INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3571/Del/2017
(Assessment Year: 2013-14)

Subodh Gupta (HUF), C/o. M/s. RRA Taxindia, D-28, South Extension part-1, New Delhi PAN:AATHS1361R	Vs.	Pr. CIT-11, New Delhi,
(Appellant)		(Respondent)

Assessee by :	Shri Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri S. S. Rana, CIT DR
Date of Hearing	26/10/2017
Date of pronouncement	05/01/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld Principal CIT-11, New Delhi [The Ld. PCIT] dated 01.05.2017 passed u/s 263 of the Income Tax Act [The Act] for Assessment Year 2013-14. He has held that that assessment order passed u/s 143 (3) of the Act by The Income tax officer,

Ward 32 (5), New Delhi [The Ld. AO] on 18/03/2016 is erroneous and prejudicial to the interest of revenue.

2. The assessee has raised the following grounds of appeal:-

"1. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and further erred in holding the assessment order dated 18-03-2016 is erroneous in so far as it is prejudicial to the interest of revenue.

2. That in any case and in any view of the matter, action of Ld. Pr. CIT in assuming jurisdiction u/s 263 and passing the impugned order under this section is bad in law and against the facts and circumstances of the case.

3. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in holding that the gift received by the appellant is covered u/s 56(2)(vii) and taxable.

4. That in any case and in any view of the matter, action of Ld. Pr.CIT in bringing to tax the gift as taxable in the hands of appellant is bad in law and against the facts and circumstances of the case.

5. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in taking the valuation of shares @ Rs. 2375.95/- u/s 56(2)(vii) r.w.s. 2(22B) instead of fair market value @ Rs. 234.82/- per share under rule 11UA as claimed and that too by recording incorrect facts and findings and without observing the principles of natural justice.

6. That in any case and in any view of the matter, action of Pr.CIT in adopting the fair market value of the share @ 2375.95/- is bad in law and against the facts and circumstances of the case."

3. Assessee is a Hindu undivided family, who filed its return of income for Rs. 579720/– on 31/7/2013. The assessment order was passed on 18/3/2016 u/s 143 (3) of the Income Tax Act at

the returned income. The assessment order passed by the Ld. Assessing Officer speaks as under:-

AO's Order

"*Return was filed on 31st July, 2013 declaring income of Rs. 5,79,720/. The case was processed u/s 143(1) of the Income Tax Act. Subsequently, the case was selected under CASS. Statutory notices u/s 143(2) dated 04.09.2014 was issued and served upon the assessee. In response to which Shri Sunil Jain, CA of the assessee attended the case proceedings from time to time and the case was discussed with him. Requisite details and information were submitted and placed on record.*

After discussion income of the assessee is assessed at Rs. 579720/- under section 143(3) of the Income Tax Act. Issue notice u/s 143(3) of the Act. Issue notice under section 156 of the Income Tax Act 1961.

Assessed issue necessary form. "

4. Subsequently on examination of the assessment record, ld PCIT found that the order of the assessing officer passed under section 143 (3) dated 18/3/2016 is erroneous insofar as it is prejudicial to the interest of revenue. She therefore issued show cause notice on 9/2/2017. The contents of the notice are as under:-

"The assessment records in your case for the A.Y. 2013-14 were called for and examined. The AO framed assessment u/s 143(3) on 18.03.2016. On perusal of records I consider that the order passed by the Assessing Officer u/s 143(3) of the I.T. Act, 1961 is erroneous in so far as it is prejudicial to the interests of the revenue

2. Please refer to the notice u/s 154 issued vide F. No. ITO/W-32(5)/2016-17/524 dated 07.01.2016. You have filed a reply on 01.12.2016 in response to notice u/s 154. In the reply it has also been mentioned in para 5 that the matter was considered in the assessment proceedings wherein a reference has been made to the written submissions dated 12.10.2015. The perusal of reply dated 12.10.2015 shows that you have submitted the details of acquisition of shares by you. You have submitted the detail is as under

(i) Date wise detail of acquisition of shares with distinctive numbers by the assessee is enclosed

(ii) Copy of the house tax receipt is enclosed.

(iii) Shares were submitted for D mat vide letter dated 26.11.2012 to M/s RCMC share registry. The copy of the letter is enclosed.

3. In this submission you have simply submitted the mode and manner of acquisition of shares. There is no inquiry made by the AO as regards the applicability of section 56(2)(vii) therefore your case

would fall u/s 263(1) explanation 2. Vide letter dated 01.12.2016 you have accepted that you have received 75,000 equity shares from Mrs. Sneh Gupta who is the mother of Karta of HUF. You have also made your further submission that your case is not covered u/s 56(2)(vii). You have attempted to say that the gift is from relative only. You have also referred to the definition of relative made by the Finance Act 2012 w.e.f. 01.10.2009. You have presumed that the amendment is only to enlarge the definition of relative in so as it relates to HUF and not to restrict its definition. You have also referred to notes of clauses of Finance Bill 2012. It has been specifically mentioned that the relative of HUF would be only the member thereof. It is admitted by you that Smt. Sneh Gupta is not the member of HUF. There is no iota of doubt that any other person who is not a member of HF would not come within the definition of relative. It is only your imagination that the amendment is only to enlarge the definition of relative whereas the legislature has narrated clause e(ii) to distinguish between relative in the case of individual and also in the case of HUF.

4. Earlier there was a judgement of the Hon'ble IT AT, Rajkot in the case of Vinitkumar Raghavjibhai in ITA No. 583/Rjt/2007(A.Y. 2005-06). In that case the assessee received a sum ofRs. 60 lacs from the HUF of which the assessee was the member. In that case the case was of the

view that HUF is not covered in the definition of relative. In para 12.1 the IT AT has discussed that there are two ways involved in a transaction i.e. amount given and amount received. The Hon'ble IT AT further held that 'if we relate the provision of Income Tax Act to these ways of "given " and "received" in case of HUF, the case of the amount received by a HUFfrom its member is provided in section 64(2). As per section 64(2) an income from such transfer of property shall be deemed to arise to the individual and not to the HUF. In para 11.2 the ITA T held that a gift received from relative, irrespective of whether it is from an individual relative or from group of relatives is exempt from tax under the provisions of section 56(2)(vi) as a group of relatives also falls within the explanation to section 56(2)(vi). It further held that it is not expressly defined in the explanation that the word "relative " represents a single person. It held that a single word or words can be read as plural also, according to the circumstances/situations. The IT AT finally held as under:-

"Therefore, in our considered view, the "relative" explained in Explanation to section 56(2)fvi) of the Act includes "relatives" and as the assessee received gift from his "HUF", which is "a group of relatives", the gift received by the assessee from the HUF should be interpreted to mean that the gift was received from the "relatives" therefore

the same is not taxable under section 56(2)(vi) of the Act, we hold accordingly. ”

5. To overcome this kind of situation the legislature made amendment in the definition of relative by the Finance Act 2012 with retrospective effect 01.10.2009 and specifically provided that in the case of HUF only member would be the relative.

6. The Hon’ble Supreme Court in the case of Tarulata Shyam vs. CIT, 108ITR 345 has referred to a decision of Brandy Syndicate vs. Inland Revenue Commissioner (1921) 1 Kb 64 wherein it was held as under:-

Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. ”

7. Similarly the definition of relative has to be seen with reference to what has been mentioned in the Act. We have to look only fair to the language used. There is no scope of presumption of enlargement of definition as mentioned by you in your reply.

8. The Hon’ble ITAT, Delhi in the case of DCIT vs. Frontline Capital Services Limited, 96 TTJ 201 has also referred to the decision of the Hon ’ble Supreme Court in the case ofTarulata Shyam(supra). The portion of the para 12 is reproduced below:-

“12. It is well-settled position in law that rules of interpretation can be put into service only where the language of the statute is

ambiguous or capable of more than one meaning. In the case of CIT vs. Sodra Devi (1957) 32 ITR 615 (SC) the Hon'ble Supreme Court have held that unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction, i.e., the intention of the legislature should be primarily gathered from the words which are used. The same view has been reiterated by the Hon'ble Supreme Court in the case ofSmt. Tarulata Shyam & Ors. vs. CIT 1977 CTR (SC) 275 : (1977) 108 ITR 345 (SC).

Reference may however be made to the Supreme Court decision in the case of Keshavji Raoji & Co. vs. CIT (1990) 82 CTR (SC) 123 : (1990) 182 ITR 1 (SC) holding that as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature. In Doypack Systems (P) Ltd. vs. Union of India (1988) 69 CTR (Allied Laws) (SC) 6 : AIR 1988 SC 782 it was observed "The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical

construction is clear, manifest and without doubt, the construction ought to prevail unless there are some strong and obvious reasons to the contrary

It has to be reiterated that the object of interpretation of a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand Artificial and unduly latitudinarian rules of construction which with their general tendency to "give the taxpayer the breaks" are out of place where the legislation has a fiscal mission. "In Doypack Systems (P) Ltd. it was further observed that "contemporaranea exposition is a well-settled principles or doctrine which applies only to the construction of ambiguous language in old statutes It is not applicable to modern statutes."

9. In the case of Housing and Urban Development Corporation Limited vs. JCIT, 102 TTJ 936 the Hon'ble IT A T Delhi referred to a decision of apex court in the case of Suresh Lohiya vs. State of Maharashtra(l966) 10 SCO 379 wherein it held that once a word has been defined in the statute, the court cannot look elsewhere for its meaning. The Hon 'ble ITAT further referred to the

judgement of the Hon'ble Supreme Court in the case of P. Kasilingam vs. PSG College of Technology (1995) Supp 2 SCC 348 and other case laws. The relevant portion of the para 12 is reproduced below:-

"12. . In our opinion, the word 'means' can only have one meaning, that is, it is an exclusive definition vide P. Kasilingam vs. P.S.G. College of Technology (1995) Supp 2 SCC 348. When we say that a word has a certain meaning then by implication we mean that it has no other meaning vide Punjab Land Development & Reclamation Corpn. Ltd. vs. Presiding Officer, Labour Court (1990) 77 FJR 17 (SC) : (1990) 3 SCC 682. However, when certain other categories are added then it means that only those additional categories will be included within the definition and none others, vide Mahalakshmi Oil Mills vs. State ofA.P. (1989) 1 SCC 164 : (1988) 71 STC 285 (SC)."

The Court went on to further hold that question of giving a natural meaning to the word 'interest' does not arise. The relevant extract from pp. 654-655 of thereport is reproduced as under:

"It is open to the legislature to define words and, if the legislature has defined it, we cannot go by the meaning in common parlance or what may be called as its 'natural meaning'. We have to strictly abide by the meaning given to it by the legislature, as in the present case.-

10. Smt. Sneh Gupta is not the member of HUF and hence, from the above reading of the section, not covered under 'relative'. Therefore the sum received by M/s Subodh Gupta(HUF) from a person other than the relative would be covered u/s 56(2)(vii)(c)(i), as you have not paid any consideration while receiving as gift the 75,000 shares of M/s Triveni Polymers Pvt. Ltd. The AO has failed to invoke plain section i.e. 56(2)(vii)(c) read with the definition of relative. It also becomes a mistake of law. In view of this the AO omitted to add a sum of Rs. 17,81,98,500/- i.e. fair market value of 75,000 shares at the rate of Rs. 2375.95 per share.

11. In view ofthe above, I am of the opinion that the order passed by the Assessing Officer u/s 143(3) of the I.T. Act, 1963 is erroneous in so far as it is prejudicial to the interests of the revenue. You are given an opportunity of being heard and show cause as to why the impugned order be not enhanced/modified or set-aside for fresh assessment u/s 263 of the IT Act, 1961. Your case is fixed for hearing on 20.02.2017 at 11:30 a.m."

5. In the notice u/s 263, it was demonstrated by the Ld. PCIT that no enquiry was made as required to be made by the ld AO. According to him, ld AO did not enquire about applicability of

section 56 (2) (vii) with respect to gift received by the assessee from Karta of assessee HUF and therefore the case of the assessee false under Explanation (2) of section 263 (1) of the act.

6. The fact of the case shows that the assessee has received 75000 equity shares of a company from Mrs Sneh Gupta, who is mother of the Karta of assessee- Hindu undivided family. According to the assessee above gift was not covered under section 56 (2) (vii) of the act as gift is from mother of the karta of assessee and thus 'relative'. Notice issued by the ld PCIT deliberated that mother is not a member of an HUF and therefore is not covered in the definition of 'relative' as it applies in case of assessee.

7. The assessee submitted its reply in response to the notice on 20/3/2017, which is placed at page No. 178 – 184 of the paper book. It was stated by the assessee that the above gift is from 'relative' and thus exempt receipt under section 56 of the Income Tax Act. With respect to the valuation, it was submitted that valuation is required to be made as per rule 11 UA of the Income Tax Act.

8. After considering the reply of the assessee, The Ld. PCIT passed order under section 263 of the Income Tax Act as under :-

"6. I have carefully considered the submissions of the assessee. The reply of the assessee is considered point by point and not found satisfactory rather it is repetitive in nature to the extent that it reiterates the points of interpretation of the term 'relative' and applicability of section 263. These issues were already dealt with at length in the show cause notice dated 09/02/2017.

7. In para 3 of the reply dated 20.03.2017 to the notice u/s 263 of I.T. Act, AR has contended that twin conditions of the assessment order being erroneous and it being prejudicial to the interest of revenue is not satisfied for the undersigned to assume the jurisdiction u/s 263 of income tax act. AR has also relied on various case laws which are given below:-

a. [2017] 77 taxmann.com 78 (SC) Commissioner of Income Tax, Central-Ill Nirav Modi.

b. Commissioner of Income Tax cs. Jain Construction Co. [2013] 34 taxmann.com 84 (Rajashthan HC)

c. Director of Income Tax vs. Jyoti Foundation [2013] 38 taxmann.com 180 (Delhi HC)

8. There is no substance in the contention of the assessee that the power exercised by the PCIT u/s 263 is not tenable. In none of the case laws, relied upon by the assessee, these facts exist wherein there is an issue of receipt of gift by the HUF from other

than the member of the HUF. Therefore none of the case laws would be applicable. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Works Pvt. Ltd., 198 ITR 297. The Hon'ble Supreme Court held as under:-

"It is neither desirable or permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a latter case, the Courts must carefully try to ascertain the true principles laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court to support their reasoning."

9. Even otherwise there are direct decisions of the Hon'ble Delhi High Court wherein in the similar circumstances the Hon'ble High Court has held that the PCIT has power to invoke his powers u/s 263 where the assessment order is prejudicial to the interest of revenue. A gist of the case laws is given as under:-

i.CIT vs. Goetze (INDIA) Limited, 361ITR 505(HC):
The Hon'ble Delhi High Court urns referred the following question of law:-

" Whether the Income Tax Appellate Tribunal was right in setting aside the order passed by the

Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961?"

The Hon'ble Delhi High Court discussed in detail the various case laws like CTT vs. Nagesh Knitwears Pvt. Ltd., 345 ITR 135; Malabar Industrial Company Ltd vs. CTT, 243 ITR 83(SC); Nabha Investments Pvt. Ltd. vs. Union of India, 246 TTR 41(Delhi); TTO vs. DG Housing Projects Ltd., 343 TTR 329(Delhi); Rampyari Devi Saraogi vs. CIT, 67 TTR 84(SC); CIT vs. CTT vs. Sunbeam Auto Ltd., 332 ITR 167.

In the case of CTT vs. Nagesh Knitwears Pvt. Ltd.(supra) the Hon'ble Delhi High held as under:-

"The Revenue does not have any right to appeal to the first appellate authority against an order passed by the Assessing Officer. Section 263 has been enacted to empower the CIT to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it shoidd be prejudicial to the interest of the Revenue. The expression "prejudicial to the interest of the Revenue, is of wide import and is not confined to merely loss of tax. The term 'erroneous' means a wrong/incorrect decision deviating from law. This expression postulates an error which makes an order unsustainable in law.

11. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment xvhich is unsustainable in law, it can be corrected by ike Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the

taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.

12. Delhi High Court in Gee Vee Enterprises v. Additional Commission of Income-Tax (1975) 99 ITR 375, has observed as under:-

rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances xoould make such an inquiry prudent that the word " erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

ii. PVS Multiples(India) Ltd. vs. CIT, in ITA No. 2370/Del/ 2013(ITAT):The (INDIA) Limited(supra) and also the decision of the Hon'ble Delhi High Court in the case of CIT vs. Nagesh Knitwears Pvt. Ltd/supra).

iii. Bharti Hexacom Ltd. vs. CTT, ITA No. 2576/Del/2011: The Hon'ble Delhi Tribunal has referred to the decision of the Hon'ble Delhi High Court in the case of Gee Vee Enterprise vs. ACIT, 99 ITR 375 as under:-

> *"7.5 Furthermore, we find that Hon'ble Jurisdictional High Court in Gee Vee Enterprise vs. Asst. CIT [1975] 99 ITR 375 has held that the Ed. Commissioner of Income Tax can regard the ITO's order as erroneous on the ground that in the circumstances of the case the ITO should have made further enquiries before accepting the statements made by the assessee in his return. We find that this case law is also applicable on the facts of this case Assessing Officer in this regard has not made any enquiry and has accepted the statements made by the assessee in his return."*

iv. Thomson Press (India) Ltd. vs. CTT, 94 CCH 42(DelHC): In this case also the Hon'ble Delhi High Court has discussed various case laws pronounced on section 263. The observations of the Hon'ble Delhi High Court as in para 51 are reproduced as under:-

"We are also unable to accept the contention that since in the preceding year, no issue has been raised with regard to charging of interest by one unit to another, the same could not be picked up by the CIT under Section 263 of the Act. Merely because an issue remained unchecked in a preceding year does not mean that the CIT is estopped from exercising its powers under Section 263 of the Act. It is well established that the principles of res judicata do not apply to income tax proceedings and an error in the preceding year need not be repeated or ignored in the subsequent years. The decision of this Court in

Escorts Ltd. (supra) was based on the principle of consistency. In that case, the Assessee had been carrying on transactions similar to the one which was sought to be questioned under Section 263 of the Act for vast several years preceding the relevant assessment year. The transaction had also received the attention of the Commissioner of Income Tax in an earlier year and had been decided in favour of the Assessee. The Revenue had accepted the same and not filed an appeal. It is in that context that the Court held that since the Revenue had accepted similar transactions in the past and had allowed a view to sustain for several years, an exercise under Section 263 of the Act was not warranted. In the present case, the issue was not picked up in the preceding year. Further, the claim of the Assessee cannot be stated to be of a nature which has been consistently accepted in past several preceding years since the entry in relation to notional interest had been passed by the Assessee only in one preceding year and had remained undebated."

v. CIT vs. Raisons lndustires Ltd., 288 ITR 322(SC): The Hon'ble Supreme Court held as under:

"The scope and ambit of a proceeding for rectification of an order under section 154 and a proceeding for revision under section 263 are distinct and different. An order of rectification can be passed on certain contingencies. It does not confer a power of review.

If an order of assessment is rectified by the Assessing Officer in terms of section 154 of the Act, the same itself may be a subject matter of a proceeding under section 263 of the Act. The power of revision under section 263 is exercised by a higher authority. It is a special provision. The revisional jurisdiction is vested

in the Commissioner. An order thereunder can be passed if it is found that the order of assessment is prejudicial to the Revenue. In such a proceeding, he may not only pass an appropriate order in exercise of the said jurisdiction but in order to enable him to do it, he may make such inquiry as he deems necessary in this behalf.

An order of assessment is subject to exercise of an order of a revisional jurisdiction under section 263 of the Act. The doctrine of merger in such a case will have no application."

10. The sum received by M/S Subodh Gupta HUF from a person other than the relative would be covered u/s 56(2)(vii)(c)(i) as the assessee has not paid any consideration while receiving as gift the 75000 shares of M/s Triveni Polymers Pvt. Ltd. The AO failed to invoke the plain section i.e. 56(2)(vii)(c) read with definition of 'relative' therefore it also becomes a mistake of law. In view of this the AO omitted to add a sum of Rs. 17,81,98,500/- i.e. the fair market value of 75000 shares at the rate of Rs. 2375.95 per share. Hence, in the considered opinion of the undersigned the order passed by the AO u/ s 143(3) of income tax act was held as erroneous so far as it is prejudicial to the interest of revenue. In view of facts detailed above, the twin condition of assessment order being erroneous and prejudicial to the interest of revenue for invoking the section 263 are demonstrably met.

11. In reply dated 20.03.2017 in para 4, the assessee has reiterated that mother of karta of HUF even though not a member of HUF is within the definition of the term 'relative'. In the show cause notice u/s 263 dated 09/02/2017 the undersigned deliberated upon the interpretation of the words used

in the income tax act and the legal reading of the statute in this context. It was sufficiently demonstrated that the interpretation of the assessee is farfetched, a part of imagination and opposed to the legislative intent of this plain statue. The assessee has not produced any counter argument or a fresh/ new plea to the reasoned arguments put forth by the undersigned in the above mentioned show cause. At the risk of repeating, as also mentioned in show cause notice reproduced above in para 2, it shall be considered settled position for the order that follows that in this case, mother not being a part cf assesse HUF is not with in the ambit of the definition of the term 'relative' for the applicability of section 56(2)(vii).

12. In para 5, AR has submitted the following:

" FURTHER SUBMITTED THAT as per the provisions of section and explanation 'b' fair market value for the purpose of section 56 is to be as per prescribed rules which in the present case are rule 11U. As per these rules it is mandatory to compute the value as per formula given in the rule. As per sub rule 2 the computation is to be based on book value of assets of the company net of its book liabilities. There cannot be any other method when a specific method has been prescribed under the law. Therefore, the proposed fair value is totally unlawful and not tenable at law. The ride are mandatory in nature and the same has also been so held in the follozving case law:

(i) Medplus Health Services (p) Ltd. vs. ITO ward16(1) Hyderabad (2016) 68 Taxman.com 29 (Hyd. Tri.)

As per rule 11UA the computation works out to Rs. 234.82 per share. Thus the fair market value of the

shares otherwise is also Rs. 17612038/- and not Rs. 178198500/- as stated by your honour."

13. Assessee HUF received 75000 equity shares M/s Triveni Polymers Pvt .Ltd without any consideration as gift from non-member via gift deed dated 14/09/2012. Therefore, the section 56(2)(vii)(c)(i) becomes squarely applicable which reads as follows:

> *56(2). In any particular, and without prejudice to the generality of the provisions of the sub section (1), the following incomes shall be chargeable to income tax under the head income from other sources:*
>
> *(vii) Where an individual or HUF receives, in any previous year, from any person or persons.*
>
> *(c) any property, other than immovable property-*
>
> *(i) without consideration, the aggregate fair market value of which exceeds Rs. 50,000/- , the whole of the aggregate fair market value,*
>
> *(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand Rupees, the aggregate fair market value of such property as exceeds such consideration.*

14. The same is chargeable to tax at the aggregate of the fair market value. Explanation to sub-clause (c) of section 56(2)(vii) states:

> *For the purpose of this clause,-*

(b) fair market value of a property, other than an immovable property, means the value determined with the method as may be prescribed.

15. AR claimed the fair market value is to be determined as per rule 11U and 11UA. And in support of the assessee has quoted case law "medplus health services(P) ltd. vs ito ward 16(1) Hyderabad (2016) 68 taxmann.com 29(Hyderabad tribunal). The argument of the assessee is based on the partial and selective reading of the Income tax act. Any statute unless otherwise stated has to read in entirety. Income tax act defines the term fair market value u/s 2(22B) as follows:

> *2(22B). unless the context otherwise requires, the term "fair market value", in relation to a capital asset, means-*
>
> *i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and*
>
> *ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rides made under this Act.*

16. Implying thereby that in this case sub clause (i) to section 2(22B) would come into play. Plain reading of this section clearly specifies that fair market value in relation to capital asset means the price this asset would ordinarily fetch on sale in open market. The interpretation of the assessee in light of the same cannot be accepted as the determination of fair market value in accordance with the rules made under the income tax act falls within the ambit of sub clause (ii) to section 2(22B). Further, it is clearly specified that such determination is to be resorted to in cases where price referred in sub clause (i) is not ascertainable. Therefore, why the price of Rs.

2375.82/- per share is accepted as the fair market value as ner sprf-inn 9WRVR

17. In the present case, the sale of the shares held by assesse HUF has been made to non-resident company Gerresheimer Glas Gmbh. These two entities are unrelated to each other and the transection of sale, purchase of the shares has happened at arms' length price determined by -

- *the business interest of the buying company,*
- *the perceived value of the underlying shares,*
- *the future earning potential in such transection,*
- *at a mutually and voluntarily agreed upon price which is market clearing as the willingness to pay of the buyer matches the price at which seller is willing to part with the underlying property (equity shares here).*

18. Vide the share purchase agreement dated 17 December, 2012, the buyer company has purchased the 15,79,815 shares of Triveni polymers. Out of these, 1.55.0 shares have been sold by the assessee HUF for a total sale consideration of Rs. 36,82,76,900/- @ Rs. 2375.82/- per share.

19. Of the total of 1,55,000 shares sold in December 2012 by the assessee HUF, 75.0 shares had been received as gift in the month of September 2012. AR has claimed the fair market value of these shares received as per the valuation made under rule 11UA works out as Rs. 234.82 per share. Thus, fair market value of these shares as Rs. 1,76,12,038/-.

20. It is relevant here to quote a landmark judgement of Hon'ble Allahabad high court in case of Amrit Banaspati co. Ltd., 256 ITR 337. In this case the

appeal was filed by the assessee against the decision of ITAT, Delhi which had upheld the wealth tax assessment order of the assessing officer. In this case, fair market value of the underlying property which was a flat in Mumbai was determined by the assessing officer at the market value of the property. The assessee, on the other hand, was using the valuation on the basis of the municipal authorities. The valuation so arrived was Rs. x,jo,aC'Q,' - icr die re^evanc assessmem yeai i 99o-9-i. uiioiesuiigiy, me assessee liiiu himself agreed to sell the property for Rs. 10.26 crores in September 1995. The finding of the Hon'ble high court were as follows:

"... both the commissioner wealth tax (Appeals) as well as the Tribunal have reflected the assessee's appeal and hence it has come to this court it may be noted that where Rule 8 is applicable Rule 3 will not be applicable. The question in this case is whether it could be said that it was not practicable to apply rule 3.

The Tribunal has held in paragraphs 2.10 and 2.11 of its judgement that Rule 8 was rightly nmUori in flue m<ip nntl it has ompn moent reasons for its opinion as mentioned in the said paragraphs. There was wide variation between the market value of the property and valuation done by the assesse on the basis of the municipal authorities where the rateable value determined by the municipal authorities was Rs. 6,573/- and valuation so arrived was Rs, 1,55,130/-. In fact the assesse himself agreed to sell his property through his agreement dated May 11, 1995, for a sum ofRs. 10.26 crores. The assesse had also made improvements.

In our opinion, it would be shocking to say that a flat in a locality like Worli in Mumbai was worth only Rs. 1,55,130/-. Everyone knows that process of flats in Bombay are very high and the petitioner himself had agreed to sell it on September 15, 1995, at Rs. 10.26 crores. It would be ridiculous to say that the price of the flat is only Rs. 1,55,130/-. Moreover, we cannot interfere zvith the findings of fact of the Tribunal."

21. The findings of Hon'ble high court were upheld by the Hon'ble Supreme Court in the case of Amrit Banaspati Co. Ltd. in 365 ITR 515 as well. The circumstances in the present case and that of Amrit Banaspati Co. Ltd. (supra) are similar. The Hon'ble Supreme Court & Hon'ble High Court has held in that case that when fair market value is substantially higher than the value calculated as per rules, is not to be taken. The ratio of the Hon'ble Supreme Court's judgement is applicable as the Hon'ble Supreme Court has upheld the higher value i.e. fair market value. In the case of the assessee also, the fair market value is much higher than the value determined as per rules. It may be mentioned that it is not mandatory, in this case, to determine the value as per rule 11U/11UA because as per section 2(22B) the fair market value is ascertainable.

22. The value suggested by the AR is unacceptable in light of the clear application of section 2(22B) of income tax act. And as per the section the fair market value is to the price which this capital asset would fetch in open market. The case law of Medplus Health Services (p) Ltd. vs. ITO zvard 16(1) Hyderabad (2016) 68 Taxman.com 29 (Hyd. Tri.) is also not applicable in the case at hand as in the appellate proceedings neither has the application of section 2(22B) being made nor has it been deliberated or

adjudicated upon. Moreover, the issue is covered by the ratio of the decision of the Hon'ble Supreme Court in the case of Amrit Banaspati (supra) as no rule would be applicable as per section 2(22B)(i) of the IT Act since the market value is ascertainable. The case of the revenue is on strong footing as no rule would be applicable within the express provision of section 2(22B)(i).

23. The assessee HUF, itself has sold the share at price of Rs. 2,375.98/-per share within a period of less than three months of the acquisition of shares by way of gift, it being verified as to whether it is correct or not as per rule, in view of the fact that fair market value i.e. Rs. 2,090.71 per share is being taken for the purpose of computation of gift from unrelated party. More importantly, there has been no fundamental change in the economic environment at large, the business of the assessee firm, its assets base or any material factor that would result in shooting up of the price of the shares with in a very short period of less than 3 months' time. Further, the decision to sell the shares of this closely held company (whose shares to the extent of 92.8% of the total issued shares were owned by the Gupta family members and HUF prior to sale) and the purchase decision of the non-resident company for a total consideration of Rs. 3,75,37,51,402.50/- (for sale of 15,79,815 shares @ 2375.98/- per share) would have taken its own time and bargain to finalize at an agreed price.

24. It is also pertinent to mention that the price of the shares of Triveni Polymers as per the declaration regarding the transfer of shares filed with RBI in form FC-TRS dated 20/12/2012 is also stated to be Rs. 2,090.71/- per share. It is therefore, unambiguously

established that the fair market value of these shares is much more than the value the assessee has claimed.

25. Therefore, for the purpose of the valuation of the 75000 shares received as gift by the assessee HUF, the most appropriate value of the fair market value as per law in light of section 2(22B) and as per the general prudence is hereby determined as Rs. 2375.98/- per share, which is the actual sale price of the shares under consideration. That is, this sale price is the price which the assessee has actually been able to fetch in the open market and therefore, most appropriate fair market value.

26. The contention of the assesse as per para 6 is also not acceptable that all inquiries were conducted by the AO during the assessment proceedings. The assessee has simply stated that certain shares have been received as gift. No further application of mind was made by the AO as regards the application of section 56(2)(vii). The AO did not look into the bare definition of section 2(22B). The AO did not enquire into the applicability of the rule 11U and 11UA. It is very clear on the face of it that no inquiry was made as regards section 56(2)(vii) r.w.s. 2(22B) by the AO. And thus there is no change of opinion as no opinion has been expressed by the AO, being no inquiry has been made. The case is fully covered by explanation 2 to section 263.

27. In the result, it is held that the assessee HUF is liable to pay taxes on the receipt of gift of shares without any consideration. The AO is directed to modify the order passed by the AO vide order dated 18.03.2016 to the extent that the market value of 75000 shares received from the mother are treated as

income u/s 56(2Hviib which the AO failed to bring to tax. The income of the assessee HUF is therefore, enhanced by (75000x Rs. 2375.95) Rs. 17,81,98,500/- above and over the assessed income for the present A.Y. 2013-14. The AO is directed to give effect to this order and raise demand immediately.

28. The penalty proceedings u/s 271(1) (c) r.w.s. 1 are also initiated because the assessee failed to apply section 2(22B) for the purpose of fair market value which is ascertainable and also the case of the assessee, on the plain reading of the definition of 'relative', is not covered as mother is not member of HUF. The mother has gifted 75000 shares to the HUF."

9. In nutshell, he directed the Ld. assessing officer to modify the order passed to the extent that the market value of 75,000 equity shares received from the mother of the Karta of HUF treating as income under section 56 (2) (vii) which the AO failed to bring to tax as the income of the assessee HUF. Consequently, the income of the HUF was enhanced by Rs. 17819 8500/−.

10. Contesting the orders of the ld PCIT, The Ld. authorized representative vehemently submitted that during the course of assessment proceedings the ld AO has verified the details in

depth. Therefore, the ld PCIT does not have jurisdiction to revise order u/s 263 of the act, as the order of the ld AO is neither erroneous nor prejudicial to the interest of revenue. On the merits, he submitted that mother of the karta of assessee HUF is member of the HUF of his son and therefore the amount of gift falls in the exemption/ exclusion clause and not taxable. He further submitted that valuation methodology adopted by the ld PCIT is erroneous. According to him rule 11 UA applies to the transaction, if at all, it is taxable. He furnished written submission also as under:-

> *"BRIEF SYNOPSIS*
>
> *Ground No. 1 & 2: These grounds are against the assumption of jurisdiction of Ld. CIT to invoke the provisions of Section 263 in the present case on the ground given in para 10 of the impugned order which reads*
>
> *"The AO failed to invoke the plain section i.e. 56(2)(vii)(c) read with definition of 'relative ' therefore it also becomes a mistake of law " .*
>
> *1. Appellant received 75000 shares of M/s Triveni Polymers P Ltd. from mother of Mr. Subodh Gupta during the year under appeal which according to the appellant, was examined by AO during the course of assessment proceeding and view was taken by him as to its non-taxability in view of the relationship*

between the mother and the son and hence the assessment order cannot be said to be erroneous and prejudicial to the interest of Revenue.

PB 46 is the list of shareholders as on 23.09.2012 showing that on 14.09.2012, Mrs. Sneh Gupta transferred 75,000 shares of TPPL to the assessee.

PB 133-148 is assessee's reply dared 12.10.2015 to the Ld. Assessing Officer giving details and documentary evidences with regard to acquisition of shares by the assessee and also filing the Gift Deed of these shares.

PB 134 is a complete break up about year wise acquisition of shares including 75,000 shares received by way of gift from Mrs. Sneh Gupta (Mother).

PB 147 & 148 is the Gift Deed showing that Mrs. Sneh Gupta gave shares jointly to following persons:

l. Sh. Subodh Gupta (Karta)

2. Mrs. Sonal Gupta (wife of the Sh. Subodh Gupta)

3. Ms. Stuti Gupta (daughter of Subodh Gupta)

4. Ms. Sachi Gupta (daughter of Subodh Gupta)

5. Mr. Shreyansh Gupta (Son of Subodh Gupta)

2. Not only this, issue about the acquisition of shares of M/s Triveni Polymers P Ltd (TPPL) & taxability of capital gain resulting from the

transfer of shares including the shares received from the mother was extensively examined during the course of assessment proceeding as is evident from the following:-

PB 1-3 is the copy of return showing that assessee had disclosed amount of capital gain from sale of equity shares of M/s Triveni Polimers Pvt. Ltd. (TPPL).

PB 4 is Assessing Officer's notice u/s 142(1) wherein he asked for statement of affairs of the assessee for 3years.

PB 5 is assessee's reply submitting statement of affairs and other details including Bank A/c of the assessee.

PB 23-54 is assessee's reply dated 05.08.2015 filed to the Ld. Assessing Officer including various documents with regarding to capital gain arising on sale of shares of TPPL.

P0 24 is the copy of computation sheet showing computation of long term capital gain arising on sale of shares of TPPL.

PB 25-46 are copies of annual returns filed by TPPL with ROC showing list of shareholders in2011,2012&2013.

PB 47-51 is the copy of form FC-TRS file under FEMA regulations with RBI for the purpose of transfer of shares to the non-resident.

PB 55-132 is assessee's letter dated 16.09.2015 filed to Ld. Assessing Officer attaching copies of share purchase agreement for sale of shares of TPPL by the assessee to the non-resident.

PB 97-98 are relevant annexures showing sale of shares by the assessee.

PB 117 is the detail of payment received by various sellers including the assessee.

PB 135-143 is a copy of letter showing that the shares were submitted for dematerialization.

PB 144-146 is a statement of affairs of 3 years showing that shares of TPPL were held by assessee upto 31.03.2012 but not as on 31.03.2014.

PB 149 is the Assessee's reply dated 07.12.2015 submitting copy of valuation report of shares which were submitted to RBI.

PB 152-155 is the copy of valuation report submitted to RBI.

PB 156-158 is another letter submitting various evidences with regard to valuation of shares.

PB 160 & 161 is Assessee's reply dated 22.12.2015 submitting about justification of valuation of shares.

Thus, from the perusal of the above documents, it is clear that the Ld. Assessing Officer has made detailed examination with regard to the mode and manner of acquisition of shares and value of capital gain arising on these shares. This fact was brought to the knowledge of the Ld. Assessing Officer that 75,000 shares of TPPL were received by way of gift from Mrs. Sneh Gupta (mother of Sh. Subodh Gupta).

The Ld. Assessing Officer after making detailed examination took a view and accepted the claim

of the assessee as to the non taxability of the impugned gift. This view taken by the Ld. Assessing Officer is a legal view carried as per law and fact i.e. definition of the possible view as allowable with the law.

Therefore, in view of these facts and circumstances, Ld. CIT had no justification to press into service provisions of Section 263 to contradict the view taken by the Ld. Assessing Officer who in any case is taken to have considered all the facets of an issue i.e. gift in the present case as the gift was explained to Ld. AO and further that it was received from the mother of Mr. Subodh Gupta. Since section 56(2)(vii) contains exception that if gift is received from 'relative', it is not taxable, AO took this view and passed the impugned order.

4. Therefore, the revision order passed by Ld. CIT u/s 263 is bad in law in view of following propositions of law and judgments in support of the same:

1) There is a presumption that an assessment order has been passed after application of mind. Thus, revision u/s 263 of such assessment order would be bad as held in the judgment of Oracle Systems Corporation vs. ADIT 380 ITR 232 (Delhi) (CLC Pg. 110-117) para 10-13

(a) In the following judgments, it has been held that merely because the assessment order is brief it would not be concluded by this fact alone that assessment order was passed without making requisite enquiries.

CIT vs. Ashish Rajpal 320 ITR 674 (Del) at page 686 (CLC Pg. 1-13)

CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom) at page 114

CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del) at page 179 (CLC Pg. 14- 27)

CIT vs. Vikas Polymers 236 CTR 476 (Del) (CLC Pg. 28-36) Hari Iron Trading Co. vs. CIT 263 ITR 437 (P&H)

CIT vs. V.P. Agarwal, Prop. Agarwal Scientific Glass Industry 169 Taxman 0107 (Allahabad High Court)

If an Income-tax Officer acting in accordance with law makes an assessment, the same cannot be termed as erroneous by the Commissioner simply because, according to him, the Assessing Officer should have made thorough enquiry and order should have been written more elaborately.

CIT vs. Mahendra Kumar Bansal 297 ITR 99 (Allahabad)

The Allahabad High Court held that merely because the Assessing Officer had not written a lengthy order, it would not establish without bringing on record specific instances that the assessment order passed under section 143(3)/148 of the Act is erroneous and prejudicial to the interests of the Revenue

Chandrakan L. Nandwana vs. ACIT ITA No. 5970/Mum/2008 dated September 10, 2009

If an Income tax Officer acting in accordance with law makes an assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the AO should made thorough enquiry and order should have been written more elaborately. The order of the AO passed u/s 143(3) of the Act is not erroneous, in so far as it is not prejudicial to the interests of the revenue.

Ram Kishan Dass vs. ITO 149 TAXMAN 55 (Del.) (Mag.)

Assessment year 1999-2000 - Whether where assessee had placed entire relevant material and Assessing Officer on examination of such material decided and allowed claim of assessee, it cannot be said that order of Assessing Officer is erroneous or prejudicial to interest of revenue merely because in order, elaborate discussion is not made on certain points - Held, yes

Infosys Technologies Ltd. vs. JCIT ITA No. 222/Bang/2011 dated 07.05.2012

Order prejudicial to interests of Revenue— Assessing Officer examining and considering issue but not mentioning in assessment order - Order not erroneous.

(c) It is a well-known fact that Assessment Order does not contain positive findings on the issue(s) where the Assessing Officer is satisfied. Only adverse observations are given in the assessment order.

CIT vs. Ashish Rajpal 320 ITR 674 (Delhi) (CLC Pg. 1-13)

Proceedings u/s 263 cannot be initiated for inadequate enquiry, but only for lack of enquiry, which is distinct from inadequate enquiry.

DIT vs. Jyoti Foundation 357 ITR 388 (Del) (CLC Pg. 37-43)

CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del) (CLC Pg. 14-27)

ITO vs. D.G. Housing Projects Ltd. 343 ITR 329 (Del) (CLC Pg. 44-52)

CIT vs. Leisure Wear Exports Ltd. 341 ITR 166 (Del) (CLC Pg. 53-62)

CIT vs. Vodafone Essar South Ltd. 212 Taxman 184 (Del) (CLC Pg. 63-67)

CIT vs. Hindustan Marketing and Advertising Co. Ltd. 341 ITR 180 (Del)

CIT vs. New Delhi Television Ltd. 262 CTR 604 (Del) (CLC Pg. 68-71)

CIT vs. Vikas Polymers 236 CTR 476 (Del) (CLC Pg. 28-36)

- *CIT vs. Hero Auto Ltd. 343 ITR 342 (Del.)*

Lack of proper enquiry—Assessee having given complete details of the provisions of warranty in response to the query raised by the AO during the course of assessment proceedings and regarding claim of deduction under s. 35DDA. AO accepted the assessee's claim after examining the same, order under s. 263 passed by the CIT cannot be sustained

- *CIT vs. Bharat Aluminum Co. Ltd. 303 ITR 256 (Del)*

Revision - Erroneous and prejudicial order — Lack of proper enquiry CIT having not found the assessment order erroneous in which the AO allowed the legitimate business expenditure to accepting corrections in the original return made through a letter, he had no power to revise the same.

4) Where two views are possible, and one of the possible views has been taken by the AO in the order passed u/s 143(3), then provisions of section 263 cannot be invoked:

Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC) (CLC Pg. 72-77)

CIT vs. Arvind Jewellers 259 ITR 502 (Guj)

CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del) (CLC Pg. 14-27)

CIT vs. DLF Power Ltd. 329 ITR 289 (Del) (CLC Pg. 78-86)

CIT vs. Max India Ltd. 295 ITR 282 (SC) (CLC Pg. 87-89)

CIT vs. Design and Automation Engineers (Bombay) Pvt. Ltd. 323 ITR 632 (Bom)

CIT vs. Mepco Industries Ltd. 294 ITR 121 (Chennai)

CIT vs. Munjal Castings 303 ITR 23 (P&H)

Grasim Industries Ltd. vs. CIT 321 ITR 92 (Bom)

CIT vs. Tek Chand Saini 325 ITR 343 (P&H)

CIT vs. Honda Siel Power Products Ltd. 333 ITR 547 (Del) (CLC Pg. 90-101)

CIT vs. G.M. Mittal Stainless Steel Ltd. 263 ITR 255 (SC) (CLC Pg. 102-105)

5) It is further submitted that merely because a different view can be taken is not enough to hold assessment order as erroneous or prejudicial to the interest of the revenue. Reliance is placed on the following judgment:

CIT Vs. Sohna Woolen Mills 207 CTR 178 (P&H) (CLC Pg. 106-109)

AO taking possible view. Mere because of an audit objection, and merely because a different view can be taken are not enough to hold that the order of the AO is erroneous or prejudicial to the interest of the revenue

Ground No. 3 & 4: These grounds deal with the issue of taxation of gift of shares received by the Assessee u/s 56(2)(vii)(c) of the Act.

The assessee has received gift from Mrs. Sneh Gupta who happens to be mother of Sh. Subodh Gupta, Karta. According to the Ld. AO, mother (Mrs. Sneh Gupta) does not fall within definition of the term 'relative' for the appellant HUF.

In this regard, our respectful submissions are as under:

I) The perusal of the Gift Deed enclosed at PB 147 to 148 would show that as per para 2 of the Gift Deed, the shares of TPPL were gifted by Mrs. Sneh Gupta in the following manner:

"2. That out of natural love and affection which I bear towards the family of my son namely Shri Subodh Gupta his wife Sonal Gupta and three children Stuti Gupta, Sachi Gupta & Shreyansh Gupta all R/o B-102 Gulmohar Park New Delhi jointly forming Subodh Gupta HUF I make a Gift

of 75000 equity shares of Triveni Polymers Pvt. Ltd. having registered office at 2B DCM Building Barakhamba Road New Delhi of Rs.10/- each bearing distinctive No. 1070001 to 1120000 and 225001 to 250000 in favour of Subodh Gupta HUF on 14/09/2012. ”

Thus, perusal of the above Gift Deed would show that the shares have been gifted to the above said persons collectively and each of them would clearly fall within the definition of term ‘relative’ as provided in clause ‘e’ to Explanation provided in Section 56(2)(vii) which has been inserted to enable the HUF assessees to claim exemption of the gifts as would be clear from the notes on clauses to the amendment made by Finance Bill, 2012 (CLC Pg. 194) as is reproduced hereunder:

“Clause (e) of Explanation to second proviso of the said clause provides that the definition of "relative" shall have the same meaning assigned to it in the Explanation to clause (vi) of sub-section (2) of the said section.

It is proposed to substitute the aforesaid clause (e) so as to provide that the definition of "relative" shall also include any sum or property received by a Hindu undivided family from its members apart from the persons referred to in the Explanations clause (vi) of sub-section (2) of the said section.

This amendment will take effect retrospectively from 1st October, 2009. ”

Thus, it does not over shadow the other definition of the term ‘relative’ as has been

given in the case of individuals. Amendment in fact is actually an enabling provision which enables ITUF assessee to claim benefit of exemption on the amount of gift received from its Members also. JTowever, HUF shall continue to get the benefit of exemption on the amounts of gifts received from any other person also who falls in one of the categories of the 'relative' as provided in Explanation to clause (vi).

Thus, where all the members of the HUF are individuals related to the donor then they very much also fall within the definition of the term 'relative' on collective basis also. Reliance is placed on the following judgments:

1. Vineet Kumar Raghavjibhai Bhalodia vs. ITO 12 ITR(T) 616/ 140 TTJ 58 (CLC Pg. 118-126)

In this case, the assessee had received gift from HUF. The revenue took stand that HUF would not come within the definition of the term "Relative" and more so when HUF is not an "Individual".

The Hon'ble Rajkot bench analysed the provision in this regard as contained in Hindu Law and under Income Tax law and held that HUF is group of relatives. Therefore, any amount received from father's HUF would be as good as amount received from relatives. Relevant observation as contended in Para 11.1 are reproduced here under for the sake of ready:

11.1 A Hindu Undivided Family is a person within the meaning of section 2(31) of the Income-tax Act and is a distinctively assessable unit under

the Act. The Income-tax Act does not define expression 'Hindu Undivided Family". It is well defined area under the Hindu Law which has received recognition throughout. Therefore, the expression "Hindu Undivided Family" must be construed in the sense in which it is understood under the Hindu Law as has been in the case of Surjit Lal Chhabda. v. CIT [1973] 101 ITR 776(SC) .Actually a 'Hindu Undivided Family" constitutes all persons lineally descended from a common ancestor and includes their mothers, wives or widows and unmarried daughters. All these persons fall in the definition of "relative" as provided in Explanation to clause (vi) of section 56(2) of the Act. The observation of the CIT(A) that HUF is as good as 'a body of individuals' and cannot be termed as "relative" is not acceptable. Rather, ar/HUF is 'a group of relative 4Plfilow having found that an HUF is 'a group of relatives', the question now arises as to whether would only the gift given by the individual relative from the HUF be exempt from taxation and would, if a gift collectively given by the 'group of relatives 'from the HUF not exempt from taxation. To better appreciate and understand the situation, it would be appropriate to illustrate an example, thus an employee amongst the staff members of an office retires and in token of their affection and affinity towards him, the secretary of the staff club on behalf of the members of the club presents the retiring employee with a gift could that gift presented by the secretary of the staff club on behalf of the staff club be termed as a gift from the secretary of the staff club alone and not from all the members of the club, as such? In

our opinion answer to this quoted example would be that the gift presented by the secretary of the club represents the gift given by him on behalf of the members of the staff club and it is the collective gift from all the members of the club and not the secretary in his individual capacity. And if it is held otherwise, it will lead to an absurdity of interpretation which is not acceptable in interpretation of statutes as has been held by the Hon'ble Apex Court in the case ofK. Govindan & Sons (supra).

2. CIT vs. C.P. Appanna 202 ITR 0678 (Karnataka) (CLC Pg. 127-129)

In this case, it has been held by the Hon'ble Karnataka High Court while examining the availability of benefits under section 5(l)(xvia) which is available to an individual, would also be available to an HUF. It was held that the word individual includes "group of individual", therefore benefit of exemption would be available to I1UF also.

3. CIT vs. Gunvantlal Ratanchand 208 ITR 1028 (Gujarat) (CLC Pg. 130- 132)

In this case, the facts were that the benefit of exemption u/s 54C of the IT Act, 1961 which was allowable to individual assessee was claimed by HUF assessee. It was held that family members of Hindu constitute HUF and each of them would be individual, therefore benefit of exemption 54(C) would be available to HUF also.

4. Surjit Lai Chhabda vs. CIT 101 ITR 776 (SC) (CLC Pg. 133-147)

In this case it has been held that income tax act does not define expression HUF whereas, it is well defined area under Hindu Law. Therefore, the expression HUF must be construed under the Income Tax law in the sense in which it is understood under the Hindu Law.

5. K. Govindan & Sons vs. CIT 247 ITR 192 (SC) (CLC Pg. 148-155)

In this judgment Hon'ble Supreme Court held that an interpretation of statutory provisions which will result into an absurd situation cannot be accepted.

6. DCIT vs. Ateev V. Gala (ITA No. 1906/ Mum/2014) (CLC Pg. 156-166)

7. Harshad Bhai Dahyalal vs. ITO (Ahd)

In this case, Hon'ble bench has followed the judgment of Hon'ble Rajkot Bench and the same view has taken.

Thus, the gift received by HUF assessee from relative of its members would not be taxable under section 56(2)(vii) in view of above said judgments.

II. Without prejudice to above submission, it is respectfully submitted that in any case Mrs. Sneh Gupta (Donor) i.e. mother of Sh. Subodh Gupta is also member of Sh. Subodh Gupta (HUF), she being lineal ascendant of Sh. Subodh Gupta (29 ITR 165(Raj)(FB).

Under the Flindu law, a Hindu Undivided Family constitute all persons lineally ascendant or descendant from a common ancestor and includes their mother, wives, widows and

unmarried daughter/sisters and more importantly all these person falls under the definition of 'Relative' as provided in Explanation (e) of Sec 56(2)(vii). Thus, gift received from the mother would be covered within the meaning of relative in both the clauses of Explanation (e) i.e. clause (i) and clause (ii).

Reliance is placed on following judgments of Hon'ble Kolkata Bench of ITAT:

Subhadra Devi Nevatia vs. Department of Income Tax (Dt. 10th February, 2012, ITA NO. 1298/K/2011, ITAT Kolkata) (CLC Pg. 167-175)

In this judgment, Hon'ble bench analyzed the provisions of Hindu Law as contained in Hindu Succession Act and their interplay with the provision of Sec 56(2)(v) of Income Tax Act, 1961.

It has been held in this judgment that entity of HUF as described under the Income Tax Act must be construed in the sense in which it is understood under the Hindu Law. It was also held that a HUF constitute all persons lineally ascended or descended from a common ancestor and included their mother, wives or widow and unmarried daughter and all those persons who fall under the definition of relatives as used under Sec 56(2)(v). Relevant portion of the judgment is reproduced hereunder from page 5:

"It is a fact that the assessee has received this sum being a member of HUF, even we can say that after amendment w.ef 01/4/2003 in the Hindu Succession Act, the females are entered

as coparceners. In view of above clause (v) of explanation to sec. 56(2) of the Act, Explanation defines 'relative ' and relative here means as per clause (v) of explanation any lineal ascendant or descendant of the individual. Now, where HUF is a person within the meaning of sec. 2(31) of the Act, the entity of HUF must be construed in the sense in which it is understood under the Hindu Law, as has been decided in the case of Surjit Lai Chhabra vs. CIT (1975) 101 ITR 776 (SC), wherein it has been held that the expression 'HUF' in the IT. Act is used in the sense in which a Hindu joint family is understood under the personal law of Hindus. Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and apparently the l.T. Act does not indicate that an HUF as an assessable entity must consist of at least two male members. It means actually a Hindu undivided family constitutes all persons lineally ascendant or descendant from a common ancestor and includes their mothers, wives or widows and unmarried daughters. All these persons fall under the definition of 'relative' as provided in Explanation to proviso to clause (v) of sec. 56(2) of the Act. Even otherwise, to appreciate the controversy in this issue, it is apposite to reproduce the essential part of sec. 5(l)(viii) of erstwhile Gift Tax Act (now repealed), which is relevant for this purpose. "

Finally, after analyzing the concept of HUF under Hindu Succession Act and Hindu Law, Hon'ble Kolkata bench analysed and summarized the

provisions of law contained in income tax act as under:

"8. From the above facts and circumstances, provisions of the Act and case laws, it is clear that it is mandated by the proviso to section 56(2)(v) of the Act that this provision shall not apply to any sum of money received from any relative and according to Explanation to this section 56(2)(v) of the Act the expression 'relative' has been defined and includes any lineally ascendant or descendant of the individual. It means that the HUF consists of members of a joint family who are lineally ascendant or descendant of the individual. Outside the limits of coparcenary there is a fringe of persons, males and females, who constitute an undivided or joint Hindu family. Further, there is no limit to the number of persons who can compose it nor to their remoteness from the common ancestor and to their relationship with one another. It consists of a group of persons who are united by the tie of sapindaship arising by birth, marriage or adoption. If this is the situation, we can easily hold that HUF entity falls within the definition of relative as defined in explanation to section 56(2) of the Act. Once it is held that HUF falls in this dejinition, no receipt from HUF to its coparceners or members can be assessed by invoking the provisions of section 56(2)(v) of the Act.

Accordingly, we allow the claim of assessee and uphold the order of CIT(A) on this issue. "

Surjit Lai Chliabda vs. CIT 101 ITR 776 (SC) (CLC Pg. 133-147)

In this case, it has been held that income tax act does not define expression HUF whereas it is well defined area under Hindu law. Therefore, the expression HUF must be construed under the Income Tax law in the sense in which it is understood under the Hindu law.

Thus, in view of the above, it is clear that gift given by Mrs. Sneh Gupta as a member of IIUF to its relatives and collectively given to all the members of son's HUF would clearly be the gift from the 'relative' as envisaged u/s 56(2)(vii) and thus exempt.

III) (a) T he definition of "relative' given in Explanation to section 56(2)(vii) defines relatives in relation to "Individual' & "HUF'. It does not say that 'relative' has to be seen from the stand point of Individual and HUF when such Individual & HUF are donees. Interpretation which is quite possible interpretation is that 'relative' has to be seen qua Individual & HUF when such Individual & HUF are donor.

If such interpretation is taken, donor Mother in the instant case being Individual would encompass son, grandson, granddaughter etc within the meaning of 'Relative' and that being so gift from the mother to son and other members of son's family were 'relative' in relation to the mother & thus there is no question of gift being taxable.

(b) Section 56(2)(vii) is anti abuse provision as reiterated by CBDT in its circular No. 5/2010

dated 3.6.2010 para 24.2 and CBDT Circular no. 1/2011 dated 6.4.2011 in para 13.2. Therefore, interpretation of any anti abuse provision has to be made in the context of its objective.

CIT vs. South Arcot District Cooperative Marketing Society Ltd. 176 ITR 117 (SC)

The Supreme Court in the case of CIT vs. South Arcot District Co-operative Marketing Society Ltd. (supra) dealt with the concept of liberal construction for granting deduction under s. 80P of the Act. It held that a liberal interpretation should be given to the language of the provision while dealing with the exemption provisions. It is stated that having regard to the object with which the provision has been enacted, it is apparent that a liberal construction should be given to the language of the provision. As in the present case, there is no condition as regards to ownership in the provisions of s. 80-IB(10) of the Act, we feel that taking a liberal construction of the provision, the assessee is eligible for deduction under s. 80-IB(10) of the Act.

The Punjab & Haryana High Court in the case of B.M. Parmar vs. CIT 235 ITR 679(SC) held that "In the m ter of tax, the statute is to be interpreted strictly. A provision has to be construed keep ng in view the purpose and object for which it is enacted. The concept of commercial principles on business practice would not be relevant unless it is found to be inevitable."

The Supreme Court in the case of CIT vs. Strawboard Manufacturing Co. Ltd. 177 ITR

431(SC) and the Punjab & Haryana High Court in the case of CIT vs. Strawboard Manufacturing Co. Ltd. 1975 CTR (P&H) (1975) 98 ITR 78 (P&H) holding "an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to applied to something to which it would not ordinarily be applicable." It further observe that even if both the interpretations—one put by the learned counsel for the company a d the other by the learned counsel for the Department—are taken to be correct, it is 1 h principle of interpretation that the interpretation which is favourable to the subject should e adopted and that which is favourable to the Department should be discarded. In c 'e that principle is applied to the present case, the interpretation which supports the assessee has to be accepted. We need not go that far as in our opinion , on a plain reading of the agreements and the provisions of law, the assessee is entitled to the deduction clearly.

Anupam Tele Services vs. ITO 366 ITR 122 (Guj) holding that exception in Rule 6DD has to be interpreted in the backdrop of object of section 40A(3) and thus be interpreted liberally

Object of section 56(2)(vii) was to tax the money received by a stranger from other stranger received as subterfuge of gift. However, exceptions were carved out to save

the genuine situations having regard to social considerations and practices. One such exception was that gift between close relatives would not be hit by the taxability of section 56(2)(vii).

Object of exception given in section 56(2)(vii) is to be seen and that is that gifts received from close relatives are probable human conduct and are not source of any money hindering in contrast to the gift between the unrelated parties and thus gift to relative should not be hit by taxability under section 56(2)(vii).

Seen in this backdrop, gift from mother to son and son's family should not be hit by section 56(2)(vii) and should be saved by the exception of 'relative'.

(c) Exception is benevolence which needs to be interpreted liberally. Mangalaya Trading & investment Ltd. ITA 4696 of 1997 (Mum) dated 9.2.1999

Fashion Power vs. DCIT 2 SOT 817 (Mum)

(d) In any case, two views are possible and in such a case, view favourable to the tax payer has to be followed as held in 88 ITR 192(SC).

Ground No. 5 & 6: These grounds are without prejudice to Grounds 1 to 4 above. In these grounds, the assessee has challenged the action of Ld. CIT in holding that valuation of shares would be done as per section 2(22B) instead of fair market value under Rule 11UA.

a) In this regard, it is submitted that Ld. CIT has misread the plain reading of law as is

expressly provided in Explanation (b) to section 56(2)(vii) providing that fair market value' of a property means the value determined in accordance with method as may he prescribed."

b) The methods prescribed are as per Rule 11U & 11UA as would be evident from the Notification No. 23/2010 and amendments thereafter (CLC Pg. 186-193).

c) Ld. CIT has referred to the definition of fair market value as given in Section 2(22B), however it is a general definition and it would be needed to be referred only when specific definition is not provided in the charging section.

In this case, since specific definition has been provided under the law therefore, there would not arise any need to refer to the general definition. Thus, action of Ld. CIT is contrary to law on the face of it.

d) In this regard, reliance is placed on the judgment of Medplus Health Services (P) Ltd. vs. 1TO in 48 ITR(T) 396 (Hyderabad - Trib.)/ 158 ITD 105 (Hyderabad) (CLC Pg. 176-185) which says that there cannot be any other method when sped lie method has been prescribed under the law.

e) Ld. CIT has relied upon the decision of Amrit Banaspati 256 ITR 337(A11) and 365 ITR 515(SC).

But, facts of that case and law applicable in that case were entirely different. Under Wealth tax Rules, Rule 3 was made subject to Rule 8 and that being so, valuation was to be done as per Rule 8 only.

f) in section 5 I (vii), only rule prescribed for valuation is Rule 11UA and thus no assistance any other provision can be taken. When there is special provision made, special provision would prevail on the general provision as held in the following judicial decisions:-

Hindustan Graphites Ltd. vs. CIT 96 Taman 163 (MP)

CIT vs. Safya Narnl Munjal 256 ITR 516(P&H)

CIT vs. Oni Prakash Munjal 325 ITR 605 (P&H)

Ratan Lai vs. ITO 98 ITR 681 (Del)

Thus, without prejudice to our submission made in Ground No. 1 to 4 above, the order of Ld. CIT is prima facie illegal on the face of it and deserves to be modified to this extent accordingly."

11. Ld. departmental representative vehemently submitted that no requisite enquiries were made by the ld AO and therefore by virtue of explanation 2 inserted with effect from 1/6/2105 u/s 263 of the Act, the order is erroneous and prejudicial to the interest of revenue. On the issue of merit, he submitted that assessee is an HUF and mother of the karta of HUF has given gift to the assessee HUF. She is not a member of the assessee HUF. Hence, the gift is chargeable to tax in the hands of HUF. On valuation, he supported the order of the Ld PCIT. He submitted as under:-

"In this regard, it is humbly submitted that Explanation 2 has been inserted in Section 263 of I.T.Act by Finance Act 2015 w.e.f 01.06.2015 which is reproduced below:

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

In the above case, it is humbly submitted that the following decision may kindly be considered with regard to validity of proceedings u/s 263 of I.T.Act:

1. Malabar Industrial Co. Ltd. Vs CIT f20001 109 Taxman 66 (SC)/r20001 243 ITR 83 (SC)/ 159 CTR 1 (SC) (Copy Enclosed)

Where Hon'ble Supreme Court held that where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified

2. Raimandir Estates (P.) Ltd. Vs PCIT 170 taxmann.com 124 (Calcutta)/[201C 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512] (Copy enclosed)

Where Hon'ble Calcutta High Court held that where assessee with a small amount of authorised share capital, raised a huge sum on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees and Assessing Officer passed assessment order without carrying out requisite enquiry into increase of share capital including premium received by assessee, Commissioner was justified in treating assessment order as erroneous and prejudicial to interest of revenue

3. Raimandir Estates (P.) Ltd. Vs PCIT f2017] 77 taxmann.com 285 (SC)/2017 245 Taxman 127 (SC)

Hon'ble Supreme Court has dismissed SLP against High Court's ruling that where assessee with a small amount of authorised share capital, raised huge sum on account of premium, exercise of revisionary powers by Commissioner opining that this could be a case of money laundering was justified."

12. Facts shows that assessee is a Hindu undivided family, who filed its return of income on 31/07/2013 declaring income of Rs. 579720/–. Assessment under section 143 (3) of the income tax act was passed on the returned income on 18/3/2016. Subsequently, the Ld. PCIT passed an order under section 263

on 01/05/2017. He held that the order passed by the Ld. Assessing Officer dated 18/3/2016 passed under section 143 (3) of the Income Tax Act was erroneous and prejudicial to the interest of the revenue. For holding so he stated that ld AO has not examined the complete details and taxation, arising out of receipt of Gift of 75,000 equity shares of Triveni polymers private limited from Mrs. Sneh Gupta, who is mother of the Karta of HUF, not a member of the HUF of Mr. Subodh Gupta. Subsequently those shares were sold to one German-based company by the assessee. Therefore, notice under section 263 of the income tax act was issued on 9/2/2017, which is placed at page No. 175 – 177 of the paper book. The assessee replied to that notice which is placed at page No. 178 – 184 of the paper book stating that there is no error in the order of the Ld. assessing officer and the complete details was disclosed before the Ld. Assessing officer. However, the Ld. PCIT held that the property received by assessee from a person other than the 'relative' would be covered under section 56 (2) (vii) © (i) as the assessee has received 75,000 shares of Triveni Polymers private limited as gift from Mrs. Sneh Gupta. The Ld. assessing officer failed to invoke the applicable

sections of the act. Therefore, it becomes a mistake of law. Therefore, the Ld. PCIT held that the Ld. assessing officer omitted to add a sum of Rs. 17.81 crores, which is the fair market value of 75,000 shares at the rate of Rs. 2375.95 per share. Therefore, in the opinion of the Ld. PCIT the order passed by the Ld. assessing officer was held to be erroneous as well as prejudicial to the interest of the revenue. Ld. PCIT noted that the amount of gift received from the mother of the assessee HUF is chargeable to tax under section 56 of the Income Tax Act and then she decided the fair market value of the shares as on the date of the transfer at Rs. 2375.98/– per share. The Value of such shares taken by the ld PCIT was the sale price per share sold by the assessee to the German company within short time as according to him , as per provision of section 2 (22B) of the act that is the fair market value of gift of shares received by assessee. Consequently, the addition of Rs. 17.81 crores was made in the hands of the assessee. This order is under challenge before us. On the basis of the reading of the facts as well as the order of the Ld. PCIT, following 3 issues emerges before us:-

i. whether the order passed by the Ld. assessing officer is erroneous and prejudicial to the interest of revenue as per ground No. 1 and 2 of the appeal of the assessee.

ii. Whether the gift of 75000 equity shares of Triveni polymers Ltd, made by Mrs. Sneh Gupta to the assessee HUF is chargeable to tax under section 56 (2) (vii) of the act, as per ground No. 3 and 4.

iii. Whether the valuation taken by the ld PCIT for the purpose of determining the income chargeable is correct applying section 2 (22B) of the act ignoring rule 11UA of The Income Tax Rules, 1962 as per Ground no 5 & 6.

13. The 1st issue that we consider is whether the order passed by the Ld. assessing officer is erroneous and prejudicial to the interest of the revenue or not. The main plank of the submission of assessee is that the assessee has disclosed the complete details before the Ld. assessing officer during assessment proceedings. Ld AO has applied his mind on the issue. Therefore, the order passed by the Ld. assessing officer is neither erroneous nor not prejudicial to the interest of the revenue as capital gain resulting from the transfer of shares including the shares received from the mother was extensively

examined. According to the Ld. authorized representative there is a presumption that assessment order has been passed after the complete application of the mind. Thus, the revision under section 263 of such assessment order would be bad in law. He further stated that merely because the order passed by the Ld. assessing officer is brief; it would not be concluded by this fact alone that the assessment order was passed without making requisite enquiries. He further stated that as the Ld. assessing officer has not made any positive finding on this issue and only adverse observations are given in the assessment order, which is missing in this assessment order. Therefore, the Ld. assessing officer has accepted the claim of the assessee that the gift received from the mother of the karta of assessee is not chargeable to tax in the hands of the assessee HUF. He further stated that for the inadequate enquiries provisions of section 263 could not be resorted to. The Ld. authorized representative further pressed into service that where two views are possible and one of the possible views have been taken, then provisions of section 263 cannot be invoked. To substantiate the above claim, he referred to page No. 2 of the paper book which is a computation of taxable income for the

assessment year 2013 – 14 wherein the sale of equity shares of the Triveni polymers private limited were shown in the long term capital gains computation thereof was disclosed in return of income. He further referred to the letter dated 05/08/2015 placed at page No. 23 of the paper book where the computation of long-term capital gain on sale of shares from Triveni polymers private limited were enclosed. He further referred to page No. 34 of the paper book which shows that the complete details of the shareholding of the company whose shares are sold is also available wherein acquisition of the shares by the assessee is shown. He further referred to page No. 147 and 148 of the paper book, which is part of reply of the assessee, dated 12/10/2015 before the Ld. assessing officer, which is a declaration of the gift from Mrs. Sneh Gupta. This gift deed clearly shows that shares have been received by the assessee as gift from mother of karta of assessee HUF. He further referred to letter dated 7/12/2015 wherein the copy valuation report of the shares submitted to the reserve bank of India is submitted to the Ld. assessing officer. In view of this, the contention of the assessee is that the Ld. assessing officer has examined the details and after that, he has accepted the

return of income of the assessee without taking any adverse view. He further referred to page No. 167 of the paper book where the notice under section 154 of the income tax act, 1961 was issued on 7/11/2016 by the Ld. assessing officer is placed . In that, ld AO has asked the assessee to showcause why an amount of Rs. 17.81 crores received as a gift from person other than the member of the HUF may not be treated as income under the head income from other sources for the year assessment year 13-14. He submitted that subsequently, this notice was not acted upon which itself shows that there is no error in the order of the Ld. assessing officer. He therefore submitted that the action under section 263 of the Income Tax Act of the PCIT is not sustainable.

14. The Ld. departmental representative relied upon the amendment to the section 263 of The Income Tax Act. He submitted that w.e.f. 1/6/2015 explanation (2) has been inserted, which provides that an order passed by the Ld. assessing officer shall be erroneous insofar as it is prejudicial to the interest of the revenue , if the impugned order is passed without making enquiries, verification which should have been made. He submitted that the order has been passed

without making any enquiries about the taxability of the gift received by the assessee HUF.

15. We have carefully considered the contention of the Ld. authorized representative as well as the Ld. departmental representative and also perused the explanation (2) added to the provisions of section 263 of the Income Tax Act by The Finance Act 2015 w.e.f. 01/06/2015. That explanation provides that any order passed without making enquiries verification, which should have been made, makes the order erroneous and prejudicial to the interest of the revenue. From that angle, it needs to be examined if the ld AO has made certain inquiries with respect to taxability of gift of those shares in the hands of assessee. Had the ld AO made the inquiries about the fact of the gift, relationship of the assessee with Mrs. Sneh Gupta and also whether such gift is chargeable to tax u/s 56 (2) or not, the order cannot be held to be erroneous as well prejudicial to the interest of revenue. Therefore, It is necessary to examine what kind of inquiry ld AO has made. In the present case letter, dated 12/10/2015 placed at page No. 133 of the paper book is the only relevant details that speak about the submission of the gift deed before the Ld. assessing officer.

Vide that letter the date wise detail of acquisition of shares, with distinctive numbers were enclosed and it was mentioned that these shares were acquired through gift from Mrs. Sneh Gupta, mother of karta of HUF assessee on 14/9/2012. It was further stated that the donor originally acquired the shares as per different dates. Therefore it is apparent that the above information was provided with respect to the computation of cost of acquisition to be determined in case of the assessee when it is sold, as the Act provides for cost acquisition of the previous owner substituted in case of certain types of acquisition, such as gift etc. Therefore, it is apparent that the copy of the gift deed, which is submitted by the assessee before the Ld. assessing officer was with respect to the cost of acquisition to be determined at the time of sale of those shares for working capital gain in the hands of the assessee. The ld AO has not at all looked at those documents from the perspective of section 56 (2) of the Act. No other evidence was adduced before us which even remotely suggest that the ld AO has enquired about the taxability of impugned gift and its taxability in the hands of assessee. From the above facts, it is apparent that the ld assessing officer did not enquire during

the course of assessment proceedings about the taxability of the shares received as gift by the appellant. Further , it is apparent that assessment order was passed on 18/3/2016 and order under section 263 of the income tax act was passed on 1/5/2017, both after 1/6/2015, therefore explanation (2) introduced w.e.f. 1/6/2015 squarely applies. Therefore, it is apparent that Ld. assessing officer has not made any enquiry with respect to the taxability of gift received by the assessee from the mother of the Karta of assessee. Furthermore, merely notice has been issued under section 154 of the Income Tax Act on the same issue but later on, no rectification order has been passed by the Ld. assessing officer does not help the case of the assessee. The provisions of section 154 operate when there is an apparent mistake from the records. The Ld. assessing officer might have thought that the provisions of section 154 of the income tax act are not the appropriate tool available to him. As apparently, the error required to be redressed by the ld assessing officer requires detailed examination of the chargeability of income taxable in the hands of the assessee as well as quantification thereof, hence not apparent from record. Furthermore, it is clear that section 154

and section 263 operate in different circumstances. Therefore, we concur with the views of the ld PCIT that order passed by the Ld. assessing officer is erroneous as well as prejudicial to the assessee interest of the revenue as it is passed without making enquiries verification, which should have been made by the Ld. assessing officer. As the above explanation is a deeming fiction which provides that such orders are erroneous and prejudicial to the interest of the revenue, other arguments on the applicability of section 263 of the Income Tax Act made by the Ld. authorized representative also fails. Therefore, accordingly, we dismiss ground No. 1 and 2 of the appeal of the assessee.

16. The 2nd issue is whether the gift of 75,000 equity shares of a private limited company received by assessee HUF from Mrs. Sneh Gupta is chargeable to tax under section 56 (2) (vii) of the act. According to provisions of section 56 (2) (vii) , where any individual or Hindu undivided family receives in any previous year from any person or persons on or after the 1st day of October 2009 but before the 1st day of April 2017, any sum of money or property without consideration, aggregate fair market value of which exceeds Rs. 50,000, the whole of

the fair market value of such property, shall be chargeable to income tax under the Income From Other Sources, as Income of the recipient. As per explanation (d) in the definition of 'property', several types of assets are listed including shares and securities. It is not denied that assessee is an HUF, during the year it has received from mother of the Kaka of the assessee HUF a gift of 75,000 shares of a private limited company. Therefore, apparently the provisions of section 56 (2) applies in the case of the assessee. However, proviso to the above section provides that the above clause shall not apply to any sum of money or any property received from any 'relative'. Therefore, if such sum or property is received from a 'relative' it will not be chargeable to tax under that section. The explanation (e) defines 'relatives' in case of a Hindu undivided family as any member thereof. Therefore, if the above assessee, HUF, receives any sum from any member of the HUF then such sum or property received by the HUF assessee will not be chargeable to tax. Therefore, the simple issue that arises to be examined that whether Mrs. Sneh Gupta is a member of the assessee HUF. If she is, then the gift of share is not chargeable to tax in the hands of assessee as income.

Assessee has provided gift deed which is placed at page no 148 of the paper book. In para no 2 of that deed , it is stated that out of natural law and affection which Mrs. Sneh have Gupta bear towards the family of her son , namely Sh. Subodh Gupta, his wife Sonal Gupta and three children, Stuti Gupta, Sachi Gupta and Shreyans Gupta jointly forming Subodh Gupta HUF, she has given 75,000 equity shares of the Triveni polymers private limited. Therefore It is apparent from the declaration that assessee HUF consist of Sri Subodh Gupta, his wife and 3 children only. Therefore, as per the declaration furnished it is crystal even assessee as well as the donor do not consider that Mrs. Sneh Gupta is the member of assessee HUF. The contention of the assessee that the above gift deed would show that the shares have been gifted to the above said persons collectively and each of them would clearly fall within the definition of term 'relative' as per the provisions of section 56 (2) (vii), therefore the gift is not chargeable to tax. It was further stated that clause defining 'relatives' with respect to HUF was only for the reason to enable the HUF assessees to claim exemption of the gift as would be clear from the 'notes on clauses' to the amendment made by The Finance Bill, 2012,

wherein it has been mentioned that the definition of 'relative' shall also include any sum or property received by a Hindu undivided family from its members apart from the persons referred to in explanation clause (vi) of subsection (2) of the said section. It was further the contention of the Ld. authorized representative that HUF can receive gift without attracting tax liability from its members as well as from the persons defined as relatives. Therefore, the argument was that all the persons, which are mentioned in explanation (e), if the HUF receives sum of money or property from them it is not chargeable to tax. Hence, as the donor is the mother of the karta of HUF, she can give gift to each member of such HUF without attracting tax liability in his or her individual hands, therefore, if the gift is given to the collective name of HUF comprising the same individual, it should also not attract tax. The above contentions deserves to be rejected because the proviso to section 56 (2) (vii) provides definition of 'relatives' in case of individual and HUF separately. It provides that above clause for taxability shall not apply to any sum of money or property received from any 'relative'. The 'relative' have been mentioned separately with respect to an individual, and

with respect to a Hindu undivided family. Therefore, in case of Hindu undivided family, if the gift is not received from member of such HUF then such sum is chargeable to tax. The 'relatives' mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF. Further, it substitutes the earlier definition of the 'relative' when there was no reference about what constitutes 'relatives' with respect to the HUF. It only talks about 'relatives' with respect to an individual. Therefore, earlier the issue was that if the gift is received by an HUF from its members, probably it was taxable. To remove that lacuna and to give benefit to the HUF, the above amendment was made. The amendment also speaks through ' notes on clauses' that now the definition of 'relative' shall also include any sum or property received by an Hindu undivided family from its members apart from the persons referred to in the explanation with respect to an individual. It does not provide that if gift is made to an HUF by any of the 'relatives' of those individuals comprising the HUF, who is not the member of the HUF, then such gift is not chargeable to tax. If such a view were accepted, then gift to HUF would never be chargeable to tax if it were received from

the "relatives" of the members of such HUF. We are afraid that is not the language as well as the intention of the legislature. Even otherwise, When the language of the law is clear, support of the 'notes on clauses' to the amendment does not help the assessee. Further, the contention of the Ld. authorized representative that where all the members of the HUF are individuals related to the donor , then they very much also fall within the definition of the term 'relative' on collective basis also deserves to be rejected reason being that here the assessee is an HUF and not to those individual members of HUF. HUF is a distinct assessable entity and section 2 (31) defines the 'person' where Hindu undivided family is a separate taxable entity from its members who are 'individual'. Further, the ld AR has relied up on the plethora of judicial precedents. We deal with each of them turn by turn. The decisions relied upon by the Ld. authorized representative on Vinitkumar Raghavji Bhalodia V ITO 140 TTJ 58, Harshadbhai Dayalal V ITO and in ITA number 1906/MUM/2014 in DCIT versus Ateev V Gala. We have perused them and find that they do not help the case of the assessee because in those particular cases, the gift was given by the HUF to the individual assessee where all

the members of the HUF were also eligible to make tax-free gift in the hands of the assessee individual. Hence, reliance placed on those judgments is rejected, as they are distinguishable on facts. Further, the Ld. authorized representative relied on the decision of Hon'ble Karnataka High Court in 202 ITR 678, where the question was whether the exemption provided under the section 5(1)(xvia) of The Wealth Tax Act is also applicable to HUF or not. The Hon'ble court held that the word 'individual' includes group of individuals and therefore benefit of exemption would be available to HUF. The above decision also does not apply here. In the section 56 (2) (vii) there are two specific and different types of exclusions provided for 'individual' and 'HUF'. In case of individual different set of 'relatives' have been defined and in case of an 'HUF' there are different set of 'relatives' defined. By relying on that decision, the argument of the assessee is to expand the benefit available to an HUF of tax-free gift from members of HUF as well as from the non-members as applicable to the individual. Before the Hon'ble Karnataka High Court, there was no benefit available to an HUF in wealth tax act for that particular section and therefore such a view was taken,

Whereas in the present case the legislature has defined 'relative' differently for individual and HUF. In section 56 of the act, legislature has given a clear-cut provision that if the recipient is individual or HUF then from whom it can receive property or sum without paying tax under section 56 of the act. In view of this, the reliance placed by the assessee on the decision of the Hon'ble Karnataka High Court is misplaced. Similarly, the reliance placed on CIT versus Gunvantlal Ratanchand 208 ITR 1028 (Gujarat) also deserves to be rejected because the issue before the Hon'ble court was that when the exemption is granted to individuals whether such exemption is available to an HUF or not When the such exemption was not provided by the legislature to an HUF. The Ld. authorized representative further relied upon the decision of the Hon'ble Supreme Court in case of Surjeet laL Chhabra versus CIT [101 ITR 776] (SC) and submitted that Income Tax Act does not define expression Hindu undivided family, whereas it is well-defined area under Hindu law and therefore the expression Hindu undivided family must be construed under the income tax law, in the sense in which it is understood under the Hindu law. Here it is not the issue that

what constitutes Hindu undivided family, but whether the property received from a non-member is exempt when the law itself provides that sum or property received from member of an HUF only is not chargeable to tax.in that cae Hon Supreme court was concerned under the Income-tax Act with the question whether the assesse's wife and unmarried daughter can with him be members of a Hindu undivided family and not of a coparcenary. The assessee further relied on the decision of the Hon'ble Supreme Court in 247 ITR 192 wherein it has been held that an interpretation of statutory provisions, which will result into an absurd situation, cannot be accepted. Before us, The Ld. authorized representative could not show that exclusion provided in respect of an 'individual' separately and in respect of a 'Hindu undivided family' results into any absurdity. We also do not see any such absurdity in those provisions. The next argument of the Ld. authorized representative was that Mrs. Sneh Gupta (donor) being mother of Sh. Subodh Gupta is also member of Subodh Gupta HUF as she being lineal ascendant of Sri Subodh Gupta. For this proposition, he submitted that under the Hindu law, Hindu undivided family constitute all persons lineally ascendant or

descended from a common ancestor, and includes their mother, wives, widows and unmarried daughter, sisters and more importantly, all these persons fall under the definition of 'relative' as provided in explanation (e) of section 56 (2) (vii) of the act. Therefore, according to him, the mother of the karta of the assessee HUF is also member of his HUF. For this proposition, he relied on the decision of the Hon'ble Rajasthan High Court in 29 ITR 165 and on the decision of the Kolkata bench of ITAT in ITA No. 1298/K/2011. The Hon. Rajasthan High court held that Wives or widows of male members of an undivided Hindu family and unmarried daughters of male members are members of the family, though they may not be coparceners, hence does not address the question before us. We also reject the reliance on the above decision of the coordinate bench because the assessment year involved in that year is 2005 – 06 and further it was a case of an individual who received gift from HUF. It is on similar lines of earlier decisions relied upon by the assessee. In the present case, the assessee is a HUF who received the gift from a non-relative. The ld-authorized representative also could not show us any commentary on Hindu law or any other authoritative material,

which says that mother of Karta of assessee HUF, is member of his HUF. Therefore, we reject the arguments of the assessee that the gift of 75,000 equity shares received by the assessee is not chargeable to tax under section 56 (2) (vii) of the act. Hence, we do not find any infirmity in the order of the Ld. PCIT in holding that gift of 75,000 equity shares received by the assessee received from Mrs. Sneh Gupta is chargeable to tax under section 56 (2) (vii) of the act. Accordingly, Ground no 3 & 4 of the appeal are dismissed.

17. The 3rd issue is with respect to the valuation of the equity shares received by the assessee as gift from Mrs. Sneh Gupta. In the present case, the assessee HUF has received this gift of 75,000 equity shares of an unlisted company. The provisions of section 56 (2) (vii) (c) provides that where an individual or Hindu undivided family receives from any person any property other than immovable property without consideration, then the aggregate fair market value of which exceeds Rs. 50,000, the whole of the aggregate fair market value of such property is chargeable to tax as income under the head income from other sources. Explanation (b) defines that 'fair market value' of a property other than any movable property means the value

determined in accordance with the method as may be prescribed. Rule 11 UA has been notified w.e.f. 8/4/2010, which provides for valuation for the purposes of section 56 of the act. With respect to the 'fair market value' of unquoted equity shares, the valuation is provided in rule 11 UA (c) (b). Therefore, the valuation is required to be worked out according to that formula only. The Ld. PCIT has adopted the definition of 'fair market value' as provided under section 2 (22B) of the act. According to us when the specific rule for determination of 'fair market value' for section 56 has been notified, same shall be applied and not as defined under section 2 (22B)of the act. Furthermore, the notification issued by the Central government also speaks that determination of fair market value under rule 11 UA shall be applied for the purposes of section 56 of the act. Therefore, we reject the valuation adopted by the Ld. PCIT applying provisions of section 2 (22B) of the act. According to the assessee such computation u/r 11UA of Income tax Rules, 1962 works out at Rs. 234.82 per share. However, neither the Ld. PCIT nor the assessing officer has verified this computation of the fair market value of the shares. Therefore, we set aside the issue t of computation of

the fair market value of the shares back to the file of the Ld. assessing officer. We direct assessee to produce the valuation before the ld AO as per rule 11UA of IT Rules. He shall examine and verify the computation determining the fair market value of equity share at Rs. 234.82 for each equity shares. If it sound found in accordance with law, then AO may determine amount taxable under section 56 (2) (vii) of the act on account of gift received by the assessee HUF from Mrs. Sneh Gupta. In the result ground, no 5 & 6 are allowed with above direction.

18. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 05/01/2018

Sd/-	-Sd/-
(AMIT SHUKLA)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 05/01/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi