i>Silver Needle Hospitality (India) Pvt. Ltd.</i>	<i>175,490 preference shares</i>
<i>2.</i>	<i>SilverNeedle Hospitality (India) Pvt. Ltd.</i>	<i>5,000 equity shares”</i>

- b) Trust was settled on 23.01.2018 with an amount of Rs 10000/- (Settlement deed is at Page Number-31 of the Paper Book) In this deed the definition of securities has been mentioned at Page Number- 36 Clause 1.32. The same is reproduced hereunder for the sake of reference-

“Clause 1.32 Securities means:

- a) Any stocks or shares issued by any Company;*
- b) Debentures (including debenture stock, loan stock, bonds, certificates of deposit and any other acknowledgement of indebtedness) issued by or on behalf of a government, local authority, public authority or Company;*
- c) Units in a unit trust or other collective investment scheme; and*
- d) Any options or warrants to subscribe for, and any other rights to acquire, any of the aforesaid.”*

- c) It is further relevant to mention here that immediately after the execution of deed dated 31.03.2018, on the same date i.e. on 31.03.2018, the constitution of all partnership firms have been changed and the assessee has been made partner in all these firms **through M/s Vervain**

Management Private Ltd. And the settlor has been retired from these firms. In fact, this Company is termed as original trustee vide deed dated 23.01.2018, meaning thereby the beneficiaries i.e. the family members & other persons which can be included as per the discretions of the family members of the settlor have been made partners in the partnerships firms indirectly.

- d) During the course of assessment proceedings, the Assessee vide his letter dated 11.10.2019 has also accepted candidly that the trust has received an Amount of Rs 6,69,27,63,437/- (herein after referred to as 669.27 Crore) in the form of **interest in partnership firm** and equity / preference shares in Companies.
- e) After the receipt of the above reply the AO has issued further questionnaire dated 25.11.2020(**Page Number-136-138 of PB**). In this questionnaire the AO has basically following things.
- a. Nature investment made, source of investment, amount of investment etc.
 - b. Ledger copy of capital account.
 - c. Amount of Capital introduced.
 - d. Explanation regarding source of investment.
 - e. Explanation regarding utilization of investment. etc
- f) In response to the above questionnaire the assessee vide his reply dated 08.12.2020 has replied vis-à-vis source of capital that the assessee trust has received an amount of 669.27 Crore in shape of preference shares having value of around 1.79 Cr, equity shares having value of Rs 1.79 cr and **rest is interest of settlor, in various partnership**

firms of which firms the assessee has been made partner. Break of amount Rs 669.27 Crore is at Page number 139 of the PB)

- g) Thereafter, the AO issued another questionnaire dated 11.01.2021 and asked the assessee to justify the non-taxability interest/property/shares received by the Trust.
- h) In pursuance to the above notice the assessee filed part reply dated 02.02.2021(Page No-159- 164) and then filed one more reply dated 08.02.2021. In this reply the assessee has submitted that the assessee has received interest in partnership firms, which is not taxable under the provisions of income tax. Assessee referred to explanation (d) of section 56(2)(vii) for contending that interest in partnership is not covered under the definition of “property”. Assessee also referred to the provisions of section 56(2)(x) for arguing that even if the amount of Rs 669.27 Crore is covered in the definition of “property” the amount cannot be taxed as the same has been received from the benefit of relative of individual. This reply of the assessee is silent vis-à-vis transfer of equity and preference shares of the Company(name mentioned somewhere above)
- i) The above facts are being mentioned to judge whether the AO has conducted adequate enquiries with respect to the issues on which the PCIT has declared the order as erroneous and prejudicial to the interest of revenue. (**this para will go at last**)

5. Perusal of the sequence of event would prove beyond doubt that in the final reply dated 08.02.2021, the assessee has made only

submissions with respect to the non-taxability of interest in partnership firm, the assessee has nowhere mentioned anything about the receipt of preference shares and equity shares of M/s Silver Needle hospitality. The AO has also not conducted any query nor raise any further question as regard to the applicability of the provisions of section 56(2)(vii) explanation (d) vis-à-vis preference shares and equity shares.

6. The AO has also failed to see the applicability of the provisions of section 45(4) of the Income Tax Act as they stood at the relevant times and interpreted by the Apex Court in the case of Mansukh Dying reported in 449 ITR 439(SC), in the hands of partnership firms, in this case Hon'ble Apex Court has observed that *"the assets of the partnership firm were revalued to increase the value by an amount of Rs. 17.34 crores on 01.01.1993 (relevant to A.Y. 1993-1994) and the revalued amount was credited to the accounts of the partners in their profit-sharing ratio and the credit of the assets' revaluation amount to the capital accounts of the partners can be said to be in effect distribution of the assets valued at Rs. 17.34 crores to the partners and that during the years, some new partners came to be inducted by introduction of small amounts of capital ranging between Rs. 2.5 to 4.5 lakhs and the said newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which amount was available to the partners for withdrawal and in fact some of the partners withdrew the amount credited in their capital accounts. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners can be said to be "transfer" and which fall in the category of "OTHERWISE" and therefore, the provision of Section 45(4) inserted by Finance Act, 1987 w.e.f. 01.04.1988 shall be applicable. Law has also been amended after the arrival of the Supreme Court judgement. In the present case since the assessee has been introduced as partner in the partnership firms, **and that too without any capital contribution, capital account of the assessee has been credited with an amount of Rs 669.27Crore, as evident from the above facts.** Therefore, it was the abundant duty of the AO to examine the valuation of shares of*

partnership firms, adopted by the settlor for crediting the capital account of assessee in those firms and the taxability of the same in the hands of the firms and vice versa, which the AO has not done in this case. Therefore, it is a complete case of lack of enquiry. It is settled position of law that tax planning is permissible if it is done within the four corners of law but tax evasion is not permissible. Further if apparent is not real then the courts have power to lift the veil and to see through the transaction as held by the Hon'ble Apex Court in Vodafone case. In this case arrangement of affairs have been done in such a manner that one partner has been made retired and the retirement benefits have been devolved in the favor of third parties and family members. The ought to have examined the issue thread barely.

7. It is settled position of law ITAT has no power to enhance the income of an assessee, or to withdraw the benefit that has been granted by the AO. However, the ITAT has all the powers to examine the applicability of correct provisions before the matters coming to it for adjudication particularly in the light of admitted facts. Herein this case in fact we are not ultimately deciding the liability of the assessee u/s 45(4) rather deciding the assumption of jurisdiction by the PCIT for invoking the action of section 263. If the assessee is able to satisfy the AO regarding the non-applicability of the provisions of section 45(4) then issue can be decided as per law.

7. Be that as it may be now we deal with the other contentions of the Id Counsel for the assessee, one by one that the amount received is not taxable in terms of section 56(x) as the same has been received for the benefit of relative. We don't find any infirmity in the view of the PCIT in as much as it is evident from the clauses of the trust deed that the benefits of the trust were not restricted to

relatives only. The relevant clause is reproduced hereunder for the sake of convenience.

“1.6 “Beneficiaries” means the beneficiaries of this Trust, which constitute:

- a) The Settlor;*
- b) The spouse of the Settlor;*
- c) The children and remoter issue of the Settlor; and*
- d) **Such other objects or persons as are added under clause 6 and “Beneficiary” shall be construed accordingly.**”*

.....
.....
6.1 The Trustee may, at any time during the Trust Period, declare that any person or class of persons (whether or not in existence or ascertained) or Charity shall be added to the class of Beneficiaries provided that no such person or class of persons or Charity may be or include any Excluded person.”

8. Therefore it is abundantly clear that the benefit of the amount received was not restricted to the family members and hence the view of the AO is not plausible view therefore the PCIT is correct in law in holding the order as prejudicial to the interest of revenue.

9. Second contention of the Ld Counsel for the assessee is that what was received is not covered by the definition of term “property” as given in explanation(d) of section 56(2)(vii). So far as the submissions made by the counsel of the assessee before the AO during assessment proceedings on 08.2.2021 is seen, it is clear that these submissions are not addressing the fact that in the present case the assessee has not only received the interest in partnership firm rather has also received **preferential shares and equity of M/s SilverNiddel**. Now we examine whether interest in partnership firm is covered in the meaning of expression “property”.

10 Expression “property” has two ingredients i.e “shares and securities”. In our understanding these terms are not similar in view of the following differences.

Shares:- Shares can be used more broadly to mean **a part or portion of something**. For instance, "sharing" refers to dividing or giving out portions of something among several people. Here it is pertinent to that legislature has not used the words of a company after the term "shares", which means the expression shares as in explanation-2 of section 56(2)(vii) does not mean that the word share is only related to shares of corporate entities only.

Securities

- a. Encompasses a broader range of financial instruments.
- b. Includes shares, bonds, debentures, mutual funds, and other investment products.
- c. Can be traded on various financial markets, including stock exchanges, bond markets, and over-the-counter (OTC) markets.

Key differences- Between shares and Securities are as under:-

Shares	Security
Scope Shares are a specific type of security	While securities is a more general term
Instrument types- Not of wider range it can be in equity and preferential shares	Securities include a wider range of financial instruments beyond shares
While shares are typically traded on stock exchanges.	securities can be traded on various financial markets.
To illustrate the difference "I bought 100 shares of Apple stock." (Here, "shares" refers specifically to units of ownership in Apple.)	"The investment portfolio includes a mix of securities, such as stocks, bonds, and mutual funds." (Here, "securities" encompasses a broader range of financial instruments.)
Represent ownership in a specific company.	Securities: May or may not represent ownership, as they can include debt instruments like bonds
Typically represent equity in a company, firm, association of person, trust as the case may be	Securities: Can represent various asset types, such as equity (shares), debt (bonds), or hybrid instruments
Shares: Generally considered riskier due to market volatility and potential for losses	Securities: Can have varying risk profiles depending on the type of security, such as low-risk government bonds or high-risk junk bonds
Typically offer potential for long-term capital appreciation and dividends	Can offer varying return expectations, such as fixed income from bonds or potential for capital appreciation from shares
Typically traded on stock exchanges, with prices determined by market forces.	Securities: Can be traded on various platforms, including stock exchanges, bond markets, and over-the-counter (OTC) markets.

Shares have narrower scope	Securities have wider scope
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Beside these above differences there are so many differences between expression share and securities therefore one cannot say that they are synonyms. These additional differences highlight the complexities and nuances of shares and securities, and demonstrate the importance of understanding the specific characteristics of each.

11. Hon'ble Bombay High Court while dealing with an appeal in the case of Dahiben Umedbhai Patel And Others vs Norman James Hamilton And Others reported in [1985]57COMP CAS700(BOM) while interpreting the expression "security" has held that as per the definition of security given in Section 2(h) of the Regulation Act, **security means-**

'securities' include –

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ii) Government securities; and
- (iii) rights or interests in securities".

12. There are so many other judgments wherein it has been held that shares are a species of security.

13. In fact the assessee in its trust deed vide clause **1.32 has also defined the term "securities" as under:** -

"securities" means

- a) any stock or shares issued by any company.....

13. The above discussion would prove beyond doubt that expression **shares and securities as used in explanation(d) of section 56(2)(vii) denotes two different type of properties** these

properties are distinct and hence the term “and” used between them carries a meaning of “or”. There are so many judicial pronouncements wherein it has been held that “and” can be read as “or” when the interpretation requires so. The and/or doctrine is applied in following situations.

- a) **Literal interpretation leads to absurdity:** - If reading “and” literally leads to an absurd or un reasonable results, courts may interpret it as “or”.
- b) **Contextual analysis supports it** :-If the context of the statute, regulation, or contract suggests that "and" should be read as "or", courts may apply the and/or doctrine.
- c) **Legislative intent:** If the legislative intent behind the statute or regulation is to provide alternative options, courts may interpret "and" as "or".

11. In the present case the context in which the term shares and securities has been used it is abundantly clear that “and” should be read as “or”. Further literal interpretation in the present case is also giving an absurd meaning therefor we are of the firm opinion that the expression “and” used here should be read as “or”

12. Case laws where it has been held that terms 'or' and 'and' can be interchangeably interpreted to fulfil the legislative intent. In this context, reference can be made to the following rulings of Hon’ble Apex Court in.

- a) **Durrani Abdullah Khan v. State of Maharashtra (2017) 4 AIR Bom R 300** wherein in paragraph No.14 it is stated as under:

"14. The word "and" is normally conjunctive and word "or" is normally disjunctive. The word "and" is required to be given its literal meaning. It is only if the use of word "and" conjunctively produces unintelligible or absurd result, then the Court has the power to read the word 'or' as 'and' and vice versa to give effect to the intention of the legislature. The interpretation has to depend on the text and the context. The words normally are be read in their ordinary, natural and grammatical meaning. The word 'or' as 'and' and 'and' as 'or' in a statute are read unless the same is obliged to do so. Reading of the word 'or' as 'and' and 'and' as 'or' is not to be resorted to unless some other part of the same statute or the clear intention of it requires to be done. "

- b) *Jindal Stainless Ltd. v. State of Haryana* [\(2017\) 12 SCC 1/\[2016\] 75 taxmann.com 137 \(SC\)](#),
- c) *Barun Kumar Vs State of Jharkhand-* (2022) SCC online SC 1093 (para 11)
- d) *Akshaibar Lal (Dr.) v. Vice-Chancellor, Banaras Hindu University* (1961) 3 SCR 386.
- e) *Remsons Industries Ltd. v. National Stock Exchange of India Ltd.*- reported in 168 Taxman. 458:- Similar view has been followed that “and’ can be read as “or”
- f) Recently Karnataka AAR in a ruling reported in (2020) 116 Taxman.com 270 in a ruling titled **as Water Health India (P.) Ltd.**, In re has held as under :-

“Applying the said principle to the instant case that the word 'and' used before the 'water sold in sealed container' in the Sl. No. 99 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 is disjunctive nature and lays down that 'water sold in a sealed container' is the another type of water excluded from the said entry along with the aerated water, mineral water, purified water, distilled water, medicinal water, ionic water, battery water, de-mineralized water. Therefore, supply of purified water whether in sealed container or unsealed container not entitled for GST exemption as the purified water excluded from the Sl. No. 99 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017. Thus supplying of purified drinking water to the general public in an unsealed container is not exempt from GST. [Para 19]”

- g) In **Ishwar Singh Bindra v. State of UP AIR 1968 SC 1450** the central question before a three judge Bench of this Court was the interpretation of Section 3(b)(i) of the 1940 Act. This Court held: -

"11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions "or" and "and" one for the other".

12. From the above judgments we are of the view that term “and” is to be read as “or”. And if that be so then whether interest in partnership firm falls in the category of “shares” as used in explanation (d) of section 56(2)(vii). What is “interest in partnership firm” has been decided by so many judicial pronouncements wherein this expression has been interpreted of expression. We have already noted somewhere else that term shares as used in explanation-2 of section 56(2)(vii) is not restricted to the shares of companies only, rather it is wide enough to mean **a part or portion of something**. For instance, "sharing" refers to dividing or giving out portions of something among several people..

13. Merely because some expression is missing we cannot restrict the meaning of a word. It is settled position of law that that words should not be overly restricted; their meaning can be **shaped** by the context in which they are used. Legal texts, contracts, or laws often define words, **but if a specific definition is not provided**, courts or authorities may interpret the word according to its **common usage** or the broader context. Therefore we have to take the common meaning of word “share”. Further below mentioned judgments would show that interest in partnership firm is nothing rather shares of partnership firm

- a) Shares of a partner in partnership firm are generally termed as “Interest in partnership firm”, which refers to not only the proportion of ownership, rather also include their right to participate in the management of the firm as held by the Apex Court in the case of **CIT Vs Raman Chettiar 57 ITR 232(SC)**.
- b) K. Rukmani Ammal v. K. Balakrishnan (1973) **91 ITR 631 (Madras High Court)** **The court observed that a partner's interest in a partnership firm is a species of movable property and can be transferred.**
- c) S. Gurunarayana v. S. Narasimhulu (2004) 7 SCC 472 (Supreme Court of India) **The Supreme Court held that a partner's interest in a partnership firm is not merely a financial interest but also includes their right to participate in the management of the firm.**
- d) **Sudhir Gopi v. Usha Gopi (2018) 14 SCC 452 (Supreme Court of India)** The Supreme Court held that a partner's interest in a partnership firm is a **valuable right and can be the subject matter of a partition suit.**

14 Above judicial views clearly provide that “interest in partnership firm” falls in the category of **“shares”** and the same is covered by the provisions of explanation (d) of section 56(2)(vii). Therefore, we reject the contentions of the counsel for the assessee that interest in partnership firm is out of the purview of section 56(2)(X).

15. The next contention raised by the counsel for the assessee is that amount was not received without consideration. We don't find any merit in this contention in view of the fact that it is not merely a case of receipt of an amount, **rather a case where on the same date the assessee has been given rights in the partnership firms**

and the erstwhile partner has been retired. In fact, assessee has been made owner of the partnership firms without paying any penny. In fact, it is a finding of fact that no actual money has been transferred to the account of the assessee rather shares of M/s Silver Niddle has been transferred and capital account of the assessee has been credited in the partnership firms by reconstituting the partnership firms.

16. Counsel for the assessee next contended two things **A)** the amount received by the trust is received under fiduciary capacity and hence not taxable. **B)** Counsel for the assessee also argued that **trust via trustee does not have any right to enjoy the receipt as owner.** We don't find any merit in these arguments, there are provisions under the Income Tax Act which are meant **exclusively for the purpose of taxation of Private Discretionary trusts.** For instance, section 165 specify the tax rates applicable to a trust section 164A provides charge of tax in case of oral trust etc. Further Hon'ble Bombay High Court in the case of CIT Vs Venu Suresh Trust 221 ITR 649(Mad) "*Even though the assessment of income is in the hands of the trust, it had to be made in the same manner and to the same extent as it would have been made in the hands of the beneficiaries*". The income of the private discretionary is taxable at maximum marginal rates. If there is specific law, then the provisions of specific law would override the general provisions of law. Otherwise the provisions of Income Tax Act, providing maximum marginal rate for taxing the Income of Trust, would become redundant.

17 **Provisions of section 56(2)(X) are not applicable to genuine transactions:** -Assessee has made detailed submissions in **Para 58** of its written submissions and has also relied on various decisions. In the facts of the present case, two important facts which are missing in other cases are that the assessee in this case has

received the amounts without consideration for the benefits of non-relatives, secondly the assessee has been made partner in those firms where the settlor was having substantial interest. In order to circumvent the provisions of section 45, which deals with the chargeability of capital gains under various circumstances, the assessee has adopted a route of transferring the assets of Partnership firm through layers of companies and juristic entities. Therefore, we are not convenience with the arguments of the assessee.

18. Explanation -2 of section 263 has been inserted with effect from 01.06.2015 and applicable to the present case clearly provides as under: -

- a) The order is passed without making inquiries which should have been made.....
- d) the Order has been passed ignoring the decision of Supreme Court which is prejudicial to the interest of assessee

19. The position of facts and law as discussed above would prove beyond doubt that the present case the order of the AO is erroneous in so far as prejudicial to the interest of revenue. The AO has passed the order without making enquiries which should have been made by him. It is equally true that in final stage of assessment, the assessee has not disclosed the transferee of shares of private limited company along with interest in partnership firm in categorical terms.

20. Here we would like to make a reference to the decision of Hon'ble Rajasthan High Court in the case of CIT Vs Every stone reported in 213 ITR 843 (Raj) wherein it has been held that non

application of mind by the AO to the legal issues would justify action of section 263.

21. Before parting we would also like to observe that the detailed submissions made by the assessee, would itself shows that the present case was not an ordinary case and the AO ought to have conducted some more enquiries and then ought to have examined the applicability of other provisions of the act. However, nothing has been done by the AO. Therefore, it is a clear case of no enquiry by the AO and hence the PCIT is correct in holding the order of the AO as erroneous and prejudicial to the interest of revenue.

22. The appeal of the assessee stands dismissed.

Order pronounced in the open court on 30th Dec, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 30th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.