

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI S RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

ITA No.2829/Mum/2022
(Assessment Year 2018-19)

Income Tax Officer-19(1)(1) Mumbai, Room No.223 Income-tax Office, Matru Mandir, Tardeo Road Grand Road, Mumbai-400 007	vs	Aam Family Private Trust 4 th Floor, Altamount Road Mumbai-400 026 PAN : AAGTA5172R
APPELLANT		RESPONDENT

Assessee represented by	Shri K Shivram & Rahul Hakani
Department represented by	Shri Manojkumar Sinha (Sr.AR)

Date of hearing	04/01/2023
Date of pronouncement	23/02/2023

ORDER

Per: Kuldip Singh (JM):

Appellant, Income Tax Officer-19(1)(1), Mumbai(hereinafter referred to as the 'Revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 14/09/2022 passed by the National Faceless Appeal

Centre (NFAC), Delhi [hereinafter referred to as 'the Ld.CIT(A)] on the grounds interalia that –

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition of Rs.9,04,96,847/- which is taxable under section 56(2)(x) of the Income Tax Act, 1961?"*
2. *"Whether on the facts and circumstances of the case and in law, the Ld. ... CIT(A) has erred in ignoring the fact that, the Trust has been created by Smt. Archana Miglani and Smt. Archana Miglani herself is one of the beneficiaries of the trust and her nephew and niece are also beneficiaries of the trust who do not fall under the meaning of "relative" as defined in explanation to clause (vii) of section 56 (2) of the IT act, 1961. Hence, provision of clause (x) of sub section (2) of section 56 of the Income Tax Act, 1961, is applicable in respect of the movable property received by the assessee trust?"*
3. *"The appellant craves leave to add, delete, alter, amend and modify any or all grounds of appeal."*

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are : The assessee is a private discretionary trust created by registered trust deed dated 22/12/2017 has filed its return of income which was subjected to scrutiny. The Assessing Officer framed the assessment under section 143(3) read with sections 143(3A) & 143(3B) of the Act at the total income of Rs.9,04,96,847/- by treating the entire value of movable assets (value of equity shares) settled by the settler of the trust, namely, Smt. Archana Miglani in favour of the trust, i.e. trust fund and being income under section 56(2)(x) of the Act.

3. Assessee carried the matter before Ld.CIT(A) by way of filing appeal, who has partly allowed the same. Feeling aggrieved with the impugned order passed by Ld.CIT(A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld.AR & the Ld.DR of the Revenue, gone through the documents available on record, order passed by the lower Revenue Authorities in the light of facts and circumstances of the case and the case law applicable thereto.

5. Undisputedly, the assessee is a private discretionary trust created by virtue of trust deed dated 22/12/2017 and this is first year of the filing return of income of the trust. It is also not in dispute that Mrs Archana Miglani wife of Mr. Anuj Miglani, is the settler of trust and Smt. Sheetal Ansal, wife of Mr. Pranav Ansal and Mrs. Shruti Munja, daughter of Mr. Rajiv Munja are the trustees of the trust. It is also not in dispute that beneficiary of the trust as per trust deed are as under:-

Sr.No.	Name & Address	Relationship to the settler
1.	Mrs. Archana Miglani	Self
2.	Mrs. Priyanka Miglani	Co-Sister in law
3.	Mrs. Neelam Miglani	Mother in law
4.	Children of Mrs. Archana & Mr. Anuj Miglani	Children
5.	Children of Mrs. Priyanka & Mrs. Ankit Miglani	Nephew & Niece

It is also not in dispute that the year under consideration being the first year of trust, trust fund was valued at Rs.9,04,96,847/- as on 31/03/2018 whereby settler of the trust, Smt. Archana Miglani settled equity shares of various companies in favour of the trust as trust fund, detailed as under:-

Sr.No.	Particulars	Units	Amount
1	Evergreen Tradeplace Pvt Ltd	93283	16,50,000.01

2	Shree Uttam Steel & Power Ltd	496940	2,13,49,940.00
3	Swilken India Pvt Ltd	55200	4,50,000.00
4	MKR Associates Pvt Ltd	44990	5,52,000.00
5	Karishma Trading Co Pvt Ltd	2400	2,93,18,600.00
6	Uttam Exports Pvt Ltd	274597	3,21,01,507.00
7	Barclay Exports Pvt Ltd	50749	50,74,900.00
	Total		9,04,96,847.00

6. The Assessing Officer framed the assessment under section 143(3) read with sections 143(3A) & 143(3B) of the Act by assessing the total income of the assessee trust at Rs.9,04,96,847/- by treating the entire value of movable assets (value of equity shares) settled by settler of the trust, Smt. Archana Miglani in favour of the trust by treating the same as income under section 56(2)(x) of the Act.

7. To proceed further, we would extract the provisions contained in section 56(2)(x) of the Act, for ready perusal, as under:-

"56. Income from other sources

(1)xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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

(i) to (ix) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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

(a) any sum of money, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property.

(b) any immovable property;

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

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ⁷⁰[ten] per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the

stamp duty value on the date of agreement may be taken for the purposes of this sub-clause :

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed⁷¹, on or before the date of agreement for transfer of such immovable property:

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

⁷²[**Provided also** that in case of property being referred to in the second proviso to sub-section (1) of [section 43CA](#), the provisions of sub-item (ii) of item (B) shall have effect as if for the words "ten per cent", the words "twenty per cent" had been substituted;]

- (c) any property, other than immovable property,—
- (A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;
- (B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any sum of money or any property received—

- (I) from any relative; or
- (II) on the occasion of the marriage of the individual; or
- (III) under a will or by way of inheritance; or
- (IV) in contemplation of death of the payer or donor, as the case may be; or
- (V) from any local authority as defined in the Explanation to clause (20) of [section 10](#); or
- (VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of [section 10](#); or
- (VII) from or by any trust or institution registered under ⁷³[[section 12A](#) or [section 12AA](#) or [section 12AB](#)]; or
- (VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of [section 10](#); or
- (IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vich) or clause (vid) or clause (vii) ⁷⁴[or clause (viiac) or clause (viiaad) or clause (viiiae) or clause (viiiaf)] of [section 47](#); or
- (X) from an individual by a trust created or established solely for the benefit of relative of the individual; *

(XI) from such class of persons and subject to such conditions, as may be prescribed⁷⁵;*

⁷⁶[(XII) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;*

(XIII) by a member of the family of a deceased person—

(A) from the employer of the deceased person; or

(B) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

where the cause of death of such person is illness related to COVID-19 and the payment is—

(i) received within twelve months from the date of death of such person; and

(ii) subject to such other conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of clauses (XII) and (XIII) of this proviso, "family", in relation to an individual, shall have the same meaning as assigned to it in Explanation 1 to clause (5) of [section 10](#).]

Following proviso shall be inserted after the existing proviso to clause (x) of sub-section (2) of section 56 by the Finance Act, 2022, w.e.f. 1-4-2023:

Provided further that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of [section 13](#).

Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii);

Following Explanation shall be substituted for the existing Explanation to clause (x) of sub-section (2) of section 56 by the Finance Act, 2022, w.e.f. 1-4-2023:

Explanation.—For the purposes of this clause,—

(a) the expressions "assessable", "fair market value", "jewellery", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii); and

(b) the expression "property" shall have the same meaning as assigned to it in clause (d) of the Explanation to clause (vii) and shall include virtual digital asset."

8. In the backdrop of the aforesaid undisputed facts and circumstances of the case, the sole question arises for determination in this case is

“as to whether assessee trust being a private discretionary trust established solely for the benefits of relatives of the settlers are liable to be taxed under section 56(2)(x) qua the value of equity shares settled to the trust by Smt. Archana Miglani?”

9. We have perused the order passed by the Ld.CIT(A), who has duly thrashed the facts in the light of the provisions contained in section 56(2)(x) and reached the conclusion that provisions contained in section 56(2)(x) of the Act are not attracted in case of the trust created for the benefit of the members / relatives of the settler who have been identified as beneficiaries.

10. It is not in dispute that the assessee trust was created for the benefit of the settler, Mrs. Archana Miglani herself and her relatives as a private discretionary trust vide trust deed dated 22/12/2017. When it is so, there is an exclusion clause under section 56(2)(x) vide proviso 5(X) that this clause shall not apply "to any sum of money or any property received from an individual by a trust created or established solely for the benefit of relative of the individual".

11. Furthermore, as per Explanation to clause (vii) of section 56(2) of the Act, relative means-

(i) In case of an individual –

(A) Spouse of the individual; (B) brother or sister of the individual; (C) brother or sister of the spouse of the individual; (D) brother or sister of either of the parents of the individual; (E) any lineal ascendant or descendant of the individual; (F) any lineal ascendant or descendant of the spouse of the individual; (G) spouse of the person referred to in items (B) to (F).

12. So, keeping in view the facts that when settler, namely, Smt. Archana Miglani has created the private discretionary trust by virtue of the trust deed dated 22/12/2013 for the benefits of herself, her co-sister in law, mother in law, own children, nephew and niece any sum of money or property received by the assessee trust is not covered under section 56(2)(x) by virtue of the Proviso, which reads as under:-

“Provided that this clause shall not apply to any sum of money or any property received-

(I) To (IX) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(X) from an individual by a trust created or established solely for the benefit of relative of the individual;”

13. Moreover, assessee in this case is pass through entity and it was the settlers money / property which is given to the private discretionary trust for benefit of herself and her relatives. Hence, question framed in the preceding para is answered in the negative.

14. In view of what has been discussed above, Ld.CIT(A) has rightly reached the conclusion that assessee trust is exempt from the applicability of section 56(2)(x) of the Act . So finding no illegality or perversity in the impugned order, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 23/02/2023.

Sd/-

sd/-

(S. RIFAUR RAHMAN)	(KULDIP SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 23rd February, 2023

Pavanan

Copy to :

1. The appellants
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR, SMC Bench
6. Guard File

(True Copy)

By order

Dy.Registrar / Asst.Registrar, ITAT, Mumbai Benches