आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.7/Chny/2017**

&

C.O. No.35/Chny/2017

(in I.T.A. No.7/Chny/2017)

निर्धारण वर्ष **/** Assessment Year : 2010-11

The Assistant Commissioner of Income Tax, Corporate Circle – 1(2), Chennai - 600 034.	v.	Shri N. Ramachandran, Khivraj Complex II, 2nd floor, No.480, Anna Salai, Chennai - 600 035. PAN : AANPR 4994 H
(अपीलार्थी/Appellant)		(Respondent & Cross Objector)

अपीलार्थी की ओर से/Appellant by : Smt. Ruby George, CIT

प्रत्यर्थी की ओर से/Respondent by : Sh. N. Devanathan, Advocate

सुनवाई की तारीख/Date of Hearing : 05.07.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -1, Chennai, dated 18.10.2016 and pertains to assessment year 2010-11. The assessee has filed cross-objection against the very same order of

the CIT(Appeals). Therefore, we heard the appeal and cross-objection together and disposing of the same by this common order.

2. Let's first take Revenue's appeal.

3. The only ground arises for consideration is taxability of transfer of shares by means of family arrangement.

4. Smt. Ruby George, the Ld. Departmental Representative, submitted that there was a survey in the business premises of M/s Birdie Investments (Madras) Pvt. Ltd. where the present assessee and his wife Smt. Surekha Ramachandran are Directors. During the course of survey operation, according to the Ld. D.R., it was found that investments were received as share premium from Prince Holdings (Madras) Pvt. Ltd. to the extent of ₹224.97 Crores. According to the Ld. D.R., the assessee explained before the Assessing Officer that there was a settlement in the family on 12.08.2009 and consequent to the family settlement, the money received was used for making investments. However, the assessee has not disclosed any capital gain on transfer of shares. According to the Ld. D.R., the assessee has disclosed only salary income besides capital loss of ₹6,63,378/- and income from other sources

to the extent of ₹5,21,89,254/-. The assessee has not offered any income consequent to the so-called family settlement. Consequent to the so-called family settlement, there was transfer / reallocation of shares of companies between assessee and his brother Shri N. Srinivasan. Therefore, the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act') on 13.06.2014. Consequent to the notice issued under Section 148 of the Act, the assessee has not filed any new return. The assessee requested the Assessing Officer to treat the return originally filed as return for the reopened assessment. The Assessing Officer, therefore, issued a show cause notice calling upon the assessee why the amount received consequent to the family settlement, including the so-called non-compete fee, should not be brought to tax? The assessee filed his objections primarily claiming that since the entire amount, including the non-compete fee, was paid to the assessee consequent to the family arrangement / settlement, it is not taxable in the hands of the assessee.

5. Smt. Ruby George, the Ld. D.R. submitted that the so-called family arrangement cannot be construed as family arrangement at

all. According to the Ld. D.R., the entire family members are not party to the so-called family arrangement / settlement. Moreover, the properties, which were subject matter of so-called family arrangement are individual properties of the assessee and his brother Shri N. Srinivasan. Therefore, according to the Ld. D.R., there was no Hindu Undivided Family. Hence, the Assessing Officer found that the profit received by the assessee in transfer of the shares of certain companies is liable for taxation. According to the Ld. D.R., the Assessing Officer also found that the non-compete fee received by the assessee from his brother Shri N. Srinivasan is also liable for taxation. On a query from Bench, the Ld. D.R. clarified that consequent to the so-called family arrangement / settlement, the shares of certain companies were re-allocated between the assessee and his brother. According to the Ld. D.R., the so-called arrangement between the assessee and his brother is not a family arrangement at all. According to the Ld. D.R., it was transfer of shares, therefore, liable for taxation.

6. Smt. Ruby George, the Ld. Departmental Representative, further submitted that the so-called family settlement between the assessee and his brother does not distribute the property equally

between them. Moreover, it was also not clear how the valuation was made for the so-called reallocation of shares. Therefore, according to the Ld. D.R., the family settlement agreement dated 12.08.2009 cannot be treated as fair and equitable. Hence, the Assessing Officer has rightly found that the agreement dated 12.08.2009 cannot be considered as a family arrangement at all. Moreover, according to the Ld. D.R., the investment in the shares of EWS Finance & Investment Pvt. Ltd. was made by India Cements Ltd. The major shareholders are assessee and his brother besides few shares were allotted to others. According to the Ld. D.R., the existence of nucleus for making investment in the so-called companies were not established by the assessee. Referring to the observation made by the Assessing Officer with regard to hand written agreement in the year 1990, to treat the entire companies as joint family property, the Ld. D.R. submitted that the so-called hand written agreement is only a self declaration given by Shri N. Srinivasan, therefore, the existence of common fund / estate was not established by the assessee. Hence, according to the Ld. D.R., the fund received by the assessee consequent to the family

settlement for transfer of shares has to be taxed under the Income-tax Act.

7. Referring to non-compete fee, the Ld. D.R. submitted that the non-compete fee is not in relation to existing property, it is in relation to right of the assessee to do business in future. Moreover, according to the Ld. D.R., the non-compete fee is to restrain the assessee from engaging himself in doing business for a period of five years. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer. However, the assessee has filed cross-objection in respect of the non-compete fee.

8. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that there was a family arrangement between the assessee and his brother. According to the Ld. counsel, it is not in dispute that India Cements Ltd. was promoted by Shri T.S. Narayanaswami, the father of the assessee and Shri Sankaralinga Iyer (of Sanmar Group). In other words, there are two groups involved in promoting India Cements Ltd. One group is by the assessee's father and another group by Shri Sankaralinga Iyer . On

the demise of the assessee's father, according to the Ld. counsel, the assessee and his brother Shri N. Srinivasan succeeded Shri T.S. Narayanaswami. Similarly, on the death of Shri Sankaralinga Iyer, his sons, namely, Shri N. Sankar and Shri N. Klumar succeeded the said Shri Sankaralinga Iyer. According to the Ld. counsel, there was a misunderstanding between the assessee's family and Shri Sankaralinga Iyer's family. The matter reached to judicial forums also. Since there was prolonged litigation, financial institutions stepped in and took over the management of India Cements Ltd. After a decade, according to the Ld. counsel, the issues were settled amicably and Shri Sankaralinga Iyer's son Shri N. Sankar became the Chairman of India Cements Ltd. The assessee's brother Shri N. Srinivasan was appointed as Managing Director and the assessee was appointed as Director. According to the Ld. counsel, in September, 2007, Shri N. Sankar and Shri N. Kumar, the sons of Shri Sankaralinga Iyer, sold their entire stake in India Cements Ltd. to the assessee and his brother. Therefore, according to the Ld. counsel, the assessee and his brother succeeded in controlling the entire management of India Cements Ltd. Consequently, Shri N. Srinivasan was appointed as Managing

Director and the assessee became Director. Since there was a dispute among the family members of the assessee, according to the Ld. counsel, there was a settlement at the intervention of the assessee's mother in the year 1990. The Ld.counsel further submitted that it was decided among the family members, all the concerns and companies promoted are family business. An agreement was also entered into to that effect. Subsequently, at the end of 2008, again there was misunderstanding among the family members and dispute arose. Therefore, there was a family agreement on 12.08.2009. As per the agreement, the share of India Cements Ltd. was allotted to Shri Srinivasan and the shares of other companies promoted by the family by making investment from the nucleus of Hindu Undivided Family was also allotted to Shri Srinivasan and the assessee was compensated by making payments in cash.

9. Sh. N. Devanathan, the Ld.counsel for the assessee, further submitted that when there was a dispute in the family in the year 1990, it was agreed between the assessee and his brother Shri N. Srinivasan to treat the business as family business and hence, at this stage, the Assessing Officer is not justified in saying that the

property does not belong to assessee's family. Moreover, according to the Ld. counsel, merely because the assessee's sisters have not joined the family arrangement on 12.08.2009, it does not lose its character as family settlement. Placing reliance on the judgment of Apex Court in K.K. Modi v. K.N. Modi (1998) 3 SCC 573, the Ld.counsel submitted that when the agreement is arrived at between two groups belonging to the same family regarding division of assets, the Apex Court held that the Court should not lightly interfere with it especially when it has been substantially acted upon by the parties. In this case also, according to the Ld. counsel, the parties have acted upon the family agreement and no one is disputing the family settlement. Therefore, according to the Ld. counsel, the Assessing Officer being the taxing authority, cannot doubt the family settlement . According to the Ld. counsel, the matter would stand differently in case any one of the family members disputed the arrangement arrived at between the assessee and his brother. The dispute pending before Company Law Board was also settled in terms of the family arrangement / settlement dated 12.08.2009.

10. Sh. N. Devanathan, the Ld.counsel for the assessee, further submitted that the very same family settlement dated 12.08.2009 came for consideration before the Administrative Commissioner under Section 263 of the Act in the case of Results Investments Pvt. Ltd. The share of Results Investments Pvt. Ltd. was also subject matter of family settlement dated 12.08.2009. In fact, according to the Ld. counsel, the Administrative Commissioner initiated proceeding under Section 263 of the Act calling upon the assessee to explain the source of investment of ₹125 Crores for issue of 6250 shares. The assessee explained before the Commissioner that the source for making investments in Results Investments Pvt. Ltd. is the amounts received consequent to the family arrangement dated 12.08.2009. After considering the family arrangement / settlement dated 12.08.2009, according to the Ld. counsel, the Administrative Commissioner found that Prince Holdings (Madras) Pvt. Ltd. has advanced an amount of ₹125 Crores for allotment of shares consequent to the family settlement dated 12.08.2009 between the assessee and his brother Shri N. Srinivasan. According to the Ld. counsel, the entire payment was reflected in the balance sheet of Prince Holdings (Madras) Pvt. Ltd. Accordingly, the Administrative

Commissioner accepted the explanation of the assessee for the source of investment and dropped the proceeding initiated under Section 263 of the Act. Copy of the order of the Administrative Commissioner passed under Section 263 of the Act in the case of Results Investments Pvt. Ltd. is available at page 156 of the paper-book Vol.I.

11. Since the Administrative Commissioner by an order dated 05.02.2014, accepted the explanation of the assessee that the source of investment was consequent to the family settlement dated 12.08.2009 and dropped the proceeding initiated under Section 263 of the Act. According to the Ld. counsel, the Assessing Officer cannot reopen the assessment by issuing notice under Section 148 of the Act. On a query from the Bench whether the order of the Administrative Commissioner passed under Section 263 of the Act in the case of Results Investments Pvt. Ltd. on 05.02.2014 was brought to the notice of the Assessing Officer? the Ld.counsel very fairly submitted that the order of the Administrative Commissioner was brought to the notice of the Assessing Officer. However, according to the Ld. counsel, the Assessing Officer simply ignored the order of the Administrative Commissioner by making

observation that the Commissioner has made cursory remarks on family arrangement and not dealt with the details. Since the source of investment was found to be the family settlement, according to the Ld. counsel, the Administrative Commissioner after examining the family arrangement / settlement dated 12.08.2009, found that the assessee explained the source and dropped the proceeding under Section 263 of the Act in respect of the investments made in Results Investments Pvt. Ltd. Therefore, according to the Ld. counsel, the Assessing Officer is not justified in reopening the assessment by issuing notice under Section 148 of the Act.

12. Sh. N. Devanathan, the Ld.counsel for the assessee, further submitted that Shri Justice S.H. Kapadia, the former Chief Justice of India, also examined this agreement, namely, family settlement dated 12.08.2009 and gave opinion saying that the agreement dated 12.08.2009 is an arrangement between the family members, therefore, it is not a transfer within the meaning of Section 2(47) of the Act. Since it is not a transfer, the former Chief Justice found that the settlement dated 12.08.2009 read together with the settlement earlier in the year 1990, do not constitute a transfer. Accordingly, the same is not liable for taxation. The Ld.counsel

submitted that a copy of opinion given by Shri Justice S.K. Kapadia, the former Chief Justice of India, is available at page 74-92 of paper-book Vol.1.

13. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that Shri K. Parasaran, the former Attorney General of India, also gave an opinion after examining family arrangement / settlement dated 12.08.2009. After narrating the issue and the joint family status, the former Attorney General of India observed in his opinion that the entire issue regarding family arrangement was discussed by the Apex Court in S. Shanmugam Pillai v. K. Shanmugam Pillai (1973) 2 SCC 312. The Apex Court found that the courts strongly lean in favour of a family arrangement that brings about harmony in the family and to do justice to various members and avoid future disputes. Ultimately, the former Attorney General of India found that the agreement dated 12.08.2009 was between the male heirs and there was no evidence to show that female heirs objected to the settlement dated 12.08.2009. According to the Ld. counsel, in the light of mere speculation, the veracity of settlement agreement dated 12.08.2009 cannot be doubted at all. According to the Ld. counsel, there cannot be any better evidence of existence of

a common family fund than the family themselves. When the family members agreed that the business is of their family, according to the Ld. counsel, the Assessing Officer cannot say that it is not a family business. The Ld.counsel further submitted that the agreement dated 12.08.2009 is acted upon between the assessee and his brother. Moreover, the sisters of the assessee have not disputed the agreement. Hence, the Assessing Officer cannot at this stage say that the agreement dated 12.08.2009 is not a family arrangement. The Ld.counsel further submitted that since there was no transfer in the family arrangement, the compensation received to equalize the inequalities in the family settlement is not taxable as income. The Ld.counsel placed his reliance on the judgment of Punjab & Haryana High Court in CIT v. Ashwani Chopra (2013) 352 ITR 620 and judgment of Madras High Court in CIT v. Kay Aar Enterprises (299 ITR 348) and also the judgment of Karnataka High Court in CIT v. Nagaraja Rao (352 ITR 565). The Ld.counsel further submitted that the Special Leave Petition filed by the Revenue against the judgment of Madras High Court in Kay Aar Enterprises (supra) was dismissed by the Supreme Court in 306 ITR 5. The Ld.counsel further submitted that the receipt of share

premium is not income at all, therefore, the same also is not liable for taxation.

14. Sh. N. Devanathan, the Ld.counsel for the assessee, further submitted that the non-compete fee received by the assessee is only consequent to the family settlement, therefore, the Assessing Officer cannot say that it is a business arrangement. To settle dispute among the family members, the assessee agreed not to engage himself in the business of cement manufacturing for five years. According to the Ld. counsel, this agreement is only to bring peace in the family and to have amicable solution to the existing misunderstanding among the family members. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in bifurcating the money received towards compensation for inequalities in the family settlement as non-compete fee. A mere reference in the family settlement as non-compete fee may not alter the character of receipt. Hence, according to the Ld. counsel, non-compete fee is also part of family settlement, therefore, the CIT(Appeals) is not justified in taking different view.

15. We have considered the rival submissions on either side and perused the relevant material available on record. In the Revenue's appeal, the issue arises for consideration is whether the transfer of shares, consequent to the family arrangement, is taxable under the Income-tax Act or not? The main contention of the Ld. D.R. before this Tribunal is that there is no nucleus of the family for making investment in the business and shares of the companies, therefore, the property and business have to be treated as individual property. Hence, the agreement dated 12.08.2009 to settle the family dispute is not a family settlement at all. The admitted fact is that India Cements Ltd. was established by the assessee's father Shri T.S. Narayanaswami and one Shri Sankaralinga Iyer. After the death of the assessee's father, both the assessee and his brother Shri N. Srinivasan succeeded to the interest of Shri T.S. Narayanaswami. Therefore, the basic business, namely, India Cements Ltd. was the ancestral property of the assessee and his brother. From that business, several other group companies were formed, namely, EWS Finance & Investment Pvt. Ltd. and other companies by the assessee and his brother. The investment in all these companies promoted by the assessee and his brother Shri N. Srinivasan was

from India Cements Ltd. Therefore, it is not correct to say that the common funds or nucleus of the Hindu Undivided Family was not available for making investment in the companies established by the assessee.

16. The admitted fact by the assessee and Revenue clearly establishes that the source for funds for making investment in the companies promoted by the assessee and his brother Shri N. Srinivasan are the income from India Cements Ltd. Therefore, the first contention of the Revenue that the assessee has no nucleus of Hindu Undivided Family for making investment in the shares of EWS Finance & Investment Pvt. Ltd. or other companies has no merit at all. This Tribunal is of the considered opinion that all the companies were established by the assessee and his brother Shri N. Srinivasan only by investing funds from nucleus of Hindu Undivided Family. It is obvious from the so-called declaration by Shri N. Srinivasan or otherwise it is called as agreement by the assessee in the year 1990. In 1990, it was agreed by the assessee and his brother Shri N. Srinivasan that the entire business is the family business of the assessee and his brother Shri N. Srinivasan. Therefore, it is not correct to contend at this stage by the Revenue

that the properties are individual properties of the assessee and the assessee had no common fund for making investment.

17. The next contention of the Revenue is that all the family members are not party to the agreement dated 12.08.2009. When the assessee was examined on 07.02.2014, he replied as follows with regard to his two sisters as answer to question No.15:-

> "After my father passed away, the family consisted of my mother, brother and two sisters. My mother, brother and I got the sisters married and whatever had to be given to them as per my mother's wishes was done. Subsequently, my mother allowed my brother and myself to run the business and so we were only the two people as part of this family settlement."

This explanation of the assessee was not properly appreciated by the Assessing Officer. When the assessee and his brother Shri N. Srinivasan got the two sisters married as per their mother's wishes and gave whatever their mother wished, it means that sufficient funds were given to their sisters. Moreover, the said two sisters had not raised any objection against the family arrangement made in the year 1990 and on 12.08.2009. Since the two sisters have not raised any objection even now, the Assessing Officer cannot doubt the family arrangement dated 12.08.2009.

18. In the assessment order, the Assessing Officer has also doubted the family arrangement entered into by the assessee and his brother on 12.08.2009 on the ground that the children of the assessee and the children of Shri N. Srinivasan were not party to the agreement. The Assessing Officer has not taken into consideration the provisions of the Hindu Succession Act, 1956. As per the Hindu Succession Act, 1956, the property would devolve on the children immediately on the death of their respective father. The children can claim share in respect of property allotted to their parents. In other words, the assessee and his brother Shri N. Srinivasan are Class I heirs. Therefore, even though the grandchildren have right on the property of grandfather, that right is subject to the property allotted to their respective parents. When Shri N. Srinivasan and the assessee entered into a family agreement between them on 12.08.2009 reallocating the shares of the companies and to equalize the allotment, monetary compensation was given as agreed between them, then their respective children can claim or succeed only to the property allotted to their respective parents. Therefore, merely because the children of Shri N. Srinivasan and the assessee are not party to the

agreement dated 12.08.2009, it will not lose its character as agreement or family settlement. Moreover, it is settled principle of law that inequalities in partition of property among the coparceners of HUF, cannot be a ground to doubt the family settlement otherwise admitted by parties.

19. This issue came before the Administrative Commissioner in the case of Results Investments Pvt. Ltd. The Administrative Commissioner at para 8.1 of his order has observed as follows:-

> "8.1 I have carefully considered the arguments of the Counsel for the assessee and also the evidence furnished by him. It is clear that M/s Prince Holdings (Madras) Pvt. Ltd. have advanced an amount of ₹125 Crores for allotment of shares. This amount has been paid by M/s Prince Holdings (Madras) Pvt. Ltd. in consequence of a family settlement agreement dated 12.08.2009 between Shri N. Ramachandran and Shri N. Srinivasan. The total payment is reflected in the balance sheet of M/s Prince Holdings (Madras) Pvt. Ltd. Thus, the capital raised by the assessee of ₹125 Crores stands explained. The issue with regard to the sources of share capital of ₹125 Crores is dropped."

From the above observation of the Administrative Commissioner in his order dated 05.02.2014 under Section 263 of the Act in the case of Results Investments Pvt. Ltd., clearly establishes that Commissioner examined the agreement dated 12.08.2009 and found that the source for investment was explained. Therefore, it

may not be correct to the Assessing Officer to say that the Administrative Commissioner has not examined the agreement. At para 9.2 of the order of the Administrative Commissioner under Section 263 of the Act dated 05.02.2014, he further observed as follows:-

> "9.2 I have carefully gone through the provisions of Section 56(2)(vii), 56(2)(viia), 56(2)(viib) and Rule 11U & 11UA. It is found that the argument of the Counsel for the assessee is correct. 6250 shares were allotted by the assessee company to M/s Prince Holdings (Madras) Pvt. Ltd. during the financial year 2009-10. In the case of the assessee company, the only section relevant to the issue of share is 56(2)(viib) which is effective only from 01.04.2012. Since the shares were allotted to M/s Prince Holdings (Madras) Pvt. Ltd. prior to the date when the above provisions became effective, these provisions and Rule 11U & 11UA are not applicable in the case of the assessee. Moreover, the shares were allotted in consequence of a family settlement agreement dated 12.08.2009 between Shri N. Ramachandran and Shri N. Srinivasan. Hence, the issue with regard to allotment of shares at high rates is also dropped."

Therefore, it is obvious that the Commissioner has examined the issue more than once in his order passed under Section 263 of the Act and found that there was family settlement on 12.08.2009 and the assessee received money which was utilised in making investments in the shares. When this order passed by the

Commissioner under Section 263 of the Act was brought to the notice of the Assessing Officer, the Assessing Officer ignored the findings of the Commissioner on the ground that the Commissioner has not dealt in detail. This Tribunal is of the considered opinion that when the higher authority has discussed the matter and found that the source for investment is the family settlement dated 12.08.2009, the Assessing Officer being subordinate to the Commissioner, cannot say that the Commissioner has not discussed the matter in detail. Whether the matter was discussed in detail or not, the observation made by the higher authority is binding on the lower authority. This Tribunal is of the considered opinion that judicial discipline needs to be followed. Whatever may be the reason, when the higher authority, namely, Commissioner, found that there was family arrangement and the source for investment is the funds received consequent to the family arrangement, the Assessing Officer cannot ignore the same. Therefore, reopening of assessment under Section 147 of the Act, cannot stand for scrutiny of law. Consequently, the order passed by the Assessing Officer after reopening of assessment on issue of notice under Section 148 of the Act cannot stand for legal scrutiny. Accordingly, we hold

that the reopening of the assessment under Section 147 of the Act is invalid. Consequently, the order passed by the Assessing Officer has no leg to stand, hence the same is quashed.

20. We have carefully gone through the legal opinion given by Mr. Justice S.H. Kapadia, former Chief Justice of India, a copy of which is available from pages 74 to 92 of the paper-book Vol.1. After extracting the facts of the case and case laws on the subject, the former Chief Justice of India has opined as follows:-

> "For above reasons, I am of the view that the said overall settlement dated 12.08.2009 read with 1990 FS do not result into "transfer" under Section 2(47) of the ITA.
>
> Apart from genuineness of the share premium which cannot be challenged as held in the case of Green Infra (supra), section 56(2)(viib) introduced by FA 2012, w.e.f. 01.04.2013 has no application to the OS of 2009. Hence, the Department is not entitled to rely on the said sub-section."

21. We have also carefully gone through the opinion of Shri K. Parasaran, the former Attorney General of India. After extracting the facts of the issue and case laws on the subject, the former Attorney General of India expressed his opinion as follows:-

> "Query A. Whether the various items [enlisted under (i) to (iii)] received by the Querist from his brother Mr. NS in

> lieu of family settlement dated 12.08.2009 will be liable to be taxed as capital gains in the hands of the Querist:
>
> (i) ₹337 Crores received by the Querist for transfer of EWS Finance shares;
>
> (ii) Share capital of ₹225 Crores infused by M/s Prince Holdings (Madras) Pvt. Ltd. in M/s Birdie (Investments) Madras Pvt. Ltd. and Share capital of ₹125 Crores infused by M/s Prince Holdings (Madras) Pvt. Ltd. in M/s Results Investments Pvt. Ltd.;
>
> (iii) Additional sum of ₹6.84 received by the Querist as part of family settlement.
>
> 32. The sum received under item (i) viz. consideration for transfer of shares is not subject to capital gains tax, as it is in implementation of a family settlement. A family settlement does not result in a "transfer" and compensation received to equalize inequalities in family settlement is not taxable as "income". The settlement agreement dated 12.8.2009 is valid and binding on the parties thereto for the reasons given in the above paragraphs. The sum received under item (ii) is not taxable, as this forms part of the overall family settlement dated 12.08.2009. Further this sum received being a capital infusion by way of share capital and share premium and hence it is not in the nature of income at all. The sum received under item (iii) is received along the same lines as items (i) and (ii), the same will not be taxable, being received under a family arrangement."

22. From the above, it is obvious that apart from reopening of assessment under Section 147 of the Act against the order of the Administrative Commissioner under Section 263 of the Act, even on merit, when there was family arrangement between the assessee

and his brother, and the inequalities of distribution of shares was compensated monetarily, this Tribunal is of the considered opinion that there was no transfer within the meaning of Section 2(47) of the Act. Therefore, the same cannot be brought to taxation under any of the provisions of Income-tax Act. Accordingly, the order of the CIT(Appeals) is confirmed on this issue.

23. Now coming to non-compete fee, non-compete fee is a part of the family settlement dated 12.08.2009. When the CIT(Appeals) found that the compensation received by the assessee is not taxable under Income-tax Act, it is not known why the non-compete fee received by the assessee is to be taxed under the Income-tax Act. This Tribunal is of the considered opinion that even though it was referred as non-compete fee, it is only a part of family settlement to settle the dispute once for all and to bring peace in the family . They anticipated that allowing the assessee to establish another cement factory in the near future may create a friction in the family and therefore, certain amount in cash was paid. This Tribunal is of the considered opinion that what was paid to the assessee is only a part of family settlement arising out of agreement dated 12.08.2009, therefore, the same also cannot be brought to

taxation. In other words, what was paid to the assessee is consequent to the family settlement dated 12.08.2009. Hence, the same is not liable for taxation. Moreover, as found earlier at para 19, the reopening of assessment after the order of the Administrative Commissioner under Section 263 of the Act is invalid. Hence, we are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below in respect of the so-called non-compete fee is set aside and the addition made by the Assessing Officer is deleted.

24. In the result, the appeal filed by the Revenue stands dismissed and the cross-objection of the assessee stands allowed.

Order pronounced on 24th July, 2018 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 24th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai-34
4. Principal CIT-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.