IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1286/Del./2020
Assessment Year 2009-2010

Smt. Soni Sonu Mirchandani, F-166, Malcha Marg, New Delhi – 110 021. PAN AAQPM7786H	vs.	The ACIT, Central Circle-5, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Vohra, Sr. Advocate, Shri Rohit Jain, Advocatee, Ms. Deepashree Rao, C.A. And Shri Vibhu Gupta, C.A.
For Revenue :	Shri Shyam Anuragi, Sr. DR

Date of Hearing :	01.09.2020
Date of Pronouncement :	28.09.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-24, New Delhi, Dated 11.02.2020 for the A.Y. 2009-2010, on the following grounds :

1. *That the Commissioner of Income-tax (Appeals) ['CIT(A)'] erred on facts and in law in confirming the action of the assessing officer in assessing the income of the appellant at Rs.92,84,18,760.*

1.1. *That the C1T(A) failed to appreciate that the findings of the assessing officer were contrary to and in blatant violation of the binding decision/ finding of the CIT(A)/ Tribunal in the appellant's own case.*

2. *That the CIT(A) erred on facts and in law in holding owelty of Rs.93,88,81,656 received by the appellant pursuant to a family settlement to be taxable as 'long-term capital gain' on transfer of shares.*

2.1. *That the CIT(A) erred in concluding that the amount received by the appellant was not towards equalization of family interests and was thus, not in the nature of owelty, but was consideration received for 'transfer' of shares, being personal property*

2.2. That the CIT(A) erred on facts in law in holding memorandum of family settlement to be an agreement for sale of shares, without appreciating the nature of the family settlement.

3. That the CIT(A) erred on facts and in law in alternatively holding that the appellant's plea regarding non-taxability of the amount received pursuant to family settlement to be in the nature of retraction, which is not permissible in law.

3.1. That the CIT(A) failed to appreciate that there is no estoppel against law and merely because an amount, not taxable in law, is erroneously offered for tax in the return of income, cannot confer jurisdiction to tax the said amount.

4. Without prejudice, that the CIT(A) erred in not setting aside the action of the assessing officer considering the indexed cost of acquisition of shares at Rs.75,77,001 as against Rs.99,80,872 claimed by the appellant in the original return.

4.1. That the CIT(A) failed to appreciate that the aforesaid action of the assessing officer is in blatant violation of the binding decisions of the CIT(A)/ ITAT inasmuch as the said issue already stood adjudicated in favour of the appellant.

5. That the CIT(A) erred in confirming the action of the assessing officer in making addition of Rs.45,00,000, being compounding fee paid by M/s. Monica Electronics Limited to the excise department.

5.1. That the C1T(A) failed to appreciate that the aforesaid amount was paid by M/s. Monica Electronics Limited as compounding fee to the excise department for compounding prosecution proceedings against the company and its directors and no amount was actually received by the appellant.

5.2. That the CIT(A) further failed to appreciate that since compounding fee was paid by M/s. Monica

Electronics Limited pursuant to the family settlement, the amount paid was. in any case, not taxable in the hands of the appellant.

5.3. Without prejudice, that the C1T(A) failed to appreciate that out of total compounding fee of Rs.40,00,000, compounding fee relatable to the appellant amounted to Rs. 10,00,000 only."

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. The facts of the case are that in this case return of income was filed on 28.07.2009 declaring income of Rs.92,15,92,886/-. In the return of income assessee has shown the long term capital gains of Rs.92,33,99,485/-. Later on, the case was selected for scrutiny and the assessment was completed under section 143(3) on 11.11.2011 after certain additions at the assessed income of Rs.93,84,18,760/-. In this Order, the following additions were made by the A.O.

(a) Indexed cost of acquisition for LTCG shown by assessee on sale of the shares was restricted to Rs.75,75,001/- as against Rs.99,80,872/- claimed by the assessee by taking cost of asset when assessee became owner by gift and not the asset hold earlier by previous owner.

(b) Rs.45 lakhs was taxed in the hands of the assessee as long term capital gains under section 45 of the I.T. Act, 1961 received indirectly on relinquishment of her right to manage Monica Electronics Ltd., and Onida Saka Ltd.,

3.1. Aggrieved by this Order, assessee preferred an appeal before the Ld. CIT(A), who gave part relief of Rs.24,05,871/- by allowing the indexation of assets (shares received as gift) from the date of ownership by the previous owner instead of from the first year in which the assessee became owner. The addition of Rs.45 lakhs as LTCG was confirmed by the Ld. CIT(A). The assessee preferred an appeal before the ITAT, Delhi Bench against the Order of the

Ld. CIT(A). The assessee took an additional ground before the Tribunal which reads as follows :

> *"That on the facts and circumstances of the case and in Law, the A.O./CIT(A) erred in not holding that the amount received on re-alignment of shareholding pursuant to family settlement arrangement was not liable to capital gains tax under section 45 of the Income Tax Act, 1961."*

3.2. This additional ground was admitted by the Tribunal vide its Order Dated 29.02.2016 and the matter was remanded back to the file A.O. for fresh adjudication as per Law. The addition of Rs.45 lakhs was also remanded back to the A.O. The A.O, therefore, noted that on perusal of the Order of Tribunal above, it is clear that the issue to be decided upon is – *"Whether any money was received by assessee in this transaction and whether the transaction is outside the purview of capital gain ?"* The A.O. on perusal of the facts of the case noted that the assessee was in possession of 59,988 equity shares of M/s. GUVISO Holdings Ltd., [GUVISO] and 4,978 shares of M/s. IWAI

Electronics Ltd., [IWAI] which she had acquired by way of gift as follows :

Sl. No.	Shares	Acquired in F.Y.	Value of Shares	Received as gift from
1.	29980 shares of GUVISO	2007-08	29,98,000/-	Shri Varun & Karan Manchandani sons of the assessee
2.	20 shares of GUVISO	2007-08	2,000/-	Shri Varun & Karan Manchandani sons of the assessee
3.	29988 shares of GUVISO	2005-06	29,98,800/-	Shri Bhagwan Malani, Father of the assessee
4.	4978 shares of IWAI	2005-06	4,97,800/-	Shri Bhagwan Malani, Father of the assessee

3.3. The above shares were sold by assessee to Mr. Gulu L. Mirchandani for a consideration of Rs.93,88,81,656/- in F.Y. 2008-2009. The assessee calculated long term capital gain of Rs.92,33,99,485/- on this transaction and reflected it in her return of income and paid tax on it. Thus, the assessee *suo-motu* declared capital gain on the same transaction.

3.4. However, this issue was raised before the Tribunal for the first time and the matter was set aside to

the A.O. to reconsider as per Law on admission of additional ground above. The A.O. in compliance to the directions of the Tribunal, issued notice under section 142(1) calling the details and supporting evidence on the aforesaid issue remanded by the Tribunal. The assessee filed the written submissions along with supporting evidences and details before A.O. on the set aside issue. The written submissions of the assessee is reproduced in the assessment order, in which, the assessee briefly explained that family settlement was arrived at between the husband of the assessee Mr. Sonu Mirchandani's family and family of his brother Mr. Gulu L Mirchandani. To execute the same, a family settlement was drawn on 31.05.2008. In pursuance of the same, the shares held by the assessee were in GUVISO Holding Ltd., [GUVISO] and M/s. IWAI Electronics P. Ltd., [IWAI] were given to Mr. Gulu L. Mirchandani and the assessee received amount of Rs.93,88,81,656/- for this transfer. The consideration was received as owelty to equivalize the interests of various Family Members. However, the assessee has by misconception of Law, has

offered the amount received against transfer of the shares inadvertently under capital gains. The Tribunal has admitted the additional ground and referred the matter to the file of A.O. to reconsider the same as per Law. Therefore, the Order of the Tribunal is binding on the A.O. In the original assessment proceedings under section 143(3), the taxability of the amount received on transfer of shares as Family Settlement was not considered but manner of computation was disputed. The A.O. has treated the amount of Rs.45 lakhs paid as compounding fees in the prosecution case pending against MEL by the GLM Group as the payment against the relinquishment of the right by the assessee to intervene in the management of day-to-day affairs of MEL and OSL and added the same under section 45 of the I.T. Act, 1961. This issue is also remanded to the A.O. It is stated that it is settled Law that any amount received under 'Family Settlement' does not involve any 'Transfer'. Thus, though the relinquishment of interest in property/shares or extinguishment of rights therein attract is transfer and attract capital gains, by Court rulings, such

re-alignment in family settlement does not constitute transfer. The assessee relied upon the following decisions :

1.	Ram Charan Cas vs., Girija Nandini Devi and Others AIR 1966 SC 323.
2.	Dewas Cine Corporation 68 ITR 240.
3.	CIT vs., Bankey L1 Vaidya 79 ITR 594
4.	CIT vs., Kay ARR Enterprises 299 ITR 348

3.5. The assessee, therefore, submitted that in the light of above settled position of Law, the amount received under the Family Settlement is not liable to tax under the Act. The assessee has furnished the bank statement evidencing the receipt of owelty amount in pursuance to the Family Settlement. The assessee has requested for exclusion of the amount of Rs.93,88,81,656/- from the taxable income. The payment of Rs.45 lakhs is compounding fees in the prosecution case pending against MEL was also consequence of Family Settlement and same was not received by assessee. This amount is not in the nature of consideration received for relinquishment of the right in any asset, therefore, addition of Rs.45 lakhs is wholly unjustified. The assessee further submitted that A.O. is bound to allow the legitimate deduction/relief and

allowance to correctly determine the income of assessee and A.O. is bound to follow the Order of the Tribunal on additional ground so admitted.

3.6. The A.O. considering the explanation of assessee and material on record reproduced the Memorandum of Family Settlement Dated 31.05.2008 in the assessment order and noted that the receipt of money in lieu of sale of share is not in dispute. The assessee has accepted that amount of Rs.93,88,81,656/- was indeed received from Mr. Gulu L. Mirchandani in lieu of sale of shares of GUVISO Holdings Ltd., and IWAI Electronics Ltd. The A.O. also noted that Family Settlement is an agreement whereby sale of shares have been done and parties have recognized themselves as purchaser and seller. The A.O, therefore, noted that it is clearly established that it was a transaction for sale and purchase of shares and assessee has received consideration for transfer of share. Thus, it cannot be said that the money was given to the assessee for equalisation of interest in family property and was owelty. The assessee did not get any other share or assets in reciprocation and

hence, the money received was not on account of re-alignment of shares and, therefore, not an 'owelty'. The A.O. also held that case Law relied upon by assessee does not apply to the facts of the case. The A.O, therefore, held that the amount received by assessee on sale of shares of above two companies are in the nature of transfer of shares and are taxable as capital gains, which, assessee has rightly offered for taxing in the original return of income.

3.7. The A.O. as regards the issue regarding indexed cost of acquisition for calculating capital gains on the sale of shares noted that in the earlier assessment order the cost of acquisition was modified and indexed cost of acquisition was restricted to Rs.75,75,001/- as against Rs.99,80,872/- claimed by the assessee. The disallowance was deleted by the Ld. CIT(A) and Department filed an appeal before the ITAT which was dismissed. However, the Department did not accept the decision and no appeal is filed because of low tax effect. Since the matter is decided by the A.O. afresh, therefore, the A.O. as per original assessment order Dated 11.11.2011 again taken the indexed cost of acquisition at

Rs.75,75,001/- as against Rs.99,80,872/- taken by the assessee.

3.8. The A.O. considered another issue regarding taxability of Rs.45 lakhs which were indirectly received by assessee, according to the provisions of the same, 'Memorandum of Family Settlement' Dated 31.05.2008, for relinquishing her rights to manage the Companies including her right and say in nomination of Managing Directors and other Directors, namely, M/s. Monika Electronics Ltd., and M/s. Onida Saka Ltd. As per the terms of the Agreement, this amount was paid indirectly to the assessee by discharging her personal liability payable by her to Central Excise Department. The A.O. in the original assessment order treated this receipt as capital gain of the assessee after giving detailed findings in the assessment order Dated 11.11.2011. This addition was confirmed by the Ld. CIT(A) by holding that *"it is clear from the 'Memorandum of Settlement' that this compounding fees was paid on behalf of the assessee to the Central Excise Department as she relinquished her rights to manage the companies including*

her right and say in nomination of Managing Directors and other Directors, namely, M/s. Monika Electronics Ltd., and M/s. Onida Saka Ltd." The Ld. CIT(A), therefore, held that *"the relinquishment of such right is covered within the meaning of 'Transfer of Capital Asset' in accordance with Section 2(47)(i) of the I.T. Act, 1961 and accordingly, the same was held taxable"*. The Tribunal has, however, restored the matter back to the file of Assessing Officer to verify *"Whether this transaction being part of family settlement is taxable or not ?"*. The A.O. noted that assessee has received this amount for relinquishing her rights to manage the two companies i.e., the consideration for her assets. She has not received this amount as owelty as there were no division of assets. She had to forego her assets for a consideration but she did not receive any asset/right in reciprocation, nor was the money paid for equalisation of interests. Thus, the money received by her though indirectly, was sale consideration for transfer of her rights and not owelty. The A.O, therefore, held that Rs.45 lakhs is liable to be taxed as

capital gain. The addition was accordingly made. The A.O. assessed the income of assessee at Rs.93,84,18,760/-.

4. The assessee challenged the additions before the Ld. CIT(A). The written submissions of the assessee is reproduced in the impugned order, in which, the assessee reiterated the submissions made before the A.O. It was explained that pursuant to Memorandum of Family Settlement Dated 31.05.2008, it was mutually agreed between the Members of Mirchandani Family as part of Family Settlement, assessee would give certain shares held by her in M/s. GUVISO and M/s. IWAI to her brother-in-law Mr. Gulu L. Mirchandani **[**brother of husband of assessee**]** thereby, resulting in the control and ownership of the said companies moving from Mr. Sonu Mirchandani family to Mr. Gulu Mirchandani family. Further, as a result of such re-alignment, the assessee received the impugned owelty amount under the 'Family Settlement/Arrangement'. Pursuant to the aforesaid Arrangement, it was, *inter alia,* also mutually agreed that Mr. Gulu L. Mirchandani shall be in sole management and control of two listed companies i.e.,

M/s. Monika Electronics Ltd., and M/s. Onida Saka Ltd. including right to nominate the Managing Directors and Directors of both the M/s. Monika Electronics Ltd., and M/s. Onida Saka Ltd., subject to the condition that Mr. Gulu L. Mirchandani Group would indemnify Mr. Sonu L. Mirchandani Group against and in respect of any and all claims, actions, demands, losses, damages, liabilities and or Judgments in respect of pending cases, which including settling one pending prosecution by payment of the compounding fees of Rs.45 lakhs payable by MEL to the Chief Commissioner of Central Excise. It was submitted that assessee moved an additional ground before the Tribunal which was admitted who remanded the matter to the file of A.O. Thus, the A.O. was bound to follow the Order of the Tribunal and was asked to compute the income in accordance with Law and tax could be computed on the income to be determined in accordance with Law. Therefore, A.O. is bound by Law to consider the issue in the light of fact that assessee has received owelty amount through the Memorandum of Family Settlement. It was submitted that

transaction of the assessee is in the nature of bonafide Family Settlement and same should have been accepted by the A.O. and terms of the same clearly stipulate that assessee and entire family has acted bonafidely. According to Family Settlement there would be no transfer as is settled by several Judgments. The A.O. shall have to determine the income only in accordance with Law even if assessee has inadvertently offered the same for taxation. The assessee relied upon several decisions in support of the contention. It was submitted that Rs.45 lakhs was not received by assessee as it was compounding fees paid through Family Settlement for settling the prosecution fees payable by MEL to Chief Commissioner of Central Excise and that assessee has not received any consideration. Thus, it could not be taxed in the hands of assessee as this transaction was carried-out as a consequence of Family Settlement and same would have no tax implication. It was also submitted that A.O. has failed to appreciate that out of the total compounding fees of Rs.45 lakhs, compounding fees

relatable to the assessee was amounted to Rs.10 lakhs only. Therefore, no addition could be made of Rs.45 lakhs.

5. The Ld. CIT(A) considering the submissions of the assessee and material on record held that A.O. has followed the directions of the Tribunal and decided the issue on facts and submissions on record. There is no violation to the Order of the Tribunal and the Ld. CIT(A) noted that the case Law relied upon by assessee in respect of Family Settlement are distinguishable on facts. The Ld. CIT(A) held that assessee has received the impugned amount as sale consideration for transfer of shares as is held by the A.O. Therefore, same is taxable and is not in the nature of owelty. This ground was accordingly dismissed. The Ld. CIT(A) also held that amount has been rightly offered to tax in the return of income by the assessee. The Ld. CIT(A) also confirmed the addition of Rs.45 lakhs because there were no Family Settlement and that the amount was paid on behalf of the assessee to the Central Excise Authorities for compounding the offence. Therefore, the Ld. CIT(A) agreed with the findings of the A.O. that same is taxable in the

hands of the assessee. Since no evidence was filed with regard to amount of Rs.10 lakhs relatable to the assessee only, therefore, addition was confirmed. The Ld. CIT(A), accordingly, dismissed the appeal of assessee.

6. On Ground Nos.1 to 3, Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has also filed written synopsis along with details of various assets of family prior to and post Family Settlement as directed which is taken on record. He has submitted that assessee along with her husband Shri Sonu Mirchandani and her two sons are in SLM Group are part of larger Mirchandani Family which had jointly promoted, owned, managed and operated a clutch of valuable companies. SLM Group entered into a Family Settlement with the family of Shri Golu Mirchandani [in short "GLM"] brother of Shri Sonu Mirchandani to amicably separate the joint business. He has referred to PB-5 which is Memorandum of Family Settlement Dated 31.05.2008. As a result of such re-alignment and as an integral part of the Family Settlement, assessee received owelty amount of

Rs.93,88,81,656/- which was under misconception of Law offered for taxation in the return of income on account of long term capital gains and paid the taxes therein. The assessee in the first round of appellate proceedings before the ITAT, raised an additional ground of appeal that the owelty amount received in terms of Family Settlement was not liable to tax which was admitted by the Tribunal and the matter was remanded to the A.O. for considering this issue as per Law vide Order Dated 29.02.2016 [PB-91]. The authorities below did not consider the issue in the light of Family Settlement Deed and repeated the additions. PB-113 is Family Tree prior to the Settlement. As per the Family Settlement various family assets were divided/distributed to the families of GLM and SLM in the year 2003 pursuant to the execution of Will of their Mother. At that stage, two families had common shareholding and joint control in various companies as are referred in PB-113. The two families thereafter decided to re-align their respective rights, interests in the running businesses of Mirchandani Group which were jointly managed and controlled by GLM Group

and SLM Group through Family Settlement Deed. He has submitted that family re-alignment/arrangement is intended to be generally and reasonably for the benefit of the family either by comprising doubtful or disputed rights or by preserving family property or peace and security of the family by avoiding litigation or by saving the family honour. The essential of a Family Settlement and binding effect of such Settlement has been expounded by the Hon'ble Supreme Court in the case of Kale vs., Dy. Director of Consolidation reported in AIR 1976 (SC) 807 which are as under :

> *"In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions :*
>
> *(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(3) The family arrangement may be even oral in which case no registration is necessary:

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of s. 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property. It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole 9 owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same:

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

6.1. He has submitted that it is clear that there would be no transfer of assets and amount received by the assessee was a part of Family Arrangement which did not

give raise to liability of capital gains. He has submitted that Family Arrangement being in the nature of re-alignment/re-distributing, relinquishing or even consolidating certain claims, rights between the Members of the Family bonafide by putting an end to the dispute among themselves is not regarded as 'Transfer' and the amount received has been held not liable to tax under the Income Tax Act and relied upon the following decisions :

1.	Kale vs., Deputy Director of Consolidation 3 SCC 119
2.	Ram Charan Das vs., Girja Nandini Devi & Ors. AIR 1966 SC 323
3.	Judgment of Hon'ble Supreme Court in the case of Ravinder Kaur Grewal & Ors. Vs., Manjit Kaur & Ors. CA.No.7764 of 2014 Dated 31.07.2020
4.	Judgment of Hon'ble Madras High Court in the case of CIT vs., Kay ARR Enterprises 299 ITR 348 (Madras). SLP dismissed by Hon'ble Supreme Court.
5.	Judgment of Hon'ble Bombay High Court in the case of CIT vs., Sachin P. Ambulkar 42 taxmann.com 22
6.	Judgment of Hon'ble Karnataka High Court in the case of CIT vs., R. Nagaraja Rao 352 ITR 565 (Karnataka)
7.	Judgment of Hon'ble Karnataka High Court in the case of CGT vs., K.N. Madhusudan GTA.Nos.1 & 2/2008.
8.	Judgment of Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income Tax vs., Ashwani Chopra 352 ITR 620

6.2. He has also relied upon Order of ITAT, Delhi C-Bench, Delhi in the case of Shri Govind Kumar Khemka, Delhi vs., ACIT, Circle-47(1), New Delhi, Dated 16.09.2019 in ITA.No.2963/Del./2019 on the proposition that *"it is well settled Law that partition of Family Settlement is not a transfer"*. In the present case, Mir Chandani Family entered into a bonafide Family Settlement in order to ensure amicable and equitable distribution of assets and properties between the two brothers i.e., GLM and SLM. The A.O. and the Ld. CIT(A) have not doubted the genuineness/bonafides of the Family Settlement even in the first round of proceedings. There is no allegation whatsoever that Family Settlement was not voluntary. He has submitted that parties have acted upon the Family Settlement. The assessee and her family Members had pre-existing, antecedent title, claim, interest in various properties as referred in the Family Settlement Deed. Thus, the amount received by assessee through Family Settlement on transfer of assets would not attract capital gains tax. He has submitted that perusal of the Family Settlement Deed, it

may be noted that the same was bonafide Family Settlement entered into between the Family Members of Mirchandani family by clearly setting out the individual rights and holdings of each and every Member of the family tree and based on such Settlement. It was not an agreement for transfer of personal asset i.e., shares held by the assessee in the companies jointly controlled, owned, operated and managed. The owelty amount thus received in Family Settlement for equalisation of the rights/properties of the parties to the Settlement should be held to be not taxable and should be directed to be excluded from the taxable income of the assessee. Thus the authorities below are bound to follow the first Order of the ITAT in the case of assessee which is not challenged before the Hon'ble High Court and should have excluded the income offered by assessee for taxation.

7. Learned Counsel for the Assessee as regards Ground No.4 submitted that this issue was considered and decided in favour of the assessee in the first round of proceedings by the Ld. CIT(A) vide Order Dated 14.03.2013

which was affirmed by the Tribunal vide Order Dated 31.01.2014 [PB-48 to 90]. He has, therefore, submitted that the addition made by the A.O. and confirmed by the Ld. CIT(A) on account of difference in indexed cost of acquisition of share will not survive.

8. Learned Counsel for the Assessee as regards Ground No.5 submitted that A.O. has repeated the addition of Rs.45 lakhs being compounding fees paid by Monica Electricals Ltd., to the Central Excise Department. In doing so, the A.O. has alleged that indirectly money was received by the assessee for relinquishing of her rights to manage two companies which is confirmed by the Ld. CIT(A). He has submitted that pursuant to the aforesaid Family Settlement, it was inter alia, also mutually agreed that Mr. Golu L Mirchandani shall be the sole management and control of the two listed companies i.e., MEL and OSL, including right to nominate the Managing Directors and Directors of both MEL and OSL, subject to the condition that GLM Group would identify the SLM Group against and in respect of any and all claims, actions, demands, losses, damages,

liabilities and or Judgments in respect of pending cases which include settling one pending prosecution matter by payment of compounding fees of Rs.45 lakhs payable by Monica Electricals Ltd., to the Chief Commissioner of Central Excise. Even in the said compounding fees of Rs.45 lakhs, only Rs.10 lakhs pertain to the assessee. Thus, the assessee has not received any amount directly because it was paid to Central Excise Authorities, therefore, it would have no tax implication. The Learned Counsel for the Assessee alternatively also submitted that since assessee's share was Rs.10 lakhs only, therefore, addition of Rs.45 lakhs is wholly unjustified.

9. On the other hand, Ld. D.R. relied upon the Orders of the authorities below. The Ld. D.R. referred to the reasoning given by the authorities below that there is no Family Settlement between the parties. He has submitted that it is a contractual agreement between the parties and the assessee has entered into simple transaction of sale and purchase with Shri Golu L. Mirchandani which clearly indicate that there is a transfer of asset within the meaning

of Section 45 of the I.T. Act, 1961, so as to levy the capital gain tax on transfer of the share/asset. The Ld. D.R. submitted that assessee voluntarily paid self-assessment tax on the capital gain so offered on the same transaction in the original return of income and as such, there were no justification for the assessee to claim exclusion of the amount from the return filed originally under section 139(1) of the I.T. Act, 1961. The Ld. D.R. also submitted that since the amount of Rs.45 lakhs was paid for settling the criminal prosecution and other offences in the name of the company owned by the assessee, therefore, the assessee has received the amount in question and as such the same also liable to be taxed in the hands of the assessee. The Ld. D.R. submitted that appeal of assessee has no merit and the same may be dismissed.

10. We have considered the rival submissions and perused the material on record. It is not in dispute that the present appellate proceedings are second round appellate proceedings before Income Tax Appellate Tribunal ["ITAT"]. In the first round of appellate proceedings, assessee has

raised additional ground of appeal as above with regard to exclusion of the impugned amount from taxability of income. The additional ground was remanded to the A.O. for consideration as per Law. The authorities below though have decided the issue, but, have somewhere observed that assessee may not be entitled to get the income excluded once it is offered for taxation in the return of income. It may be noted here that it is an admitted fact that earlier Order of the Tribunal Dated 29.02.2016 was not challenged before the Hon'ble High Court by the Revenue and as such, the earlier Order of the Tribunal have become final. The Hon'ble Madras High Court in the case of Mr. T.S. Santhanam vs., Expenditure Tax Officer, Company Circle-II(1), Madras [1973] 87 ITR 582 (Mad.) held that *"the essential principle as to the Rule of Finality of an assessment is that the A.O. cannot change his mood and try to reopen a closed state of affairs."* The Hon'ble Supreme Court in the case of Commissioner of Income Tax, Delhi and Rajasthan vs., Rao Thakur Narayan Singh [1965] 56 ITR 234 [SC] in the context of Rule of Finality held as under :

"Held that as the order of the Appellate Tribunal became final, the findings of the Tribunal, even though by mistake, that the officer could not initiate reassessment proceedings in respect of the interest income also, was binding on the Income-tax Officer and he could not reopen the assessment over again to include the interest income.

It was not the intention of the legislature by amending section 34(1) in 1948, to enable the Income-tax Officer to reopen final decisions made against the revenue in respect of questions it that directly arose for decision in earlier proceedings. If that were not the legal position it would result in placing an unrestricted power of review in the hands of the Income-tax Officer to go behind the findings given by a hierarchy of Tribunals' and even those of the High Court and the Supreme Court with his changing moods".

10.1. It is well settled that when the Tribunal sets aside an assessment and remands a case for fresh assessment, the power of the ITO is confined to the subject matter of appeal before the Tribunal. The A.O. is bound to follow the directions of the Tribunal. We rely upon the Judgments of Hon'ble Allahabad High Court in the cases of S.P. Kochhar

vs., ITO 145 ITR 255 [All.] and Shri Vindhya Basini Prasad Gupta vs., Commissioner of Income Tax 186 ITR 253 [All.], Judgment of Calcutta High Court in the case of Katihar Jute Mills Pvt. Ltd., vs., Commissioner of Income Tax 120 ITR 861 [Cal.]. Considering the above, it is clear that when the parties have allowed the earlier Order of the Tribunal to become final, it is binding on the authorities below and the Ld. CIT(A) shall have to decide the same in accordance with Law and should refrain from making observations and comments on the findings of the Tribunal regarding taxability of impugned amount.

10.2. The assessee in the present appeal has claimed that she has entered into Memorandum of Family Settlement Dated 31.05.2008, copy of which is filed at pages 5 to 26 of the PB which is also reproduced by the A.O. in the impugned assessment order. Learned Counsel for the Assessee also referred to PB-113 which is shareholding structure of Mir Chandani Group. It describes GLM Group consist of Mr. Golu L. Mirchandani, Mrs. Geeta G. Mirchandani, Mr. Keval G. Mirchandani, Ms. Sasha G.

Mirchandani. SLM Group consist of Mr. Sonu Mirchandani **[**Husband**],** Smt. Soni Sonu Mirchandani **[**Assessee**],** Mr. Karan S. Mirchandani [Son] and Mr. Varun S. Mirchandani [Son]. Both the Groups were holding M/s. GOVISO Holding Ltd., and M/s. IWAI Ltd., which are unlisted Companies. M/s. GOVISO Holding Ltd., has controlled by M/s. Mirc Electronics Ltd., **[**Listed Company**]**. The other group companies are M/s. Onida Saka Ltd., **[**"OSL"**]** and M/s. Monica Electronics Ltd., **[**MEL**]** the listed companies. The Family Settlement provides GLM is First Party and SLM, Mrs. Soni Sonu Mirchandani **[**Assessee**]** and her sons are 2nd to 5th Party. The details of the properties/assets are mentioned. It is mentioned in the Family Settlement that GLM and SLM being brothers have decided that in view of expanding family and in order to avoid disputes, differences and misunderstanding within the Family Members, it would be in the interests of both the GLM Group and SLM Group that they separate their businesses. As GLM has been incharge of day-to-day management of M/s. MIRC, GLM Group and SLM Group have decided to separate their

businesses. The parties have, therefore, decided to record their Settlement by way of Memorandum. As per Memorandum of Family Settlement, Assessee transferred share holdings of GOVISO **[**59988 shares**]** to GLM. The assessee transferred shareholdings of IWAI **[**4978 shares**]** to GLM, subject to impugned consideration. Present Directors nominated by Assessee On Board of GOVISO to step-down. GLM shall retain the sole management and control of two listed companies MEL and OSL including right to nominate the Managing Director and other Directors. It was also agreed that Mr. Golu Mir Chandani shall pay compounding fees of Rs.45 lakhs directly to Central Excise Authorities on behalf of Directors of M/s. Monica Electronics Ltd., [MEL] which included the assessee. Mr. Sonu Mir Chandani shall repay loan of Rs.10 crores to Mr. Rafique Malik. Mr. Sonu Mir Chandani shall withdraw the legal notice Dated 19.05.2008. Mr. Sonu Mir Chandani shall return possession of Mersdes Benz Car to MIRC. Mr. Karan Mir Chandani and Mr. Varun Mir Chandani sons of the assessee shall repay their personal loan to GOVISO. In the Memorandum of

Family Settlement GLM is described as 'Purchaser' and Assessee as 'Seller'.

10.3. Learned Counsel for the Assessee relied upon Judgment of the Hon'ble Supreme Court in the case of Kale vs., Dy. Director (supra). He has also relied upon Judgments of Hon'ble Supreme Court in the cases of Ramcharan Das vs., Girija Nandini (supra), Ravinder Kaur Grewal & Others vs., Manjit Kaur & Others (supra), on the proposition that the Memorandum of Family Settlement is binding on the parties once it is acted upon and is not required to be registered. He has also relied upon other Judgments at Sl.Nos. 4 to 8 mentioned at page-25 of this Order i.e., Commissioner of Income Tax vs., KayAAR Enterprise etc., (supra), on the proposition that Family Arrangement being in the nature of re-alignment, re-distribution, relinquishing or even consolidating certain claims and rights between the Members of the Family bonafidely by putting an end to the dispute amongst themselves is not regarded as 'Transfer' and any amount received has been held not liable to tax under the taxation provisions.

10.4. Learned Counsel for the Assessee also submitted that the impugned amount of Rs.93,88,81,656/- received by the assessee through above Family Settlement is an Owelty in nature and is, therefore, not taxable and is liable to be excluded from the total income so offered for taxation.

10.5. We may note that Owelty is an equalisation charges. It is the amount that one co-owner must pay to another after a Lawsuit to Partition real estate, so that each co-owner receives equal value from the property. The Webster Law Dictionary defines Owelty *"A Lien created or a peculiar sum paid by Order of the Court to effect an equitable partition of property when such partition in kind would be impossible, impracticable or prejudicial to one of the parties of an Owelty Award."* The legal definition of the Owelty defines the difference which is paid or secured by one coparcener to another, for the purpose of equalising the partition.

10.5.1. Family Arrangements involve settlement of disputes, relating to family property in which Members

must have an antecedent title or claim. Family Settlement Memorandum, once acted upon, is binding on the parties despite being unregistered. The literal interpretation of Family Settlement would imply an existence or anticipation of a dispute between the Members of Family.

10.5.2. From the taxation perspective, the Family Settlement is in the nature of 'Partition' which is not regarded as Transfer' under section 2(47). When there is no transfer, there is no capital and, therefore, no tax on capital gain is liable to be paid. Using Family Settlement for the purpose of tax planning is not outside the purview of Law. However, Family Settlement should always be undertaken with a bonafide intention of Resolution of Disputes in a family and that it results in tax planning should be an extra benefit and not a primary concern.

10.6. Learned Counsel for the Assessee also filed details of various assets of the Family prior and post Family Settlement along with gist of the arguments as were directed by the Bench during the course of hearing. The same is reproduced as under :

ANNEXURE-III

Smt. Soni Sonu Mirchandani

AY 2009-10

Final Division of assets between SLM group and GLM group

	Particulars	SLM Group	GLM Group
a)	Immovable Properties	Malcha Marg, Property	
b)	Shares in various listed entities divided equally	50%	50%
c)	Other investments like NSC, jewellery from mother	50%	50%
g)	Interest in Saka Plastics to GLM		Saka Plastics
h)	Shares of unlisted South Delhi Corporation Pvt. Ltd	South Delhi Corporation Pvt. Ltd	
i)	Shares of M/s. GUVISO Holdings (P) Ltd. and control of Mirc Electronics Limited – flagship operating group company		Entire family shares of Guviso and Mirc Electronics
j)	Shares of M/s. IWAI Electronics Pvt. Ltd.		Entire family shares in IWAI
k)	Owelty amount Rs.93,88,81,656 Less: repayment of loan Rs.10,00,00,000 Less: repayment of loan Rs. 3,94,98,116 Net amount **Rs.79,93,83,540**	79.93 cr.	
l)	Possession of Mercedes Benz car returned to MIRC by SLM group		Mercedes Car
m)	Agricultural land located at Village Sadhrana, Gurgaon	Agricultural land	
n)	Sole management and control of two listed entities, viz. Monica Electronics Limited ('MEL') and Onida Saka Limited. ('OSL'), including right to nominate the Managing Director and other directors		Sole management and control of MEL and OSL

Sequence of Division of above assets between SLM group and GLM group

Particulars		SLM Group	GLM Group
Inheritance from Mrs. Padma Lal Mirchandani			
Assets inherited by family members at the time of her death through will dated 24.07.1999 and			
a)	Immovable Property located at F-166 Malcha Marg, New Delhi inherited by Mr. Varun S. Mirchandani	Malcha Marg, Property	

b)	Shares in various listed entities divided equally – 50% in favour of Gulu Lal Mirchandani and balance 50% between Mr. Karan S. Mirchandani and Mr. Varun S. Mirchandani	50%	50%
c)	Other investments divided equally - 50% in favour of Gulu Lal Mirchandani and balance 50% in favour of Mr. Karan S. Mirchandani and Mr. Varun S. Mirchandani, comprising of following:	50%	50%
	i) Jeevan Akshay Policy (self)		
	ii) Jewellery		
	iii) National Saving Certificates (at cost)		
	iv) UTI Equity Linked Saving Scheme		
	v) Cash		
	vi) Bank of Tokyo		
d)	Tax Free RBI Bonds to Soni Mirchandani (SLM)	Rs.10,00,000	
e)	Amount in joint account with Syndicate Bank to be equally distributed between GLM and SLM	50%	50%
f)	Assured amount along with Bonus of Jeevan Akshay Policy, if received after death, to be distributed equally between GLM and SLM	50%	50%
g)	Interest in Saka Plastics to GLM		Saka Plastics
h)	Shares of South Delhi Corporation Pvt. Ltd	Shares	
i)	29,880 shares of Guviso Holding Pvt. Ltd. inherited by Mr. Karan S. Mirchandani and Mr. Varun S. Mirchandani Note: Later transferred to GLM group	Shares	
Final Family Settlement			
Gift of agricultural land located at Village Sadhrana, Gurgaon by GLM group in favour of SLM group – Cost Rs.2.2 crores As per Gift deed dated 23.04.2008.		Agricultural Land	
Equalisation of balance interest as per memorandum of family settlement:			
i)	59,988 shares of M/s. GUVISO Holdings (P) Ltd. transferred by SLM group to GLM [Value as on 31.05.2008 @ Rs.8,778.45/ share]		**Guviso Shares and consequent control of Mirc Electronics Limited – flagship operating group company**

ii)	4978 shares of M/s. IWAI Electronics Pvt. Ltd. transferred by SLM group to GLM [Value as on 31.05.2008 @ Rs.4,888.25/ share]		Entire Shares in IWAI
iii)	GLM family to retain sole management and control of two listed entities, viz. MEL and OSL, including right to nominate the Managing Director and other directors		Sole management and control of MEL and OSL
v)	Owelty amount paid by GLM to SLM group	Rs.93,88,81,656	
vi)	Repayment of loan of Rs.10 crores by SLM to Mr. Rafique Malik	(Rs.10,00,00,000)	
vii)	Possession of Mercedes Benz car returned to MIRC by SLM group		Mercedes Car
viii)	Karan Mirchandani and Varun Mirchandani shall repay their personal loans (alongwith accrued interest thereon) to GUVISO	(Rs.3,94,98,116)	Rs.3,94,98,116

11. Considering the facts of the case, evidences on record and the Judgments reproduced above, it is clear that assessee did not produce any evidence of prior, present or likelihood of any future family dispute on record to justify the execution of the Memorandum of Family Settlement. The clauses of the Memorandum of Family Settlement clearly establish that it was a simple transaction of sale and purchase of shares, subject to consideration received by the assessee from Shri Golu L. Mirchandani. Shri Golu L. Mirchandani have been described as purchaser of the shares and assessee as seller in the Memorandum of Family Settlement which could never be regarded as Family

Settlement Deed. The assessee did not have any antecedent, title of any family property because whatever shares/asset assessee has possessed as owner have been sold subject to consideration because the assessee has acquired the shares of two Companies by way of gift from her father and sons. Thus, it was not a family property which could have been divided between the assessee and Shri Golu L. Mirchandani. The assessee did not receive any share from the family of her husband. The facts also clearly established that there is no equitable partition or distribution of family shares/ assets. The chart reproduced above shows that it was merely sale transaction of shares which could not be considered as Family Settlement. Thus, it cannot be said that the impugned amount was given to assessee for equalisation of interest in the family property and thus, it was not an owelty as is claimed by the assessee. It is also clear as per the terms of the Family Settlement that entire shares of the assessee in GOVISO and IWAI were sold to Shri Golu L. Mirchandani for impugned consideration and the assessee did not get any other share or asset in

reciprocation and hence, the money received was not on account of re-alignment of shares and thus, it could not be considered as owelty received by the assessee. The husband of the assessee did not transfer any share/property, so, where is the question of distribution of asset between the family of her husband and his property ? No owelty paid on alleged Family Settlement. No other transfer of family asset took place between the parties to the Family Settlement. It is a sale transaction between the two parties only i.e, assessee and Shri Golu L. Mirchandani. The authorities below did not accept the genuine Family Settlement because the authorities below have held it to be a simple transaction of sale and purchase of shares, subject to consideration. In other group companies no reasons explained to surrender the right or car etc., The assessee received market price for sale of shares and surrendered/relinquished her right in various companies, subject to impugned consideration. In the present case, the assessee has received impugned money as sale consideration for sale of shares and not as Owelty for equalisation of interest in the family property.

Since shares were the personal property of the assessee, therefore, when same were transferred to Shri Golu L. Mirchandani, it would amount to sale. It is an admitted fact that assessee initially admitted the transactions to be sale and purchase transaction subject to consideration. The assessee was not able to prove by any evidence to justify retraction from the earlier admission on disclosing the sale transaction in the original return of income disclosing capital gains. However, the assessee by claiming now it to be Family Settlement tried to defruad the Revenue to reduce the taxable returned income. As regards the amount of Rs.45 lakhs, it may be noted that assessee has received this amount for relinquishing her rights to manage the two companies i.e., the consideration for her asset. She has not received this amount as owelty as there were no division of assets. She had to forego her assets for a consideration and she did not receive any asset/right in reciprocation nor was the money paid for equalisation of the interest. Thus, the money received by her though indirectly were the sale consideration of transfer of her rights and not owelty. Rs.45

lakhs was paid in settling the liability of the assessee in the matter of Excise prosecution which would amount to transfer. Thus, it is clear that assessee received the impugned amount on sale of the shares. Therefore, it would be transfer of capital asset within the meaning of Section 2(47) of the I.T. Act, 1961, so as to attract the provisions of capital gains which assessee has rightly disclosed in the return of income and paid the tax thereon. There is no quarrel with regard to legal proposition canvassed by the Learned Counsel for the Assessee with regard to Family Settlement, however, the Judgments relied upon by the Learned Counsel for the Assessee above are not applicable to the facts and circumstances of the case. We, therefore, do not find any justification to interfere with the Orders of the authorities below. In the result, Ground Nos. 1, 2, 3 and 5 of the appeal of assessee are dismissed.

12. As regards Ground No.4, with regard to indexed cost of acquisition of shares in question, this issue has already been decided by the Ld. CIT(A) vide Order Dated 14.03.2013 in the first round of proceedings and deleted the

addition. The Departmental Appeal have been dismissed by the Tribunal vide Order Dated 31.01.2014. Thus, this issue should not have been taken-up by the authorities below in this second round of appellate proceedings because this issue was not the remanded matter. In view of the above, the Orders of the authorities below are set aside and the A.O. is directed to follow the first round order of the Ld. CIT(A) and the Tribunal (supra). Ground No.4 of the appeal of the Assessee is allowed. Further, charging of interest is mandatory and consequential.

13. In the result, appeal of the Assessee partly allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 28th September, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.