IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On	Judgment Pronounced On
10.11.2020	08.12.2020

T.C.A.No.242 of 2018

The Commissioner of Income tax,
Chennai. .. Appellant

-vs-

Shriram Ownership Trust,
No.4, Shriram House,
1st Floor, Burkit Road,
T.Nagar, Chennai-600 017.
PAN No.AAGTS2243H .. Respondent

Appeal under Section 260-A of the Income Tax Act, 1961 against the order dated 05.07.2017 made in I.T.A.No.407/Mds/2017 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2014-15.

For Appellant : Ms.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

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JUDGMENT

T.S.Sivagnanam, J.

This tax case appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated 05.07.2017 made in I.T.A.No.407/Mds/2017 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai (for brevity "the Tribunal") for the assessment year 2014-15.

2.The following substantial questions of law have been framed for consideration of this Court:-

"1.Whether the Tribunal was correct in holding that the investment which yielded no exempt income was to be excluded while computing deduction u/s.14A when

the Act as well as Rules framed do not provide for any such exception, and further such investment shall always remain in tax free territory?

2.Whether the Tribunal was right in deleting the additions made u/s.56(2)(vii) when the assessee in its representative capacity is to be assessed as individual, since it represents the individual only and further various courts have held that Private Discretionary Trust is to be assessed as an individual?

3.Whether the Tribunal was justified in excluding the assessee from the purview of taxation u/s.56(2)(vii) after concluding that the individual must be a natural living person when such a condition cannot be enforced on a representative assessee and has to be perceived in the context of beneficiaries?"

3.The respondent/assessee is a private discretionary Trust which filed its return of income for the assessment year under consideration, AY 2014-15 electronically on 28.09.2014, disclosing a total income of Rs.107,72,76,893/-. The return was processed under Section 143(1) of the Act. Subsequently, the

case was selected for scrutiny and notice under Section 143(2) of the Act dated 01.06.2016, was served on the assessee along with a questionnaire. Among other things, the principal issue was with regard to the amount of Rs.25 Crores credited to the balance sheet under the nomenclature "addition to corpus". On this issue, the Joint Commissioner of Income Tax, Non Corporate Range-2, Chennai (JCIT), passed an order dated 24.08.2016, under Section 144A of the Act directing the Assessing Officer to treat the receipt of Rs.25 Crores as "income from other sources" and tax the same accordingly. Pursuant to such direction issued by the JCIT, the assessee was given an opportunity, who placed their written submission dated 09.09.2016, contending that the assessee is a discretionary Trust and the direction issued by the JCIT invoking Section 56(2)(vii) of the Act is erroneous, as the said provision applies only to individuals and HUFs. The Assessing Officer noted that the submissions, which were made by the assessee, were in fact the same submissions made before the JCIT, who heard the assessee before issuing the direction dated 24.08.2016 under Section 144A of the Act and accordingly, rejected the contention and treated the sum of Rs.25 Crores credited directly

to the balance sheet as 'income from other source' and the assessee was taxed on the same. Apart from that, there was also a disallowance made under Section 14A of the Act. Aggrieved by the same, the assessee preferred appeal to the Commissioner of Income Tax (Appeals)-2, Chennai (CIT(A)) contending that Section 56(2)(vii) of the Act applies only to individuals and HUFs and the Assessing Officer ought to have taken note of the decision of the Hon'ble Supreme Court in ***CIT vs. Smt.Sodra Devi [(1957) 32 ITR 615 (SC)];*** Section 56(2)(vii) applies only to what is actually received by the individuals and HUFs. That the Assessing Officer erroneously applied Section 2(24)(iva) to bring to tax voluntary corpus donations of sums of money received by the assessee Trust ignoring the settled interpretation of the expression value of any benefit or perquisite, whether convertible into money or not. The assessee also raised several grounds contesting the disallowance under Section 14A of the Act.

4.From the grounds raised by the assessee before the CIT(A), as extracted in the order passed by the CIT(A), it is seen that the assessee did not

specifically question the power of the JCIT to issue directions under Section 144A of the Act, but contended that the Assessing Officer could not have proceeded to implement the direction of the JCIT without considering their objections. The CIT(A) by order dated 06.02.2017, partly allowed the appeal, but however, the issue with regard to taxability of the sum of Rs.25 Crores was decided against the assessee. The CIT(A) first took up for consideration as to the procedure adopted by the JCIT before issuing the directions under Section 144A of the Act and found that the JCIT had afforded sufficient opportunity to the assessee and followed the procedure under Section 144A. The CIT(A) found that the objections, which were raised by the assessee before the Assessing Officer in their written submissions dated 09.09.2018, were in fact the same submissions which the assessee had raised before the JCIT, when they were granted an opportunity to place their objections to the proposal to issue direction under Section 144A and after noting the factual position, held that there is no procedural infirmity in the assessment order dated 27.09.2016 passed under Section 143(3) read with Section 144A of the Act and accordingly, rejected the said contention raised by the assessee.

5.Next, the CIT(A) took up for consideration with regard to the taxability of the sum of Rs.25 Crores which was credited to the balance sheet under the head "addition to corpus". The CIT(A) pointed out that during the financial year 2013-14, relevant to the assessment year 2014-15, the assessee received a sum of Rs.25 Crores from six companies of Shriram Group. The CIT(A) pointed out that none of the six firms has claimed the contribution as expenditure deductible from the income chargeable to tax. The question, which was framed for consideration was whether "voluntary contributions received by the assessee are in the nature of income chargeable to tax".

6.The assessee contended that they are an Association of Person (AoP), that is, a person within the meaning of Explanation to Section 2(31) of the Act. The assessee further contended that this is so because they had filed their return in Form No.ITR-5 specifically relating to Trust and therefore, the assessee cannot be treated as an individual. Further, the assessee contended that reading of Section 56(2)(vii) as well as proviso thereunder would clearly

indicate that the individuals referred to therein are living persons. To support such contention, reliance was placed on the decision in the case of ***Smt.Sodra Devi.*** The CIT(A) did not agree with the assessee by observing that the Hon'ble Supreme Court in ***CIT vs. Indira Balkrishna [(1960) 39 ITR 546],*** has held that the word "association" means 'to join in any purpose' or 'to join in an action' and therefore, the term AoP as found in Section 2(31), would mean an association in which two or more persons come together for a common purpose or a common action. It further held that the settler has created the Trust and nominated trustees to maintain and operate the Trust for the benefit of certain identified beneficiaries who are individuals. It further held that the beneficiaries have not come together for a common purpose and they do not have any role in the operation and maintenance of the Trust.

7.The assessee contended that after the insertion of the explanation below Section 2(31) by Finance Act, 2002, with effect from 01.04.2002, reliance cannot be placed on the decision in ***Indira Balkrishna.*** This plea was also rejected by the CIT(A) holding that the insertion of the explanation

was to cover the vacuum and bring charitable and religious Trust into the ambit of taxation in an event of those institutions losing the benefit or exemption under Section 10, 11 or 12 of the Act, and accordingly, held that the decision in ***Indira Balkrishna*** continues to hold good.

8.With regard to the form of return, viz., ITR-5, which was heavily relied on by the assessee to state that they should be treated as an AoP, the CIT(A) rejected the same holding that the assessee, being a private discretionary Trust, had taken advantage of the press release issued by the Central Board of Direct Taxes (CBDT) dated 31.07.2012 permitting private discretionary Trust to have the status of 'individual' only and therefore, rejected the contention of the assessee that they fall within the meaning of explanation inserted below Section 2(31) with effect from 01.04.2002.

9.With regard to the contention of the assessee that the voluntary contribution received from six concerns of the Shriram Group towards corpus of the assessee Trust does not constitute income in the hands of the assessee

three decisions were relied on by the assessee. The CIT(A) in paragraphs 4.4.2 to 4.4.4 distinguished those decisions by assigning certain reasons and pointed out that the core issue would be whether the assessee, a private discretionary Trust, which received a corpus donation in its status as a representative assessee, representing the individual beneficiaries, is an individual for the purpose of the Act and such income is taxable or otherwise. It was pointed out that in none of the decisions, the status of the assessee was adjudicated and all the case laws are silent on the status of the assessee, which is governed by the provisions of Section 161(1) of the Act.

10.The assessee contended that the corpus donation is not a benefit or perquisite to become income under Section 2(24)(iva) read with Section 56(1) and relied on the decision in the case of ***CIT vs. G.Venkatraman [(1978) 111 ITR 444 (Madras)].*** The CIT(A) pointed out that in the said decision, it was held that the word "obtained" occurring under the 1922 Act corresponds to deemed dividend and held that appropriating of benefit is taken by the Director from the company and not 'obtained' from the company. In this

regard, reference was made to the decision in the case of ***CIT vs. Adaikappa Chettiar [(1973) 91 ITR 90 (Madras)]*** to distinguish the meaning between the words "obtained" and "taken". Therefore, the assessee argued that unless a benefit or perquisite in money or money's worth is obtained, the same cannot be treated as income.

11.The CIT(A) agreed with the contention of the assessee by taking note of the decision in the case of ***G.Venkatraman*** and held that corpus donation is not income as defined under Section 2(24)(iva) of the Act, however proceeded to hold that the said receipt will fall within the ambit of Section 2(24)(xv) read with Section 56(2)(vii) inserted with effect from 01.10.2009. Thus, the CIT(A) zeroed in on the core issue with regard to the status of the assessee. The CIT(A) held that the Trust has been created by a settler declared by a duly executed instrument in writing, which empowered the trustees to receive the property under Trust and maintain it for the benefit of the beneficiaries identified by the Trust and therefore, held that the assessee is a representative assessee as per Section 160 of the Act, since it

receives income on behalf of and for the benefit of the beneficiaries; the assessee is only a representative of the beneficiaries who are in substance and form, the real owners.

12.Referring to Section 161(1), it was held that the assessee being a representative assessee, has to be taxed in the like manner and to the same extent as it would be in respect of the beneficiaries and the status of the assessee is to be determined with reference to the status of the beneficiaries and the beneficiaries being individuals, the assessee's status is also that of an individual. The CIT(A) approved the finding of the JCIT that the status of the Trust is to be determined from the status of the beneficiaries by placing reliance on the decision in the case of ***CIT vs. SEA Head Office Monthly Paid Employees Welfare Trust [(2004) 141 Taxman 364 (Delhi)].*** Further, the CIT(A) affirmed the finding of the JCIT refusing to treat the assessee as an AoP under Section 2(31) by referring to the decision in ***CIT vs. Marsons Beneficiary Trust [(1990) 52 Taxman 454 (Bombay)].*** Accordingly, the CIT(A) held that the assessee, a private discretionary Trust, is in the status of

an individual, since all its beneficiaries are individuals and they cannot be treated as an AoP under Section 2(31) of the Act.

13.The assessee contended that the term "individual" occurring in Section 56(2)(vii) has to be interpreted with reference to the context in which it is used in the said provision. In other words, it was contended that in the proviso, there is a reference to relatives of individual, occasions like marriage etc., and therefore, the term "individual" occurring in Section 56(2)(vii) shall mean only living persons. This issue was discussed by the CIT(A) firstly by noting Section 5(1) of the Act, which deals with "scope of total income" to include all income from whatever source derived, which is received or is deemed to be received in India. It was held that the assessee in the status of a representative assessee, has received income on behalf of individuals and the reference to relatives, occasion of marriage of individual, etc., in the said provision does not apply to a representative assessee. Noting the factual position, the CIT(A) pointed out that the income received by the assessee is on behalf of the individuals and therefore, the argument that the assessee

being not a living person would fall outside the scope of Section 56(2)(vii) was to be rejected.

14.With regard to the plea that there was no income to fall within the mischief of Section 2(24)(iva), the CIT(A) held that the assessee having been held to be an individual as per the provisions of Section 2(24)(xv) read with Section 56(2)(vii), the contribution received without any reciprocation has necessarily to be treated as income of the Trust under the head "income from other sources".

15.The assessee referred to the insertion of clause (x) to Section 56(2) with effect from 01.04.2017 and contended that the persons classified under the status of individual or HUF and placing a restriction on the gift received was only prospective and the donations received by the assessee was during the financial year 2013-14 and therefore, cannot be brought to tax. This contention was rejected holding that it has been substantiated that the assessee is a representative assessee and not an AoP and therefore, would get

categorised as an individual and the provisions of Section 56(2)(vii) is applicable and accordingly, the order of the Assessing Officer bringing to tax the said amount of Rs.25 Crores was confirmed.

16.With regard to the disallowance under Section 14A, the CIT(A) held that the Assessing Officer was justified in making the disallowance under Section 14A read with Rule 8D(2)(iii). Though the finding was against the assessee, in our opinion, in its entirety, in the penultimate paragraph of the order dated 06.02.2017, the CIT(A) states that the appeal is partly allowed presumably for the reason that the CIT(A) agreed with the assessee that the corpus donation is not an income as defined under Section 2(24)(iva), but brought the assessee within the ambit of Section 2(24)(xv) read with Section 56(2)(vii). Thus, a careful reading of the order passed by the CIT(A) will clearly show that the decision was fully against the assessee. The assessee carried the matter by way of appeal to the Tribunal.

17.Before the Tribunal, the assessee firstly focused upon the status of the assessee, which being a Trust and, the grounds, which were raised before the CIT(A) which we have referred above, were raised before the Tribunal, viz., filing of the return in the prescribed form etc. Another submission was made by the assessee stating that the JCIT had no jurisdiction to invoke his power under Section 144A when there was no assessment pending. This submission was based on the fact that the scrutiny which was ordered was only a limited scrutiny, but not a complete scrutiny and a limited scrutiny is not comparable to a regular scrutiny, as it is only for a limited purpose and in this regard, relied upon the CBDT Circular dated 14.07.2016 in Circular No.5 of 2016. Further, it was contended that the decision for taking up complete scrutiny was made only on 06.09.2016 and by then, the JCIT had issued directions dated 24.08.2016. Further, it was contended that the JCIT could have issued only a guideline to the Assessing Officer, who is required to independently apply his mind and therefore, contended that the assessment order was erroneous.

18.With regard to the merits of the matter, it was argued that the assessee cannot be treated as an individual and voluntary contributions to the corpus of the Trust could not be considered as income, a private discretionary Trust could not be equated to an individual, the contributions received was only gratuitous payment and cannot be considered as income under Section 56(2)(vii) of the Act.

19.The Revenue contended that the order passed by the JCIT under Section 144A was after affording due opportunity to the assessee to raise all contentions both on facts and on law, which were considered by the JCIT by passing a detailed order. Further, it was submitted that when the JCIT invoked the power under Section 144A of the Act, the assessment was already taken up for scrutiny by issuing notice under Section 143(2) on 01.06.2016 and it is no matter whether it is limited scrutiny or complete scrutiny when admittedly, the assessment was pending. Further, regard to the merits of addition, the Department contended that there is no dispute to the fact that the

assessee received the amount as a capital inflow. It was argued that the addition was not made considering the sum as value of a benefit or perquisite under Section 2(24)(iva) or it was considered as an income under Section 2(24)(iia), but the same was considered as income falling under Section 2(24)(xv) read with Section 56(2)(vii) of the Act. Further, with regard to the form of return, it was contended that the status shown by the assessee in its form of return is irrelevant and it cannot whittle down the provisions of the Act.

20.Reliance was placed on the decisions in the case of ***CIT vs. Venu Suresh Sheela Trust [(1998) 233 ITR 99 (Madras)], CIT vs. Arihant Trust [(1995) 214 ITR 306 (Madras)]*** and ***CIT vs. T.S.K.Enterprises [(2005) 274 ITR 41 (Madras)]*** to support their contention that the assessee has to be treated as an individual and not an AoP. With regard to the insertion of clause (x) to Section 56(2) by Finance Act, 2017, the Department argued that it has no relevance because the insertion of the said clause was to bring within the fold of taxation, money received by firms and companies without

consideration. The Tribunal rejected the contention raised by the assessee with regard to the correctness of the order and direction issued by the JCIT under Section 144A of the Act and the effect of such direction on the Assessing Officer and held them to be within the frame work of Section 144A. With regard to the merits of the matter, the Tribunal held that the amount of Rs.25 Crores will not fall within Section 2(24)(iia), since the assessee was not a Trust created for a religious or charitable purpose and accordingly, approved the finding of the CIT(A) that it cannot be an amount received as a benefit or perquisite under Section 2(24)(iva).

21.The Tribunal next moved on to consider the correctness of the finding of the CIT(A), who confirmed the addition by applying Section 2(24)(xv) read with Section 56(2)(vii) of the Act. While considering the merits, the contentions advanced by the assessee based upon the form of return was rejected and held against them to the effect that the manner in which the assessee describes itself in the return of income may not be determinative of its status under the Income Tax Act, as it is a matter of law

and not of choice. Therefore, the Tribunal rejected the contentions raised by the assessee with regard to the correctness of the direction issued by JCIT under Section 144A; rejected the contentions of the assessee with regard to the binding effect of such direction on the Assessing Officer; approved the finding of the CIT(A) that the contribution received will not fall within "income" as defined under Section 2(24)(iia); and the assessee cannot rely upon the status mentioned by them in their return of income for determining as to who they are. To be noted as against all these findings, the assessee is not on appeal before us.

22.The Tribunal while considering the status of the assessee *qua* the applicability of Section 56(2)(vii) of the Act, referred to the decision in ***CIT vs. Kamalini Khatau [(1994) 209 ITR 101]*** and held that a private discretionary Trust cannot be treated as an individual for all purposes of the Act especially when, the term "individual" is not defined under the Act. The Tribunal noted the decision in ***CIT vs. Shri Krishna Bandar Trust [(1993) 201 ITR 0989 (Cal.)]*** wherein it was held that a group of individuals may as

well come in for treatment in the status of an individual, if the context so required. The Tribunal pointed out that in the said decision, the Court had referred to the decision in ***Indira Balkrishna*** and ***Andhra Pradesh State Road Transport Corporation vs. ITO [(1964) 52 ITR 524 (SC)].*** The Tribunal held that a contextual meaning has to be given to the term "individual" and merely because a private discretionary Trust has been treated as an individual for the purpose of taxation under Section 80L or Section 194A or Section 54F would not be a reason to treat it so under Section 56(2)(vii) of the Act. The Tribunal observed that it is alive of the decision in ***Venu Suresh Sheela Trust*** and ***Arihant Trust,*** however, held that the said decisions cannot be applied to the assessee's case, as in those decisions, the interpretation was relating to provisions which granted relief to the assessee and not charging provisions. In other words, it held that Section 56(2) of the Act is a charging provision unlike Section 80L or Section 54F which are provisions which give relief to the assessee and required to be liberally interpreted. The Tribunal referred to the definition "relative" and observed that the term "individual" implies only a natural person for the purposes of

Section 56(2)(vii) of the Act. The decisions, which were referred to by the Department, were held to be rendered in a different context dealing with other provisions of the Act, which in the opinion of the Tribunal, are provisions which give relief to the assessee.

23.The Tribunal referred to the decision of its Delhi Bench in ***Mridu Hari Dalmia Parivar Trust vs. AO [(2016) 68 taxmann.com 376 (Delhi-Trib.)]*** and held that though the decision concerned an assessment under Section 56(2)(vi), it being a precursor to Section 56(2vii), the decision will apply to the assessee's case. The Tribunal also took note of the insertion of clause (x) in Section 56(2) of the Act with effect from 01.04.2017 and, the Explanatory note to Finance Bill, 2017 indicates that provisions as it stood prior to the introduction of clause (x) covered only individuals and HUFs and the legislature wanted to include in its fold other entries also, which were receiving gratuitous payments and such provisions were applicable only from 01.04.2017. With the above findings, the Tribunal held the the amount of Rs.25 Crores received by the assessee cannot be considered as “income from

other source" under Section 56(2)(vii) read with Section 2(24)(xv) of the Act and accordingly, deleted the addition.

24.Mrs.R.Hemalatha, learned Senior Standing Counsel while reiterating the stand taken by the Department before the CIT(A) and the Tribunal, submitted that the status of the Trust is to be determined by the status of the beneficiary by virtue of the deeming provision by Section 161 of the Act. The assessee Trust is a representative assessee, representing the beneficiaries, who are individuals and therefore, the status of the assessee is an individual. The assessee's case will clearly fall within the scope of Section 56(2)(vii)(a) of the Act.

25.Referring to Section 161(1) of the Act, it is submitted that the trustees are the representative of the beneficiaries and he represents the beneficiaries who are in substance, the real owners and the income is to be taxed in the like manner and to the same extent, as it would be in respect of beneficiaries. Referring to the decision in ***Marsons Beneficiary Trust,*** it is

submitted that even when trustees of a private Trust are engaged in business, they cannot be assessed as an AoP.

26.It is further submitted that after the e-filing of return of income was introduced, certain hardship was faced by the assessee which necessitated CBDT to issue a press release dated 31.07.2012 facilitating manual filing of return of income of private Trusts, since the existing e-filing software did not accept return of income of a private discretionary Trust in the status of an individual. Reliance was placed on the decision in ***Venu Suresh Sheela Trust, Arihant Trust, T.S.K.Enterprises*** and ***Niti Trust vs. CIT [(1996) 221 ITR 435 (Guj.)]*** to support the contention that the status of such a private discretionary Trust would be that of an individual. Reference was also made to the budget speech of the Hon'ble Finance Minister introducing Financing (No.2) Act, 2004. Reference was made to the factual details with regard to the purpose for which the assessee Trust was created, the persons, who are individual as beneficiaries, method of determining the beneficiaries etc., and it is submitted that in Annexure-V of the Deed of Trust dated 11.09.2006,

thirteen persons have been identified, who formed part of the beneficiaries list in the owner's group, 23 persons being beneficiaries under Senior Leader Group and each one of them occupied senior position in the companies comprised in the Shriram Group. Further, the learned Senior Standing Counsel referred to the contributors of Rs.25 Crores by six concerns, viz.,

(i) Shriram Business Finance – AAAFS2592K – Rs.2 Crores;
(ii) Shriram Credit Syndicate – AAAFS1437K – Rs.5 Crores;
(iii) Shri SR E-Commerce Finance – AAXFS7828M – Rs.5 Crores;
(iv) Shriram Two Wheeler Finance – AAWFS9761N – Rs.3 Crores;
(v) Shriram Domestic Finance – AAAFS2600Q – Rs.8 Crores; and
(vi) Shriram Professional Finance – AAAFS1440A – Rs.2 Crores

and, submitted that all of them are located in the same address in Chennai and the gratis given to the assessee Trust in which the beneficiaries are people occupying high position in Shriram Group, is obviously an amount received on behalf of the beneficiaries.

27.It is further contended that the assessee is a representative assessee as defined under Section 160(1)(iv) of the Act and the benefit or perquisite is

derived by the assessee Trust on behalf of its beneficiaries and therefore, Section 56(1) of the Act will come into play and income of every kind which is not included from the total income under the Act are to be charged to income tax under the head "income from other sources".

28.With regard to the finding of the Tribunal that individual should mean a living person, it is submitted that the gifts are actually received by the individuals and the assessee Trust has acted as a conduit and the Act does not provide for such tax evasion. Further, relying upon the proviso under Section 56(2)(vii) it was argued that the proviso is merely used to act as an optional addendum to the enactment providing an exception.

29.With regard to the insertion of clause (x) to Section 56(2), it is submitted that the argument that the said provision was inserted with prospective effect cannot come to the rescue of the assessee, since the Revenue has been subjected to establish that the assessee is a representative assessee and not an AoP and would get categorised as an individual assessee

and the provision of Section 56(2)(vii) is required to be enforced on the assessee. It is further submitted that the Department is fully right in invoking the proviso to Sections 4 and 5 of the Act to bring the income to tax. Further, it is submitted that the assessee cannot raise any contentions with regard to the finding of the Tribunal over which the assessee has not filed an appeal and in this regard, referred to Section 260A of the Act, Section 10 of the Code of Civil Procedure and Order 42 Rule 11 of the Code of Criminal Procedure.

30.With regard to the attempt of the assessee to canvass certain issues before this Court stating that they are substantial questions of law, to be decided in this appeal, Mr.T.Ravi Kumar, learned Senior Standing Counsel by referring to the following decisions, submitted that such a prayer cannot be entertained:-

(i) Helios AMD Metheson Information Technology Ltd. vs. ACTI [(2011) 332 ITR 4303 (Madras)];

(ii) Indian Additives Ltd. vs. DCIT [(2012) 67 DTR 0389];

(iii) CIT vs. Indo Gulp Fertilizers Ltd., [(2013) 355 ITR 0437];

(iv) Phool Pata vs. Vishwanath Singh [(2005) 197 CTR 0598 (SC); and

(v) CIT vs. Mastek Ltd. [(2013) 358 ITR 0252 (SC)].

31.To substantiate the argument that the assessee has to be categorised as an individual, reliance was placed on the decision in ***Kerala Financial Corporation vs. Wealth-Tax Officer [(1971) 82 ITR 477 (FB) Kerala]; Assam Financial Corporation vs. Commissioner of Wealth-Tax [(1974) 94 ITR 404]; Banarsi Dass & Ors. vs. Wealth Tax Officer, Spl. Circle, Meerut & Ors. [(1965) 56 ITR 224]; Commissioner of Welath Tax vs. Hyderabad Race Club [(1978) 115 ITR 453]; Royal Calcutta Turf Club vs. Wealth Tax Officer [(1984) 184 ITR 790]*** and ***Coimbatore Club vs. Wealth-Tax Officer [(1985) 153 ITR 172].*** Reliance was also placed on the decisions in the case of ***Ramanlal Kamdar vs. CIT [(1977) 108 ITR 73]*** *and* ***P.R.Narahari Rao vs. CIT [(2008) 299 ITR 400].***

32.Mr.R.Sivaraman, learned counsel appearing for the respondent assessee submitted that the Trust was established on 11.09.2006 for distribution of retirement benefit to the owners and senior leaders chosen from Shriram entities when they attain sixty years of age. It is submitted that the entire income of the Trust is not straight away paid, but a committee determines the Net Worth Available for Apportionment (NWAA) and a percentage of it alone be distributed at the end of duration of the Trust in which 1/3rd of the corpus and accumulated income remaining shall be given for charitable purposes and 2/3rd shall be distributed among the beneficiaries. It is submitted that the return of income filed by the assessee was in the status of Trust. The Trust received voluntary/gratuitous payment from six entities to the tune of Rs.25 Crores as contribution to corpus fund and it was directly credited to the capital account of the Trust. This corpus amount did not form part of income distributed to the beneficiaries. So, the contributions were not income received or receivable on behalf of the beneficiaries. The return filed by the assessee for the assessment year under consideration was in form ITR-

5. It was filed in the status of a Trust, the assessment was made by treating the assessee as a Trust.

33.It is submitted that the JCIT did not have jurisdiction to issue directions on an issue which is not subject matter of pending assessment, as the scrutiny was only a limited scrutiny. In this regard, the CBDT circular dated 14.07.2016 was referred to. Further, it is submitted that the assessee Trust filed its return as per Rule 12 of the Income Tax Rules (for brevity "the Rules") prescribed by the CBDT in the status of Trust and this was accepted and an intimation under Section 143(1) was issued and subsequently, notice under Section 142(1) was issued describing the assessee's status as a Trust. The assessment was made in the status of Trust and not in the status of representative assessee under Section 161(1) of the Act. Therefore, the Assessing Officer could not have applied the provisions dealing with individuals and HUFs. Further, the Revenue cannot place reliance on Section 161 of the Act, as the provision will apply only when the income is specifically receivable on behalf of or for the benefit of any one person who

are known or whose shares are determinate. In the assessee's case, the beneficiaries are indeterminate and the individual shares in the income are also indeterminate. Furthermore, the voluntary contributions received by the Trust were taken into corpus and did not form part of any income distributed to the beneficiaries. Therefore, the contributions were not income receivable on behalf of the beneficiaries and therefore, Section 164 of the Act alone can be applied.

34.With regard to the interpretation of the term "individual" occurring in Section 56(2), it is submitted that it refers to a natural human being only, as there is a reference to "relatives of the individual" and "occasions like marriage of individual" which shall prove that the term "individual" in Section 56(2)(vii) means living human being. In this regard, reference was made to the decision in ***Smt.Sodra Devi*** and ***Mridu Hari Dalmia Parivar Trust.*** Further, it is submitted that Section 56(2)(v) or 56(2)(vi) or 56(2)(vii)(a) would be attracted only when individuals or HUFs receive any sum of money. The emphasis is on the receipt by the individual himself and

not by some one else on their behalf. The word "receive" in the context of the above mentioned means receipt of a sum of money over which the recipient gets absolute control like rights of enjoyment etc. In the assessee's case, the beneficiaries under the scheme of the Trust did not have rights to receive the income periodically. It vests only on their retirement. Further, it is submitted that Section 56(2)(vii)(a) which is a charging section is differently worded from Section 5(1)(a). Under Section 5(1)(a) income of a person includes all income which is received or deemed to be received by or on behalf of such person whereas Section 56(2)(vii)(a) states that the individual receives a sum of money, it does not include sums received by some one else on his behalf and therefore, this provision is individual/HUF centric, as it imposes the artificial liability.

35.With regard to the decisions relied on by the Revenue, viz., in ***Venu Suresh Sheela Trust, Arihant Trust, T.S.K.Enterprises, SEA Head Office, Niti Trust,*** and ***Marsons Beneficiary Trust,*** it is submitted that those decisions were all rendered in different context and cannot be applied to the

assessee's case. All the aforementioned decisions have referred to and relied upon the decision in ***Indira Balkrishna*** wherein the Court added a word of caution about the test for determining an association of person and this word of caution should be borne in mind while considering the facts of the case.

36.Further, it is submitted that the amendment to Section 2(31) by insertion of explanation by Finance Act, 2002 with effect from 01.04.2002 has to be read bearing in mind the words of caution as spelt out by the Hon'ble Supreme Court in ***Indira Balkrishna*** and all those decisions were rendered prior to the amendment by Finance Act 2002. Furthermore, on facts in all those decisions, either the beneficiaries are known or the individual shares are known and therefore, Section 161 was invoked and in some of those cases, the assessee themselves have filed return in the status of "individual" unlike the case on hand, where Section 161 cannot be invoked. It is further submitted that the decisions in ***Banarsi Dass, Kerala Financial Corporation, Assam Financial Corporation, Hyderabad Race Club, Royal***

Calcutta Turf Club and ***Coimbatore Club*** relied on by the Revenue support the case of the assessee, wherein it was held that individual should be interpreted in the context in which it is used and all the judgments relate to assessment years prior to the amendment in Section 2(31) by Finance Act, 2002.

37.Further, the learned counsel sought to sustain the finding of the Tribunal *qua* the insertion of clause (x) in Section 56(2) of the Act. Thus, it is submitted that the assessee has to be treated as an AoP and not an individual, in the light of the legislative change by way of its insertion of explanation below Section 2(31) inserted with effect from 01.04.2002 as also the fact that the return of income was filed in accordance with Rule 12A of the Rules in the prescribed form ITR-5 which form is applicable to private discretionary Trusts. Further, it is submitted that even assuming the assessee has to be treated as an individual, the provisions of Section 56(2)(vii)(a) cannot be applied, as the term “individual” in that Section has the words denoting 'relatives' mentioning about occasions like marriage etc., and this needs to be

interpreted following the ratio in the case of ***Smt.Sodra Devi*** to mean that individual should denote a living person and not a Trust.

38.Heard Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent/assessee.

39.The first substantial question of law raised by the revenue in this appeal is whether the Tribunal was right in holding that the investment which yielded no exempt income was to be excluded while computing deduction under Section 14A when the Act as well as the Rules do not provide for any such exception. An identical question was raised by the revenue in the assessee's own case in T.C.A.No.241 of 2018 for the assessment year 2013-14. When the said tax case appeal was heard, we noted that the substantial question of law has to be answered in favour of the assessee in the light of the decision of the Hon'ble Division Bench in the case of ***M/s.Marg Limited vs. CIT, Chennai [T.C.A.Nos.41 to 43 and 220 of 2017 dated 30.09.2020]***.

However, the appeal filed by the revenue was dismissed on 08.07.2020 owing to low tax effect. The revenue cannot dispute the fact that the above substantial question of law was decided in favour of the assessee. In the case of ***M/s.Marg Limited***, in which the decision of the High Court of Karnataka in ***Pragathi Krishna Gramin Bank vs. JCIT [(2018) 95 Taxman.com 41(Kar.)]*** was followed. Further, the Delhi Bench of ITAT in the case of ***ACIT, Circle 17(1), New Delhi vs. Vireet Investment (P) Ltd. [(2017) 82 Taxman.com 415 (Delhi-Trib.)(SB)]*** also decided the said issue in favour of the assessee. Thus, following the above referred decision, substantial question of law No.1 is answered in favour of the assessee and against the revenue.

40.Substantial question of law Nos.2 and 3 are interconnected, namely, a decision on the status of the assessee whether it has to be assessed as an individual or as an association of persons and whether the assessee if has to be treated as an individual would stand excluded from the purview of Section 56(2)(vii) of the Act on the ground that it is not a natural living person.

Before we take up for consideration these two questions, we are required to consider the submission made by Mr.R.Sivaraman with regard to the jurisdiction of the JCIT to issue directions under Section 144A of the Act. It is his submission that the JCIT does not have jurisdiction to issue notice to deal with the issue which is not the subject matter of a pending assessment. Such contention is raised on the ground that the scrutiny assessment was a limited scrutiny and all issues in the assessment originally completed were not open to scrutiny.

41.Ms.R.Hemalatha, learned senior standing counsel would vehemently oppose the argument of Mr.R.Sivaraman on the ground that the present appeal is an appeal filed by the revenue under Section 260A of the Act and if at all additional questions have to be framed and decided, it is the discretion of the Court in terms of sub-Section (4) of Section 260A of the Act. In any event, the assessee having not filed a separate appeal on the decision of the Tribunal rejecting the contention regarding the jurisdiction of the JCIT is prevented and precluded from arguing the said point and requesting the Court to frame a

substantial question of law on the said issue and decide the same. In this regard, the learned counsel has drawn the attention of this Court to Section 260A of the Act, Section 100 CPC and Order 42 Rule 11 CPC. Therefore, it is submitted that even assuming there is another substantial question of law which is required to be considered by the Court though not admitted earlier, in an appeal by the revenue it is only the revenue which can make such a prayer before the Court and not the assessee who has not filed a separate appeal.

42.Mr.T.Ravikumar, learned senior standing counsel supported the submissions of Ms.R.Hemalatha and has relied upon certain decisions.

43.Mr.R.Sivaraman, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***CIT vs. V.Damodaran [(1979) 2 Taxman 397(SC)]***. In the said case, the revenue applied for the reference to the High Court of Kerala and and at its instance, the Tribunal referred a substantial question of law for consideration in a case arising under the 1992

Act. The assessee also requested the inclusion of another question which was also referred to the High Court. The High Court answered the first question in the affirmative and the second question in the negative. Both being answered in favour of the assessee, appeal was filed before the Hon'ble Supreme Court by the Revenue. One other issue was whether the Tribunal was competent to refer the second question and it was contended by the revenue that the said question should not have been referred by the Tribunal to the High Court at the instance of the assessee because no reference application was made by the assessee and the only reference was the application filed by the CIT. The Hon'ble Supreme Court after discussing about the power under Section 256(1), Section 254 held that in every case it is only the party applying for a reference who is entitled to specify the question of law which should be referred and nowhere in the statute there is a right in the non-applicant (one who has not applied for reference) to ask for a reference of question of law on the application made by the applicant. It was further pointed out that two category of cases can be envisaged. One consist of cases where the order of the Tribunal under Section 254 of the Act has

decided the appeal partly against one party and partly against other. This may be so whether the appeal consists of a single subject matter or there are more than one independent claims in the appeal. It was pointed out that in the former set of cases, one party may be aggrieved by the grant of relief even though partially, while the other party may be aggrieved by the refusal to grant total relief. It was pointed out that in the latter, relief may be granted or refused with reference to individual items in dispute and accordingly, one party or the other will be aggrieved and in either case, the party who is aggrieved and who desires a reference to High Court must file a reference application for the purpose and it is not open to him to make reference application filed by the other party on the basis of his claim that a question of law sought by him should be referred. It was further pointed out that in the second category of cases are where order made by the Tribunal under Section 254 of the Act operates entirely in favour of one party although in the course of making the order, the Tribunal may have negatived some points of law raised by the party. Not being aggrieved by the result of the appeal, it would be open to the party to file a reference application but on a reference

application filed by the aggrieved party, it is open to the non-applicant in the event the Tribunal agreed to refer the case to the High Court to ask for a reference of those questions of law also which arise on its submissions negatives in the appeal by the Appellate Tribunal. This was to recognize a right in the winning party to support the order of the Tribunal also on grounds raised before the Tribunal but negatived by it.

44.The Hon'ble Supreme Court noted the decision in the case of ***CIT vs. S.K.Srinivasan [(1970) 75 ITR 93(Mad)]*** and ***CIT vs. Ramdas Pharmacy [(1970) 77 ITR 276(Mad)]***, wherein it was held that there is absolute bar against a non-applicant seeking a reference of question of law on a reference application made by the other party. The Court also noted the decision in ***H.H.Maharana Bhagwat Singhji of Udaipur vs. CIT [(1964) 51 ITR 112(Raj.)], CWT vs. Mrs.Arundhati Balkrishna [(1968) 70 ITR 203 (Guj)]*** which was affirmed by the Hon'ble Supreme Court in ***CWT vs. Arundhati Balkrishna [(1970) 77 ITR 505]*** which took a contrary view than the decisions of this Court quoted above. Further noting the observations in ***CIT***

vs. Bantiah Bank Limited in ITR Reference No.20/2015 dated 10.10.2015, wherein it was pointed out that a winning party may be deprived of the right to raise questions of law which would properly arise as further questions because they would be intimately involved in a decision on the questions referred on the instance of the applicant, but it failed to classify such a case separately from a case where a non-applicant seeks to raise independent and unassociated questions of law. Ultimately, the Court held that the Tribunal was not competent to refer the second question. To be noted that the decision arose out of a reference case unlike the case on hand which is an appeal filed by the revenue under Section 260A of the Act.

45.The Hon'ble Supreme Court in the case of ***Phool Pata,*** held that perusal of Section 100 CPC shows nothing in sub-section (5) takes away or abridges the power of the High Court to hear for reasons to be recorded on any other substantial questions of law not formulated earlier, if it satisfies that the case involves such question. Therefore, even in such circumstances it is only at the instance of the appellant such power can be exercised by the High

Court. In ***Mastek Ltd.,*** it was held that the power of the High Court to frame substantial question of law at the time of hearing of the appeal other than the questions on which the appeal has been admitted remains under Section 260A(4) and this power is subject however to two conditions, namely, (i) the Court must be satisfied that the appeal involves such questions; and (ii) the Court has to record reasons thereof. Similar view was taken in ***Helios AMD Metheson Information Technology Ltd.,*** holding that there is every power vested in the High Court to deal with the substantial questions of law not formulated at the time when the appeal was entertained, subject however to the satisfaction of the Court that such a question was involved in the case and for reasons to be recorded for that purpose.

46.Ms.R.Hemalatha, learned senior standing counsel relied on the decision in the case of ***P.R.Naraharai Rao,*** wherein it was held that the assessee having not objected to the order passed by the Tribunal by filing a separate appeal, he cannot be stated to be an aggrieved person against the said finding to seek for the Court to frame an additional substantial question of

law in an appeal filed by the aggrieved party, namely, the revenue under Section 260A of the Act. For the same proposition, reliance was placed on the decision of the Hon'ble Division Bench in the case of ***Ramanlal Kamdar*,** wherein it was held that only if the assessee was aggrieved by the order of the Income Tax Officer, he had the right to file an appeal before the Appellate Assistant Commissioner and once the assessee could not have had any grievance in view of the statement made by the partner [in the said case], the appeal to the Appellate Assistant Commissioner was incompetent and equally the appeal to the Tribunal was incompetent and consequently, the reference to the High Court was also incompetent.

47.Thus, taking note of the legal principle which can be culled out from the above decisions, there is a vast difference in cases where a reference is made to the High Court by the Tribunal on an application and an appeal under Section 260A of the Act by an aggrieved person. The assessee having not filed an appeal as against the findings rendered by the Tribunal on the issue of jurisdiction and procedural aspects followed by the Assessing Officer, he

cannot stated to be an aggrieved person over such finding in the absence of an appeal at their instance under sub-section (2) of Section 260A of the Act. Unless and until the aggrieved person is before the Court by way of an appeal, the question of calling upon the Court to frame an additional substantial question of law by invoking its power under sub-section (4) of Section 260A of the Act does not arise. Therefore, we hold that the assessee is precluded from raising any contention with regard to the jurisdiction of the JCIT to issue direction under Section 144A of the Act nor anything about the procedure followed by the Assessing Officer pursuant to such direction. The underlying principle being that the revenue cannot be worse of in their appeal at the instance of the assessee who has not filed an appeal over such finding of the Tribunal.

48.Having steered clear of the above issue, we are required to decide the status of the assessee, whether it is an "individual". If it is an "individual", the statute qualifies that the "individual" should be a living person. The undisputed facts are the assessee is a private discretionary Trust

and has received donation from six of its group Companies amounting to Rs.25 Crores which was credited to the Balance Sheet of the assessee under the head 'Addition to Corpus' and not routed through the Profit and Loss Account. The authorities, more particularly, the JCIT had perused the Deed of Trust dated 11.09.2006 and Supplemental Deed dated 16.03.2009, from which, it is clear that the assessee is a private discretionary Trust. If that is so, Section 2(24)(iia) will not be applicable. Noting the facts, the JCIT issued notice under Section 144A, dated 14.07.2016 stating that the assessee is a representative assessee acting on behalf of the beneficiaries who are individuals and hence governed by the provisions of Section 160(1)(iv) of the Act. Further, by referring to Section 161(1) of the Act, it was stated that being a representative assessee, the liability is cast upon the assessee, in the like manner and same instance as it would be applicable to the beneficiaries of the Trust. It was further stated that when the assessee has to be treated as an individual, the corpus donation received by the assessee Trust requires to be brought to Tax under Section 56(2)(vii) of the Act. The assessee responded to the notice by appearing in person on 22.07.2016 along with their

written submissions. The JCIT rejected the contention of the assessee and treated the assessee as an "individual" and brought the said amount to tax.

49.In ***Indira Balkrishna,*** the Hon'ble Supreme Court pointed out that an association of persons would mean persons joining in an action and therefore, the term 'AoP' used in Section 2(31)(v) of the Act would mean an association in which two or more person join with a common purpose or for a common action. In the assessee's case neither the trustees nor the beneficiaries have come together with common purpose of earning income. The beneficiaries are the owners and top level executives of the Shriram Group of concerns. The investment of Rs.25 Crores has come from six of the concerns of the Shriram Group. The trustees exercised their powers as spelt out in the Deed of Trust as well as the Supplement Deed. The argument that the beneficiaries are not identifiable because the entire amount which is earned by the Trust by way of various income is not handed over to the beneficiaries as there is a Committee which is constituted which will determine the net worth available for apportionment and only 2/3rd will be

distributed among the beneficiaries and 1/3rd of the corpus and accumulated income will be used for charitable purpose. The contention of the assessee that the beneficiaries are unknown and there are several persons, therefore they are treated to be an association of persons, is an argument which is stated to be rejected. An argument was made stating that explanation to Section 2(31) was inserted stating that for the purposes of Clause 31, 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 and this amendment which came into effect from 01.04.2002 is referred to and submitted that the decision in ***Indira Balkrishna*** cannot be referred to. However, the legal principle laid down in the said decision cannot be taken away and the interpretation given by the assessee is not sustainable.

50.On this issue, the JCIT while issuing directions under section 144A of the Act rightly took note of the explanatory notes to the Finance Act, 2002,

wherein it has been stated that as per the provision contained in clause 31 of Section 2 of the Act as it then existed, the expression 'person' includes an individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, a local authority and every artificial juridical person, not falling within any of the above definitions. It was further stated that although the definition of person is inclusive and starts with the clarifying words "unless the context otherwise requires", in some cases, a claim has been made that certain bodies do not fall within any of the definitions of person provided in Clause 31 of Section 2 of the Act due to the sole reason that they are not supposed to have any income or profits and gains. To clarify the correct legal position, an explanation in clause 31 of section 2 has been inserted through Finance Act, 2002 so as to provide that 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. Therefore, the contention of the assessee that consequent

upon the insertion of explanation to Section 2(31), a representative assessee representing individuals is to be treated as an AoP is an argument which cannot be accepted. Furthermore, in the case of the assessee, the settler has created a trust and appointed trustees. To administer the trust for the benefit of certain identified beneficiaries who are top level executives of the Shriram Group of Companies and who are admittedly individuals. Those individuals have not come together with a common purpose and they do not have any role in the operation or administration of the Trust. Therefore, the assessee cannot be treated as an AoP. To take a decision in the matter, the facts are very essential. A trustee appointed under a trust created under a Deed of Trust has to be treated as a representative assessee in terms of section 160 of the Act provided he receives or he is entitled to receive any money on behalf of or benefit of any person. Such trustee is deemed to be an assessee for the purposes of the Act. This position becomes clear if one carefully examines section 161(1) of the Act which states that 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 Chapter XV of the Act, 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. The assessee in the instant case or the trustees are only the representatives of the beneficiaries and the income is required to be taxed in the like manner and to the same extent as it would be in respect of beneficiaries. The argument that the beneficiaries are not known cannot be accepted because the Deed of Trust as well as the Supplemental Deed would show that the beneficiaries are top level executives of the Shriram Group of Companies who will be extended financial benefit on attaining the age of 60 years and the set of persons who would be benefited have also been mentioned in the annexures. It is to be further noted that the names of those persons, who are yet to attain 60 years, are well within the knowledge of the assessee and more particularly, to the six group

concerns, which extended the gratis and, all those beneficiaries are individuals and therefore, the assessee in the instant case, having received the perquisite on behalf of its beneficiaries, should be treated as a representative of those beneficiaries and therefore, has to be assessed as an "individual".

51.The assessee harps upon the form of return filed in ITR-5. According to the learned counsel for the assessee, this is a statutory form as prescribed under Rule 12 and the assessee was assessed as a Trust. As rightly pointed out by the CIT(A) as well as the Tribunal, the status shown by the assessee in the return of income is irrelevant as the Rules only prescribes forms and this cannot in any manner control the operations of the provisions of the Act.

52.In ***Venu Suresh Sheela Trust's*** case**,** the assessee was a private and discretionary trust. In view of the fact that the shares of the beneficiaries were not ascertainable the assessee claim deduction under Section 80L in respect of interest on securities, dividends, etc. The Income Tax Officer was

of the view that the assessee's status would be an association of persons because there was more than one beneficiary whose shares in the Trust was not definite and since the assessee was admitted not an AoP envisaged under Section 80L(1)(c) and was not an individual or a Hindu Undivided Family, the assessee was held to be not eligible for any relief. However, on appeal, the Appellate Assistant Commissioner accepted the assessee's plea which was upheld by the Tribunal and the High Court.

53.In ***Arihant Trust's*** case, it was held that even an artificial juridical person can be treated as an individual under Section 194A as there is nothing to restrict the applicability of the word 'individual' only to a natural person or a human being and it applies to artificial juridical persons also.

54.In ***Marsons Beneficiary Trust's*** case, it was held that in view of the clear provisions of section 161(1) there could be no doubt that the trustees have to be assessed in the manner provided in section 161(1), in respect of any income of the trust, looking to the interpretation put by the Hon'ble Supreme Court on the term 'association of persons' also, there could be no

doubt that the beneficiaries who were named in the trust as recipients of the income of the trust, could not be considered as an AoP. The decision in ***Marson Beneficiary Trust*** was relied on in the case of ***T.S.K.Enterprises,*** wherein the assessee was assessed as an "individual" as well as the judgment of the Division Bench of this Court in ***T.C.A.Nos.661 and 662 of 1994*** dated 15.12.1998.

55.Mr.R.Sivaraman, learned counsel for the respondent would argue that the above referred decisions are not applicable to the assessee's case and all the decisions were rendered taking note of the judgment in the case of ***Indira Balkrishna***, wherein the Court has added a word of caution about the test for determining an association of persons and held that there is no formula of universal application of as to what facts, how many of them and of what nature are necessary to come to a conclusion that there is an association of persons within the meaning of section 3 and it must depend upon particular facts and circumstances of each case as to whether the conclusion can be or not.

56.The argument is that the amendment to section 2(31) by insertion of the explanation with effect from 01.04.2002 needs to be read bearing in mind the words of caution sounded by the Hon'ble Supreme Court in the case of ***Indira Balkrishna.*** Further it is argued that the decisions relied on by the revenue are of all assessments pertaining to the period before 01.04.2002 and the Courts had no occasion to consider the scope, effect and reach of the explanation inserted in Section 2(31) with effect from 01.04.2002.

57.With regard to the form of return which was adopted by the assessee on which much reliance has been placed to show that the assessee has filed their return and they were assessed as a trust, we note that this was on account of a relaxation given by the Department from compulsory e-filing of return of income for the assessment year 2012-13 for representative assessees of non-residents and in the case of private discretionary trust. In the press release issued by the CBDT, it has been stated that the private discretionary trust having total income exceeding Rs.10 lakhs have facing problems in filing their return of income electronically in cases where they are filing their return

of income in the status of an individual. This is because the status of private discretionary trust has been held in law as that of an "individual" and the existing e-filing software does not accept the return of a private discretionary trust in the status of an individual. Accordingly, the Board decided that it will not be mandatory for private discretionary trust, if its total income exceeds Rs.10 lakhs to electronically furnish the return of income. Therefore, by taking advantage of the situation, the assessee cannot harp upon the form of return and the Tribunal was right in rejecting such an argument made by the assessee, against which, the assessee is not on appeal before us.

58.In ***Shri Krishna Bandar Trust,*** the Court was considering the amendment made by Finance Act, 1980, wherein it was pointed out that in a case of discretionary trust, neither the trustees nor the beneficiaries can be considered as having come together with the common purpose of earning income. The beneficiaries have not set up the trust. The trustees derive their authority under the terms of the trust deed. Neither the trustees nor the beneficiaries come together for a common purpose. They are merely in

receipt of income. The mere fact that the beneficiaries or the trustees, being representative assessees, are more than one, cannot lead to the conclusion that they constitute an association of persons. The trustees of a discretionary trust have to be assessed in the status of an individual.

59.In ***C.R.Nagappa vs. CIT [(1969) 73 ITR 626 SC],*** it was held that the considerations which should apply while interpreting section 41 of 1992 Act should equally apply to section 161(2) of the Act and it was pointed out that sub-section (2) of Section 161 merely enacts that when income is assessed in the hands of representative assessee in his own name, the assessment shall be deemed to be made upon him in the representative capacity only and tax shall be levied and recovered in the manner provided in sub-section (1).

60.The CIT(A) took note of the factual position and pointed out that the assessee is created by a settlor, declared by a duly executed instrument in writing which empowers trustees to receive the property under trust and

maintain it for the benefit of beneficiaries identified by the trust and therefore, it became factually clear that the assessee is a representative assessee as per section 160 of the Act as it receives income on behalf of and for the benefit of the beneficiaries and the assessee is only a representative of the beneficiaries, who are in substance and form the real owners.

61.In ***Kerala Financial Corporation***, a case arising under the Wealth Tax Act, it was held that the term 'individual' in Section 3 of the Wealth Tax Act must include a corporation similar to the petitioner therein constituted under a Central, Provincial or State Law. This decision was followed in the case of ***Assam Financial Corporation.***

62.Mr.R.Sivaraman, learned counsel submits that even assuming for the sake of arguments, the assessee is to be treated as an “individual”, it cannot be an artificial person but must be a living person. To support such contention, reliance was placed on the decision in ***Smt.Sodra Devi***.

63.The decision in ***Smt.Sodra Devi*** was considered in the case of ***Banarsi Dass***, wherein it was held as follows:

> *"16.Before we part with these appeals, we may refer to an earlier decision of the court in which the word "individual" fell to be considered. In CIT vs. Sodra Devi,; Damayanti Sahni vs. CIT the question which arose for the decision of this Court had relation to the construction of Section 16(3) of the Indian Income Tax Act, 1922. That sub-section provides that in computing the total income of any individual for the purpose of assessment, there shall be included the items specified in clauses (a) and (b). What is the denotation of the word "individual" was one of the points which had to be considered in that case. According to the majority decision, though the word "individual"is narrower than the word "assessee", it does not mean only a human being, but is wide enough to include a group of persons forming a unit. "It has been held", observed Bhagwati,J. who spoke for the majority, "that the word 'individual' includes a corporation created by a statute, e.g. a university or a bar council, or the trustees*

of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind". We are referring to this case only for the purpose of showing that the word "individual" was interpreted by this Court as including a group of persons forming a unit." (emphasis supplied)

64.In ***Jogendra Nath Naskar vs. CIT [(1969) 74 ITR 33 (SC)],*** the Hon'ble Supreme Court has observed that there could be no reason why the word "individual" in Section 3 of the 1922 Act should be restricted to human beings alone and not extended to juristic entities.

65.In ***N.V.Shanmugam & Co. vs. CIT [(1971) 81 ITR 310 (SC)],*** the Hon'ble Supreme Court held that form of persons should not make them an association of persons. In the said case, the issue was whether, profit should be assessed in the hands of the receivers in the status of "AoP". It was held that the three receivers were only representative assessee and the fact that they were three in number did not make them association of receivers. After referring to the decision in ***Indira Balkrishna,*** it was observed that AoP

means an association in which two or more persons joined in for a common purpose.

66.In the case on hand, it is accepted by the assessee that it is a discretionary Trust. They have not joined in for a common purpose. They became trustees having been appointed under a Deed of Trust/Supplementary Deed. Therefore, the assessee cannot contend that they have joined together in common for purpose of carrying on an activity.

67.In ***WTO vs. C.K.Mammed Kayi [(1981) 129 ITR 307 (SC)],*** the Hon'ble Supreme Court held that the expression "individual" in Section 3 of the Wealth Tax Act, 1957, includes "Mapilla Marumakkathayam Tarwads" and they would fall within the ambit of the taxing provisions. In the said decision, the Hon'ble Supreme Court referred to the decision in ***Smt. Sodra Devi.***

68.Thus, the term "individual" used in the Act does not mean only a human being but wide enough to include a group of persons constituting a unit for the purposes of the Act. It was pointed out that the reference to wife, daughter and child of an individual in Section 4 of the Wealth Tax Act would not lead to the construction of the expression "individual" in Section 3 of the said Act as referable only to a single human being.

69.In ***Suhashini Karuri vs. WTO [(1962) 46 ITR 53 (Cal.)],*** it was held that joint trustees must be taken to be a single unit in law and not as an "AoP". This view was approved by the Hon'ble Supreme Court in ***Trustees of Goverdhandas Govind Ram Family Charity Trust vs. CIT [(1973) 88 ITR 47 (SC)].***

70.In ***CIT vs. Salem District Urban Bank Ltd., [(1940) 8 ITR 269(Mad)],*** the question which fell for consideration was whether a Cooperative Central Bank registered under the Indian Cooperative Societies Act, 1912 whose shareholders consisted of individuals and cooperative

societies, was an "individual" for the purpose of Section 3 of the 1922 Act, while holding that to give the word "individual" the meaning of a person only would be to disregard the scheme of the Act and also to rob the word of an accepted meaning.

71.In ***Jogendra Nath Naskar,*** it was held by the Hon'ble Supreme Court that a deity, though a juristic person, is not a human being and even in such a case, the expression "individual" occurring in the 1922 Act had to be applied to it.

72.In ***Coimbatore Club,*** it was held that the expression "individual" occurring in Section 3 of the Act would take in a plurality of individuals, which in turn, would include a body or group of individuals forming a single collective unit knit together by ties of common aims and joint interest and not any profit motive, but owning property.

73.Thus, bearing in mind the law laid down in the above referred decisions and also taking note of the observations of the Hon'ble Supreme Court in ***Indira Balkrishna,*** that there can be no universal application as to how to come to a conclusion as to status of an assessee, we, on a careful analysis of the facts of the case and noting the recitals in the Deed of Trust and Supplementary Deed, schedules thereof, have no hesitation in our mind to hold that the assessee was rightly assessed as an "individual" by the Assessing Officer as affirmed by the CIT(A), which was erroneously reversed by the Tribunal.

74.The argument of the learned counsel for the assessee that the word 'individual' occurring in Section 56(2)(vii) should be only a natural living person, for which purpose, strong reliance was placed on the third proviso which provides that clause(vii) of section 56(2) shall not apply to any sum of money or property received (a) from any relative or (b) on occasion of the marriage of the individual or (c) under a will or by way of inheritance. As rightly submitted by Ms.R.Hemalatha, learned senior standing counsel, the

proviso in a statute creates an exception in respect of certain category from the statutory requirement and lays down a condition for a particular situation and it is used to act as an optional addendum to the enacting provision. The reference to clauses (a), (b) and (c) in the proviso under Section 56(2)(vii) would not apply to a representative assessee and no amount has been received from any relative of the individual beneficiary or on account of marriage of the individual beneficiary and the income received on behalf of the representative assessee. Therefore, the contention of the assessee that the assessee being not a living person cannot be brought under Section 56(2)(vii). In this regard, it is relevant to take note of the scope of the total income as defined under Section 5(1) of the Act.

75.Another argument made on behalf of the assessee is with regard to the insertion of clause (x) in sub-section (2) of Section 56 with effect from 01.04.2017 to cover all persons. In our considered view this plea of prospective application of clause (x) in Section 56(2) would not come to the aid and assistance of the assessee because the assessee has been held to be a

representative assessee and not an association of persons. The finding of the CIT(A) on this issue is perfectly justified in law.

76.The Tribunal in the impugned order took note of the decision in ***Venu Suresh Sheela Trust, Arihant Trust*** and other decisions which were referred to by the revenue before us. The Tribunal would state that those decisions were rendered by interpreting provisions of the Act which give relief to the assessee and not charging provisions. In our considered view, this is not the way to read a judgment or to cull out the legal principles which have been laid down in the decision. The manner in which the Tribunal has distinguished the decisions relied on by the revenue is incorrect.

77.The learned counsel for the assessee while referring to the decision in ***Indira Balkrishna***, argued that there is no formula of universal application while determining the status of the trustee and it is the submission that this word of caution given by the Hon'ble Supreme Court should borne in mind while considering the effect of the insertion of the explanation to section

2(31) of the Act.

78.We have given our findings as to the effect of the insertion of explanation to Section 2(31) and held against the assessee. It is no doubt true that no decision can be rendered *dehors* the facts. Therefore, we shall examine the facts which were noted by the authorities. As per the Deed of Trust and the Supplemental Deed, the trust is created to benefit the members of owner group and the senior leader group of Shriram Group who are identified as beneficiaries as per the scheme laid out in the Trust Deed. The method of determining the beneficiaries of the owner group and the senior leader group is also provided in the Deed of Trust. In Annexure B of the Deed of Trust dated 11.09.2006, 13 persons have been identified and their names are in the list of beneficiaries who are in the owner's group. Annexure C of the Deed of Trust mentions names of 23 persons who are beneficiaries under the senior leader group and all of them occupy senior positions comprised in Shriram Group. The sum of Rs.25 Crores which was contributed to the assessee are from Shriram Business Finance, Shriram

Credit Syndicate, Shri SR E-Commerce Finance, Shriram Two Wheeler Finance, Shriram Domestic Finance and Shriram Professional Finance. The authorities noted that all the six concerns who have contributed the total amount of Rs.25 Crores are located in the same address in Chennai and form part of the Shriram Group. The donation which was given to the Trust are for the benefit of the persons occupying high positions in the Shriram Group and it will clearly go to show that the assessee has received the same on behalf of the beneficiaries who have been identified. If that is so, then the assessee is a representative assessee as defined under Section 160(1)(iv) of the Act and the benefit is derived by the assessee on behalf of the beneficiaries and to be taxed as an "individual".

79.The authority on examining the factual position found that the assessee has adopted a ingenious method for the purpose of circumventing the provisions of the Act by accepting the gift on behalf of the individuals thereby acting as a conduit. Unfortunately, the Tribunal did not examine this aspect of the matter but proceeded on a different footing which we decline to

approve. The Tribunal placed reliance on the decision of the Delhi Tribunal in ***Mridu Hari Dalmia Parivar Trust***. We find that the said decision could not have been applied to the facts of the instant case, more particularly, when the Assessing Officer in the said case held that the assessee is an AoP. Furthermore, the finding rendered by the Tribunal with regard to the effect of insertion of clause (x) in Section 56(2) with effect from 01.04.2007 could not have been rendered in isolation without reference to the factual details where the beneficiaries were identified and therefore, the Tribunal erred in reversing the finding of the CIT(A) that the assessee has to be assessed as an "individual". Therefore, we hold that the assessee Trust is a representative assessee as it represents the beneficiaries who are identified individuals and therefore to be assessed as an "individual" only. Consequently, the contribution of Rs.25 Crores is to be assessed as income under Section 56(1) under the head 'income from other sources'.

80.It is submitted on behalf of the assessee that it is not in dispute that

in terms of Section 160(1)(iv), a trustee is a representative assessee for a beneficiary. However, the revenue cannot place reliance on Section 161 of the Act as the said provision will apply only when the income is specifically receivable on behalf of or for the benefit of any one person who are known or whose shares are determined. It is further submitted that in the assessee's case the beneficiaries are indeterminate and the individual shares of the income are also indeterminate and the voluntary contributions were received by the assessee Trust into their corpus and did not form part of the income distributed to the beneficiaries. This argument must necessarily fail for the reasons given by us earlier as we have held that the assessee is required to be assessed as an "individual", the beneficiaries have been identified and are identifiable and Section 161 would apply because the income is specifically receivable on behalf of or for the benefit of any one person who are known and whose shares are determinate. The factual positions as brought by the JCIT and the CIT clearly show that the methodology adopted by the assessee was to circumvent the provisions of the Act.

81.For all the above reasons, we do not agree with reasons given by the Tribunal holding that the sum of Rs.25 Crores received by the assessee could not have been considered as income from other sources under section 56(2)(vii) read with Section 2(24)(xv) and accordingly, the same is set aside and the order passed by the CIT(A) is restored.

82.In the result, the tax case appeal is partly allowed, substantial question of law No.1 is answered in favour of the assessee and substantial question of law Nos.2 and 3 are answered in favour of the Revenue. No costs.

(T.S.S., J.) (V.B.S., J.)

08.12.2020

cse/abr

To

The Income Tax Appellate Tribunal 'C' Bench, Chennai.

71/72

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

abr/cse

T.C.A.No.242 of 2018

08.12.2020