IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA Nos.3264/M/2012, 3179/M/2014 & 734/M/2015
Assessment Years: 2008-09, 2009-10 & 2010-11

Income-tax Officer-19(3)(1), Room No.307, 3rd Floor, Piramal Chambers, Parel, Lalbaug, Mumbai - 400012	Vs.	M/s. DHFL Venture Capital Fund, 6th/4th Floor, Dheeraj Arma, Anant Kanekar Marg, Bandra (E), Mumbai – 400 051 **PAN: AAATD8633L**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Purushottam Kumar, Sr. A.R.
Revenue by : Shri Vijay Mehta, D.R.

Date of Hearing : 09.03.2017
Date of Pronouncement : 28.04.2017

O R D E R

Per D.T. Garasia, Judicial Member:

All these appeals are filed by the Revenue involving assessment years 2008-09, 2009-10 & 2010-11. The issues raised in all the appeals are identical, therefore for the sake of convenience they are clubbed and heard combinedly and disposed by this consolidated order. Appealwise adjudication is given in following paras:

2. In all these appeals common issues are raised which are as under:

"(1) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in deleting the disallowance of exemption in respect of income amounting to Rs.32,83,77,906/- made by Assessing Officer overlooking and without considering relevant material and evidences available before him.

(2) On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not appreciating the facts that for the earlier assessment year i.e. A.Y. 2007-08 in the assessee's own case, the claim of exemption with respect to the similar income was rejected by Ld. CIT(A).

(3) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in accepting the assessee's contention that it had not claimed exemption u/s. 10(23FB) and holding that assessee is entitled for exemption u/s. 61 to 63 without appreciating the fact that at the time of assessment proceedings the appellant had made elaborate submission supporting its claim of exemption u/s. 10(23FB) of the Income Tax Act repeatedly on several occasions vide letters dated 02.08.2010, 15.11.2010 and 13.12.2010 which shows that claim of exemption u/s. 10(23FB) of the Income Tax Act was consciously made by the assessee and not mistakenly or inadvertently, which was subsequently found to be inadmissible.

(4) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the assessee 's contention regarding not claiming any exemption u/s. 10(23FB) of the IT Act was found to be correct.

(5) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in concluding that the exemption u/s. 10(23FB) was never claimed by the assessee as the explanation of the assessee justifying the claim of exemption u/s. 10(23FB) was in response to the A.O's show cause notice dated 08.11.2010 asking the appellant as to why the claim of deduction u/s. 10(23FB) as claimed by the appellant should not be denied, overlooking the fact that it was appellant itself who in its letter dated 02.08.2010 claimed exemption u/s. 10(23FB) of the IT Act, 1961 (Para 9), which was in response to the A.O's notice dated 01.07.2010 in which the A.O. had only required details of tax free income but had not specified the section of I. T. Act under which exemption was claimed. The CIT(A) thus gravely mislead himself by overlooking the fact that the assessee had made the claim of exemption u/s. 10(23FB) on its own without any suggestion or indication from the A.O.

(6) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred by not appreciating the fact that without filing the revised return of income the assessee has altered the claim of exemption of u/s.10(23FB) which was claimed in submission at the time of assessment proceedings on its own on several occasions; this view has also been upheld by the Hon'ble Supreme court in the case of Goetze (India) Ltd. Vs. CIT [284 ITR 323 (SC)] wherein the Hon'ble Court has held that an assessee can not amend a return filed by him for making a claim for deduction other than by filing a revised return.

(7) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the income of Rs.32,83,77,906/- was not taxable in the hands of the assessee without considering the principle that the status of Private Trust carrying the business in accordance with trust deed can be taken as Association of Person assessed at maximum marginal rate as held by Hon 'ble Madras High Court in the case of CIT Vs. Kumar Publication Trust (262 ITR 173 MAD) and further that the income earned by the Trust which was assessable under the head business income was taxable at maximum marginal rate u/s 161(1A) of the Income Tax Act as held in the case of CIT Vs. J. K. Holdings 182 CTR 243 (BOM), after arriving at a finding in Para 9.25 of his order that the appellant is a “Trust”, and overlooking the fact that the assessee had shown the income of Rs.32,83,77,906/- as business income as per Part A (Profit & Loss A/c.) of the e-filed return of income filed on 26.09.2008.

(8)(a) On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in holding that the appellant Trust compiles with the definition of "revocable transfer" as given under Sec. 61 to 63 of the Income Tax Act and thus income arising to the trust is taxable in the hands of the contributors and not the appellant, completely disregarding the fact that the right to re- transfer or reassume was nullified by the provisions of clause 15.1 of the Trust Deed as reproduced in the impugned order (Para 9.5) which bars the revocation to take effect unless consent of contributors holding units of the Scheme representing not less than 75% of the total contribution to that Scheme has been obtained which debars any individual contributor from revoking the transfer.

(8)(b) On the facts and in the circumstances of the case and in law, the learned CIT(A) thus erred in not appreciating that the provisions of clause 15.1 of the Trust Deed nullified the entitlement of the contributors to revoke contribution to Scheme and thus the individual contributors on their own never had any power to revoke the transaction.

(9) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in considering the assessee as a revocable trust for the benefit of the beneficiaries despite the fact that the assessee was in the business of investing for which the decisions were its own and it had its own expenses like any normal business.

(10) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in firstly to allow the assessee to take recourse to a different explanation other than that claimed during assessment proceeding, and then accepted the explanation on the basis of certain parameters and not in its entirety, disregarding or not considering certain relevant facts.

(11) The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.

(12) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The short facts of the case are as under:

The assessee has filed the return of income as nil on 20.06.2008. Thereafter, the return was processed under section 143(1) of the Act. Assessee is a venture capital fund which is registered with SEBI. Assessee trust is private trust and the income earned by it is allocated among the beneficiaries in specified ratio. Assessee has claimed that income is exempt under section 10(23FB) of the I.T. Act. The assessee venture capital fund is governed by SEBI guidelines as per SEBI Regulations, 1996. The clause 12 of the said SEBI guidelines lays down the investment conditions and impose restrictions on a

venture capital fund. As per the relevant clause, the venture capital fund shall not invest more than 25% corpus of the fund in one venture capital undertaking. The Assessing Officer (hereinafter referred to as the AO) has verified the balance sheet for F.Y. 2007-08 and the investment pattern of the fund of the year is as under:

SN	VCU	Amount invested	% of available Corpus funds
1.	M/s. Hon'ble Supreme Court Reality Pvt. Ltd.	25,00,00,000	29.30%
2.	M/s. Proficient Reality Pvt. Ltd.	3,50,97,300	4.11%
3.	M/s. Apex Reality Pvt. Ltd.	10,63,00,000	12.46%

The AO was of a view that the assessee has invested Rs.20.93 crores in M/s. Supreme Reality Pvt. Ltd. on 31.03.2008 out of total fund of Rs.85.3 crores. The AO has given show cause notice that why the amount should not be disallowed as assessee has invested more than 25% of corpus in one venture capital fund. The assessee contended that assessee has not made 25% of corpus in one venture capital and factually it is not right. Factually assessee's fund has mobilized total corpus fund of Rs.101.03 crores and thereafter applying clause 12(b) the maximum investable cap of 25% corpus of fund worked out to be Rs.25.26 crores in one venture capital. Accordingly, on 01.11.2007 an investment of Rs.24.95 crores made in OFCD of One VCU i.e. M/s. Supreme Realty Pvt. Ltd. Therefore, the limit of 25% corpus of fund stipulated in clause 12(b) of the said regulation is not violated. Moreover, the assessee's last date of fund has not been taken on 31.03.2008. The fact that quarterly return for quarter October 2007 to December 2007 filed with SEBI which states that on 31.03.2008 divestment of fund of Rs.15.72 crores made in accordance with the terms and conditions specified in contribution agreement made with each one of the contributories. The AO was not convinced with the argument of the assessee. The assessee has also taken the contention before the AO that assessee trust deed constituting the assessee fund more particularly, clauses 15 and 4.3.3

which fulfills the definition of revocable transfer under section 63 of the Income Tax Act, 1961. If the trust is revocable then the tax is in hands of contributory and the department has already taxed the contributory therefore no income can be taxed in the hands of the assessee. Moreover, the assessee has also taken the contention that the beneficiary of the assessee trust has already offered the income in their hands. After considering the reply of the assessee, the AO was of a view that assessee can be termed as venture capital fund which violates the conditions that are specified by SEBI. The assessee has violated clause 12(b) of the said conditions/guidelines. In view of this, it is held that assessee is not liable for exemption under section 12(23FB) as claimed and AO has treated the income of Rs.32,83,77,906/-, which includes interest on debenture, interest on deposit with bank and interest on share capital money, as income from other sources and taxed accordingly.

4. Matter carried to Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] and the Ld. CIT(A) has allowed the claim by observing as under:

> "9.25 The above issues have been considered by me and I do not find any merit in the AO's contentions. The relevant documents viz. Trust deed, contribution agreements have been placed on record and the roles of all the parties are clear from the said documents viz. the appellant is a "trust" formed by the settler – M/s. Dewan Housing Finance Limited and the trustee company is the DHFL. Trustee Company Private Limited and the beneficiaries as the "contributories" who agree to make a contribution to the trust fund. The difference between settlor and the beneficiaries is clearly demarcated and there is no scope of any ambiguity. Further, the appellant has undergone assessment in past two years and the legal status of the appellant as a "trust" has never been questioned. I find no firm reasons to not consider the appellant as a "trust" when AO has been assessing the appellant as a "trust" in the past.
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> 926 Next issue raised by the AO, relates to appellant being considered as an AOP. In respect of the same, I find that the judicial precedent rendered by Hon'ble Bombay High Court in the case of CIT versus Marsons Beneficiary Trust and others (188 ITR 224) is squarely applicable. The facts of the said case are found to be similar to the present case of the appellant. In the said case, the setllor had appointed trustee to oversee business for the benefit of group of beneficiaries. The departnent proceeded to tax the group as an AOP. However, the Bombay High Court has proceeded to state in unambiguous terms that the beneficiaries are merely receivers of the income and they have neither set up the trust nor authorized the trustee to carry on the business.

Further, even if it is accepted that the appellant is an AOP, one has to consider the applicability of section 61-63. The AR has rightly submitted that even if appellant is treated to be AOP, provisions of section 61 to 63 are applicable. Hence the contention of AO for A.Y.2009-10 that the appellant is an AOP and provisions of section 61 to 63 are not applicable to the appellant is not tenable. With reference to the same, it is observed that the section 61 applies to "any Person" and accordingly if one assumes that the appellant is an AOP, one has to check the applicability of section 61 to the facts of the appellant trust.

9 27 In view of the discussion in the above paras and submission of the appellant, I now proceed to consider the taxability provisions of "revocable transfers" provided under sections 61 to 63 of the Act. The appellant trust clams that it is a private revocable trust under the Trust Act and trust is a contributed trust set up under the trust deed as a contributory revocable trust. Though the trustees hold the assets for the benefits of the beneficiaries, the contribution to a trust should constitute a revocable transfer of assets by the contributors to the trustee. It is further noted that in a case of contributory trust such as the appellant trust by investing in units of the trust, each unit holder acts as a 'settlor' of the amount invested and concomitantly becomes a beneficiary of the trust entitled to distribution from the trust. I find that the relevant provisions of the trust deed read with the 'contribution agreement' as relied upon by the appellant constitutes instrument of trust in the eyes of law and it is this instruments of trust which defines entire relationship between the trust and beneficiaries. I further find that the contribution agreement from the unit holder indicate that not only all the beneficiaries of the trust clearly are identifiable on the date of respective subscription by the unit holders, but further the shares of each unit holders in the income of the trust is also ascertainable and determinate there from on the date of subscription by the respective unit holder as well as thereafter.

9.28 Looking to the facts of the appellant trust, the each unit holder is a beneficiary of the trust entitled to distribution from the trust. The contribution agreement is an important document which has to be read with the trust deed which clearly clarify that the income accruing to the trust has ultimately to be transferred to the beneficiary in the ratio of their investments. The trust is the entity which is juxtaposed to act as a commonality between all contributors and the same doesn't impair the fact that the investments made to the appellant trust were revocable. The sections 61 and 63 unambiguously clarify that the when a transferor can unilaterally resume the power over assets, the income is to be taxed in its hands only as if the transfer never happened. It is to be noted that the "revocable transfer" necessarily imply power to assume control over the asset and hereby it is amply clear that no contributor will part with their money if the same is not subjected to their ultimate control. As pointed out by the ARs, clause 15.1 of the trust deed clearly mandate that the contributors shall be entitled to revoke the contributions at any time during the term of scheme. On the basis of above discussion, I am of the view that the appellant trust complies with the definition of "revocable transfer" as given under section 61 to 63 and thus the income arising to the trust is taxable in the hands of the contributors and not in the hands of the appellant.

9.29 As regards the applicability of section 61, the AO primarily states that the contributors have practically no control over the capital contributions and therefore the provisions of sections 61 and 63 are not applicable. Further, the AO states that the appellant had shown the sum as its income and now at the time of assessment, the appellant is changing its stand since it suits it better. Both the aforesaid contentions are considered and are not found relevant.

9.30 As regards "control" over the funds is concerned, it is crystal clear that even though the control to the manner in which funds are invested rests with the appellant trust, the contributors have the right to reassume power as well as the right to re-transfer either whole or part of the income and assets of the appellant Trust. The word "revocable transfer" itself mean the temporary change in control of the funds which can be revoked as and when required by the transferor. There cannot be transfer without change in control of funds and the word “revocable transfer" implies that the control of the funds moved from the transferor and after a period of time, the transferor regains the same. Further, the word “indirectly" used in the definition of revocable transfer signifies the broad scope of the provision. Accordingly, the AO is not justified in rejecting the appellant's contention while stating that the control of the funds rest with the appellant trust and contributors would not have any say in it.

9.31 Further as regards AO's comments regarding change in stand is concerned; I do not find that the appellant has disclosed the income as its own income in ROI. The return for AY 2008-09 as well as AY 2009-10 has been filed as 'Nil' return. The note below the computation of income clearly spells out that the appellant contends that the provisions of section 61 and 63 are applicable to it. Accordingly I do not find merit in AO's contention that the appellant has claimed what is suited to it better and the claim was made to evade taxes.

9.32 in fact, on a separate note, the ARs further validate their claim by submitting that the beneficiaries of the appellant trust have already offered in their hands the income distributed from fund which has been assessed as such in their hands by the revenue authorities. In order to substantiate the above claim before me, the evidence regarding the same in the form of confirmations and return of income by the major contributors was submitted by the appellant during the course of the appellate proceedings vide paper book dated 10.03.2011 and the letter dated 28.03.2011. It is seen from the said documents that the contributors are being taxed on the income distributed out of the appellant trust.

9.33 Herein It is pertinent to note the provisions of section 160 and section 161 of the Income Tax Act, which are enabling sections that provide an option to the AO to tax either the representative assessee or the beneficiary of the income. The corollary of the said provisions as arises is that when the share of income received by contributors from the Fund has been included in the total income of the contributors and offered to tax by the contributors then the department cannot proceed to tax the same income again in the hands of Fund. Moreover, when the facts of the issue are quite clear that appellant trust receives fund vide revocable transfer, the income cannot be taxed twice i.e. by rejecting the claim of applicability of section 61 in the hands of the appellant trust and again in the hands of the beneficiaries. Accordingly, I

find that in the instant case, the beneficiaries have offered the income to tax and in conjunction with my finding in the preceding pares regarding "revocable transfer", I hold that the income arising is taxable in the hands of the beneficiaries alone and not in the hands of the appellant trust. Consequently, I direct the A.O to delete the addition of Rs.32,83,77,906 made in the hands of the appellant trust."

5. The Ld. D.R. submitted that the company was subjected to CBI charge sheet and CBI found that assessee company has committed fraud of Rs.400 crores. The assessee has received Rs.400 crores from various parties and out of that fund Rs.100 crores were invested in existing fund at one point of time. The enquiry is going on and they will take the action as per the Act. Now coming to the facts of this case, Ld. A.R. submitted that the Hon'ble Supreme Court in the case of CIT vs. Kanpur Coal Syndicate wherein the Hon'ble Supreme Court has held that the appellate Tribunal has ample power to set aside an assessment order made on an association of persons and direct the Income Tax Officer to assess the members individually or to direct amendment of the assessment already made on the members. In this case, the assessee had received the fund and within a short time returned the same in the same year by the assessee to create a false impression that SEBI guidelines are being followed. The exemption under section 10(23FB) is to be allowed as per the provisions of Income Tax Act and the same is allowable only when the requisite SEBI guidelines are strictly followed. The cap of investment in a single VCU at 25% is made by the statute to prevent money laundering. The assessee did not follow these guidelines of SEBI, therefore assessee is not allowable exemption under section 10(23FB) of the Act.

6. The Ld. D.R. submitted that the capital contribution is revocable transfer by transferors but the income arising out of activities of fund is an uncertain income. The contributors have practically no control on it. Therefore, provisions of section 61 & 63 are not applicable in the case of the assessee. Therefore, matter may be restored to AO to make assessment as association of persons and income may be charged accordingly.

7. The Ld. D.R. submitted that assessee has taken the contention that income arising from a recoverable transfer of assets shall be assessable in the hands of transferor. The assessee fund is revocable, therefore said income arising in its hands should be taxed in the hands of contributors. The capital contribution is revocable transfer by transferors but the income arising out of activities of the funds is an ascertained income. Therefore, sections 61 & 63 are not applicable. The assessee has taken the plea at assessment stage that income distributed to various contributors has been taxed in their hands and withdrawing the exemption under section 10(23FB) will be taxing the same amount twice is totally baseless. The assessee has committed fraud and collected the funds from the public and thereafter created a false impression that SEBI guidelines are followed in a right manner. The said exemption under section 10(23FB) is only allowable when the requisite SEBI guidelines are strictly followed. The 25% of investment is to prevent money laundering. The assessee has received the money illegally and tried to show that he has followed the SEBI guidelines, therefore claiming the exemption under section 10(23FB) is not allowable.

Ld. A.R. submitted that as per the decision of Hon'ble Supreme Court in the case of CIT vs. Kanpur Coal Syndicate, the Tribunal has power to set aside an assessment made on association of persons and direct the Income Tax Officer to assess the members individually or to direct amendment of the assessment already made on the members. The Ld. A.R. submitted that if the assessee trust is not allowed the exemption under section 10(23FB), then the matter should be restored to assess all the association of persons and the suitable amendment should be made accordingly and assessee company is not listed in Stock Exchange, therefore, the assessee company is not entitled as venture capital undertaking. The Ld. A.R. has taken the contention that assessee's venture capital is a venture capital fund established as trust under trust deed dated 19.08.2005 registered under provisions of Registration Act,

1908. The fund has been registered under SEBI on 03.10.05. The contributions made by investors in terms of trust deed and contribution agreements are regarded as revocable transfer under the provisions of Income Tax Act, hence the income accruing to the fund is not liable to be taxed in the hands of assessee but is liable to be taxed in the hands of investors/contributors in proportion of their respective contributions. The assessee has not claimed exemption under section 10(23FB) during the year under consideration. The AO has not verified the claim. The assessee trust is a private revocable trust under the Trust Act and as per section 61 to 63 of the Act the income is taxable in the hands of the unit holders and should not be held taxable in the hands of the trust.

8. The AO has not verified whether the contributions made by the contributors are revocable or not. As per the trust deed and the relevant clauses of contribution agreement which empowers to revoke the contribution to such scheme and clause 15.1 has specified that it is a revocable trust. Moreover, the assessee has also submitted that the contribution agreement with United India Insurance Company specifies the rights of unit holder in respect of monies and from the analysis of the clauses of trust deed as well as contribution agreement the contributors or investors is entitled to revoke their contributions at any time during the term of scheme as per clause 4.3.3. of the Contribution Agreement. The assessee trust held the assets for the benefit of the beneficiaries. The Ld. A.R. submitted that trust unit holder had right to reassume the power directly or indirectly wholly or any part of income by two reasons that the specific provision of clause 4.3.3 of the contribution agreement entitles the unit holders to receive distributions from the scheme. The unit holders have right to retransfer either wholly or any part of income. Moreover, by reading the trust deed and contribution agreement it is a revocable trust and as per section 61 to 63 of the Act it can not be taxed in the hand of trust. The Ld. A.R. has submitted that Hon'ble Karnataka High Court in the case of Gadi

Cheluvaraya Chetty vs. CIT 150 ITR 60 wherein it is held that a transfer is deemed revocable under section 63 if it contains any provision for retransfer of whole or any part of income or asset to the transferor. As per section 160/161 of the Act it is relating to the liability of representative assessee and as per this section the trustee of a trust may be treated as representative assessee on behalf of the beneficiary under a trust and the taxes can be recovered from trustee in the manner similar to taxing the beneficiary, but the said provisions are precautionary measure to collect taxes from trustee, if it is not taxed in the hands of beneficiaries. The Ld. A.R. has relied upon the decision of Hon'ble Karnataka High Court in the following cases:

1. CIT vs. India Advantage Fund in ITA No.191/2015
2. CIT vs. ICICI Emerging Sectors Fund in ITA No.446/2015
3. CIT vs. ICICI Econet Internet & Technology Fund in ITA No.449/2015

9. We have heard the rival contentions of both the parties. The assessee has filed the return of income in the year under consideration and claimed that assessee trust is a revocable trust in view of the provisions of section 61 to 63 of the Act. We reproduce section 61 to 63 of the Income Tax Act which read as under:

> **"Revocable transfer of assets.**
>
> **61.** All income arising to any person by virtue of a revocable transfer[13] of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.
>
> **Transfer irrevocable for a specified period.**
>
> **62.** (1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—
>
> (*i*) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee ; or
>
> (*ii*) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years :
>
> **Provided** that the transferor derives no direct or indirect benefit from such income in either case.
>
> (2) Notwithstanding anything contained in sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the

income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

"Transfer" and "revocable transfer" defined.

63. For the purposes of sections 60, 61 and 62 and of this section,—

(*a*) a transfer[15] shall be deemed to be revocable if—

(*i*) it contains any provision for the re-transfer directly or indirectly[16] of the whole or any part of the income or assets to the transferor, or

(*ii*) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets ;

(*b*) "transfer"[15] includes any settlement, trust, covenant, agreement or arrangement[15]."

10. The assessee claimed that the contributions made by investors in terms of trust deed and contribution agreements are regarded as revocable transfer under the provisions of Income Tax Act, 1961. Therefore, as per above sections it makes clear that the assessee trust is a revocable trust. We reproduce the said agreement which shows the sample of contribution agreement which reads as under:

"Distribution of Distributable Proceeds"

"The manner of Distribution shall be as follows:

(a) First, 100% to all holders of Class A Units in proportion to their Contribution until the cumulative amount distributed pursuant to this clause (a) is equal to their respective Contribution.

(b) Second, 100% to all holders of Class B Units in proportion to their Contribution until the cumulative amount distributed pursuant to this clause (b) is equal respective Contribution.

(c) Third, 100% to all holders of class A Units in proportion to their Contribution until the cumulative amount distributed pursuant to this Clause (c) is equal to preferred return on amount included in Clause (a) above at the Preferred Rate of Return.

(d) Forth, 100% to all holders of Class B Units in proportion to their Contribution until the cumulative amount distributed pursuant to this Clause (d) is equal to a preferred return on amounts included in Clause (b) above at the Preferred Rate of Return.

(e) Fifth, 100% to the holders Class B Units until the cumulative amount distributed pursuant to this Clause (e) is equal to 20% (Catch Up) of that sum of Distributions made pursuant to Clause (c) and this Clause (e); and

> (f) Sixth, 80% to the holders Class A Units in proportion to Contribution and the balance 20% ("Carried Interest") to holders of Class B Units.
>
> The investment Management will make best efforts to liquidate the Portfolio investments upon termination of the Fund. If the investment Manager is unable to liquidate all Portfolio investments and realize case proceeds out of such disposition, all un-liquidated Portfolio investments shall be distributed amongst the investors in proportion to their Capital Contribution in the manner as laid down hereinabove".

11. The assessee has filed the computation income in which he has filed the total income by showing as under:

> "DHFL Venture Capital Fund is a venture capital fund established as Trust under the Trust Deed dtd. 19.08.2005 registered under the provisions of Registration Act, 1908. The fund has been registered under SEBI (Venture Capital Fund) Regulation 1996 as on 03.10.2005. The contributions made by the investors in terms of the Trust Deed and Contribution Agreements are regarded as 'revocable transfer' under the provisions of Income Tax Act, 1961 and hence income accruing to the fund is not liable to be taxed in its hands but is liable to be taxed in the hands of the investors/contributors in proportion of their respective contributions."

12. We have gone through the above two agreements and from the above agreements, we find that assessee trust is formed by the settler M/s. Dewan Housing Finance Ltd. and the beneficiaries are the contributories who agree to make a contribution to the fund. The trust deed specifically empowers the unit holders of any scheme to revoke their contributions to such scheme. Clause 15.1 of the trust deed says that in the contribution agreement of the respective scheme, the contributors shall be entitled to revoke the contributions to as scheme, at any time during the term of that scheme. In accordance with the terms and conditions set out in the scheme documents of that scheme, for any reason, including but not limited to the circumstances resulting from any adverse tax consequences or any direction of any statutory authority, provided that no such revocation shall take effect unless the consent of contributors holding units of that scheme representing not less than 75% of the total contributions to that scheme, has been obtained, in this behalf pursuant to the other scheme document of that scheme read with this trust deed. The clauses of the trust deed and distribution of distributable proceeds as stated in the

above agreement, we are of the view contributors/investors shall be entitled to revoke their contribution to the scheme at any time during the term of the scheme and also entitled to determine distribution in accordance with the clause of the contribution agreement. The contributory trust, though the trustees hold the assets for the benefit of the beneficiaries, the contributions to trust constitute a revocable transfer of assets by contributors to the trust as per the section 61 & 63 of the Income Tax Act. We find that contributory trust in law by investing in the units of the trust, each unit holder becomes beneficiary of the trust entitled to distribution from the trust. As we have held that assessee trust is revocable trust, the contribution made by investor in terms of trust deed and contribution agreement is regarded as revocable transfer under the provisions of Income Tax Act, 1961. Therefore, accruing to the fund is not liable to be taxed in its hands but it is liable to be taxed in hands of contributors. We find that the decision of Hon'ble Bombay High Court in the case of CIT vs. Marsons Beneficiary Trust and others 188 ITR 224 is applicable to the case of the assessee. The facts of the said case are found to be similar to the present case of the assessee. In the said case the settler had appointed trustee to oversee business for the benefit of group of beneficiaries. The department wanted to tax the group as AOP. The Hon'ble Bombay High Court held that if it is accepted that assessee is AOP still one has to consider the applicability of section 61 to 63. Respectfully following the judgment of Hon'ble Bombay High Court, we hold that the taxability of provisions of section 61 to 63 apply to the assessee trust. We find that assessee trust is a private revocable trust and trust is contributed trust set up under the trust deed as contributory revocable trust. Though the trustees hold the assets for the benefits of beneficiaries, the contribution to a trust should constitute a revocable transfer of assets by the contributors to the trustee. The contributory trust by investing in units of trust each unit holder as a settlor of the amount invested and concomitantly becomes a beneficiary of the trust entitled to the distribution from the trust. We therefore hold that assessee instrument of trust

is a trust deed and the relation between assessee and contributions are as trust and beneficiaries. Moreover, all the unit holders of the trust are entitled to distribution from the trust. The contribution agreement is an important document and trust deed which clearly accruing to the trust has ultimately to be transferred to the beneficiary in ratio of their investments. Sections 61 to 63 clarify that when a transferor can unilaterally resume the power of over assets, the income is to be taxed in its hands only as if the transfer never happened. The clause 15.1 of the trust deed clearly mandates the contribution made by contributor can be revoked any time during the term of scheme. Therefore, we are of the view that Ld. CIT(A) is justified in his action. We also find similar capital venture found in Bangalore in the case of CIT vs. India Advantage Fund wherein the Hon'ble Karnataka High Court has considered the applicability of section 164(1) of the Income Tax Act and held that section 164(1) applies shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the Court or the instrument of trust or wakf deed as the case may be and is identifiable as such order, instrument or deed. The individual shares of the persons on whose behalf or for whose benefit such income received shall be deemed to be indeterminate unless the individual shares of the persons on whose behalf or for whose benefit such income stated in the order of the court. Section 161(1) applies in the case of the trust received the income from representative assessee and the High Court has gone to the extent that real test is whether shares are determinable even when after the trust is formed or may be in future when the trust is in existence. Therefore, in this case the beneficiaries' agreement has been made and trust deed has been executed in the shares are determined. Therefore, assessee cannot be taxed.

13. We find that the similar financial company had been registered under Companies Act and the trust of the company was formed by trust deed and they were treated as private specific trust. The similar trust has also been formed by a government company and they were treated as private specific trust. The similar trust was formed in Bangalore. In the decision of ITAT in ITA No.178/Bang/2012 wherein the similar trust was executed by the limited company and their beneficiaries were government and semi government companies and they were treated as the private specific trust by the Tribunal. Hon'ble Karnataka High Court has also upheld the order of Tribunal in the case of CIT vs. Indian Advantage Fund.

14. Respectfully following the above decisions of the Hon'ble Karnataka High Court and the Tribunal, we are of the view that the Ld. CIT(A) is justified in holding that assessee trust is private specific trust and our interference is not required. The assessee has not claimed the deduction under section 10(23F) of the Act.

15. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 28.04.2017.

Sd/-	**Sd/-**
(Rajesh Kumar)	**(D.T. Garasia)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 28.04.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.