

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM &amp; Shri S.S.Godara, JM]

**ITA No.1695/Kol/2017**  
Assessment Year : **2014-15**

Shri Saroj Kumar Poddar  
Kolkata  
(PAN: AFTPP 2386 N)  
(Appellant)

-versus-

D.C.I.T., Circle-6(1)  
Kolkata

(Respondent)

For the Appellant: Shri J.D.Mistry, Sr.Counsel, Sri Ronak G.Doshi &  
Shri A.K.Gupta, AR

For the Respondent: Shri Girish Dave, Special Counsel & Shri P.K.Srihari, CIT

Date of Hearing : 21.08.2018.

Date of Pronouncement : 16.11.2018

**ORDER**

**PER J.SUDHAKAR REDDY, AM:**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-2, Kolkata dated 10.07.2017 passed u/s 250 of the Income Tax Act, 1961 (the 'Act') relating to A.Y. 2014-15, wherein the order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (the 'Act') dated 30.12.2016 was confirmed.

2. The facts in brief : The assessee along with various related entities collectively know as Poddar Group and Gillette USA were promoters of a company called Indian Shaving Product Limited ("ISP") incorporated in 1984. A promoters' agreement was also entered into between the promoters. The Company's shares are listed on the Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Limited ("NSE"). The original promoters agreement was amended on 10<sup>th</sup> May, 1992 and 5<sup>th</sup> June, 1992.

3. “Indian Shaving Product” the listed company, engaged in the manufacture, marketing and distribution of shaving products under GILLETTE 7 O CLOCK and other brand names owned and licensed to ISP by Gillette.

4. On 10<sup>th</sup> July, 1996 a share holder agreement was entered into between “Sri Saroj Kumar Poddar” (SKP) and “Gillette company” (GI). The assessee, Mr. Saroj Kumar Poddar directly or through his nominees held approximately 17% of the paid up equity share capital, of the company “ Indian Shaving Product” (ISP) and M/s Gillette Company (Gillette) held 51% of the paid up equity share capital of “ISP” on the date of signing of the share holder agreement (SHA).

5. We now extract from the share holder agreements, facts relevant to the issue on hand, for ready reference:-

**“ SHAREHOLDERS AGREEMENT dt. 10/07/1996**

**2. Equity**

*2.1 SKP will endeavour within 2 years from the date hereof consolidate all shareholding in ISP controlled by himself and his wife and male descendants ( SKP's Family') into the name of Sonali Estates Ltd ("Sonali" ).*

*2.2 On further issue of capital by ISP, neither Gillette nor SKP (or their respective associates) will renounce its rights to subscribe for further shares in favour of any third party, without first offering them to the other.*

*2.3 If Gillette or SKP (or their respective associates) is desirous of disposing of any shares in ISP it will not do so to any third party (not including any company owned-or controlled by Gillette or SKP's Family .respectively ) without first offering them, at a price and on terms no less favourable to the other but subject always to compliance with applicable Indian laws and regulations and Stock Exchange regulations.*

*2.4 Gillette shall be free, subject to compliance with Indian laws and regulations to transfer part or all of its shareholding in ISP to one or more wholly-owned entities in India.*

**3. Management of ISP**

**3.1 The parties hereto will concur in reconstituting the Board of ISP so that it will consist of 7 Directors of whom 2 will be elected from nominees of Sonali. Proportional representation will be excluded.**

3.2 As long as SKP's Family owns directly or through Sonali at least 5% of ISP's equity:

(a) the Chairman shall be SKP; and

(b) in the event of the death resignation or disability of SKP the Board will appoint a chairman nominated by the senior surviving member of SKP's family/after consultation with Gillette as to the general qualifications and suitability of the individual to discharge the functions of chairman of a public listed company and the same provisions shall apply to any successor nominated as Chairman as aforesaid. Provided that during any period before such further appointment takes effect the directors shall appoint ant of their number present al any meeting of the Board to chair that meeting.

3.3 The Managing Director shall be nominated by Gillette from time to time after consultation with the Chairman,

3.4 The Chairman and the Managing Director will each be elected as directors through direct nomination by Sonali and Gillette respectively pursuant to s..255 Companies Act.

3.5 The Managing Director will have management of the whole of the affairs of the company subject to applicable provisions of the Companies Act (including the superintendence, control and direction of the Board) and of this Agreement. .

3.6. The Managing. Director will consult in a timely manner with the Chairman on all matters to be placed on the Board agenda and on other important decisions including those of policy and principle.

3.7 The Chairman shall retain the same rights and privileges as are current at the date hereof and shall have right of access to all financial and other information on the company's activities as required in his role as Chairman and Director.

3.8 The Chairman's involvement in planning processes, business reviews, investor relations, etc will be in accordance' with the guidelines to be agreed in writing from time to time between Gillette and the Chairman.

6. In the year 2001, 'ISP' was renamed to "Gillette India Limited" ("the Company" or "GIL"). Thereafter in the year 2005, "Gillette USA" was acquired by "Procter and Gamble Company USA ("P&G")". The two promoter groups of "GIL" i.e. P&G was holding 75.9% of the share capital (equity) and the assessee alongwith individuals who were related to him and entities which were controlled by the

assessee, collectively known as “Poddar Group” was holding 12.86% equity share capital of the Company. Thus in total, the promoter group of GIL held 88.76% of the equity capital and balance shareholding of 11.24% was held by general public.

7. In June 2010, the Securities Contracts (Regulation) Rules, 1957 (“SCRR”) were amended to stipulate that, the Minimum Public Shareholding (“MPS”) should be 25% in case of listed companies. Those companies whose MPS was less than 25%, as on June 04, 2010, were required to achieve the same within a period of three years.

8. Various proposals made by ISP to achieve the stipulation of 25% MPS were rejected by SEBI. Finally, the assessee, as a promoter of ‘GIL’, made certain proposals to SEBI, for compliance with the MPS norms, which SEBI had approved.

In terms of these proposals, the assessee entered into a severance agreement as well as into a termination agreement.

9. On 31<sup>st</sup> October, 2013 the assessee entered into an agreement with Procter & Gamble India Holding (Netherlands) and other members of P & G Group to company with the MPS requirements of the Securities and Exchange Board of India (SEBI). In order to comply with SEBI MPS holding regulations, promoters share holding had to be reduced from 88.76% to 75%. The Poddar Group members were listed in Schedule ‘3’ to this agreement. We extract relevant clauses of the severance agreement for ready reference :-

### **Severance Agreement**

*“The Transaction will be undertaken in accordance with the approval granted by SEBI by its letter dated September 25, 2013 (the “SEBI Approval”) pursuant to the applications dated August 23, 2013 and September 2, 2013, made by SKP to SEBI on behalf of the shareholders specified in Schedule 2. Pursuant to the applications dated August 23, 2013 and September 2, 2013, a letter dated October 17, 2013 was filed with SEBI. The said application and the letter dated October 17, 2013 are hereinafter collectively referred to as the “SEBI Applications”.*

*This Agreement constitutes a binding agreement between P&G, SKP, the Continuing Poddar Group Members and the Selling Poddar Shareholders who agree to be bound by the Agreement for the Selling Poddar Shareholders to sell*

certain equity shares of Gillette held by them in the OFS as existing promoters of Gillette pursuant to filings made under the equity listing agreements entered into with the stock exchanges and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations (Takeover Regulations”) for the re-classification of the Continuing Poddar Group Members as part of public shareholders of Gillette and for P&G to sell certain equity shares of Gillette held by it in the OPS.

### 1. Current Shareholding Pattern of Gillette

Sl.No.	Name	Shareholding
1.	P&G	75.90%
2.	SKP and its affiliates (Poddar Group) (Please refer to Schedule 2)	12.86%
3.	Public	11.24%
	Total	100%

### 2.Steps involved in the Transaction

P&G, SKP, the Selling Poddar Shareholders (who have agreed to reduce their shareholding to enable compliance with the SEBI Approval) and the Continuing Poddar Group Members, as existing promoters have agreed that the following steps would be undertaken to achieve compliance with minimum public shareholding requirements of Gillette :

- (i) For compliance with the SEBI Approval, the OFS would be undertaken by P&G, SKP and the Selling Poddar Shareholders, for the following quantity and in the following proportion, in compliance with the regulations prescribed by SEBI in this respect :

Sl.No.	Name	No.of Shares (% Total Shares)
1.	P & G	293.277 (0.9%)
2.	Selling Poddar Shareholders	2,564,467(7.87%)
	Total	2,857,744(8.77%)

- (ii) Simultaneously with the execution of the Trade Agreement to be entered amongst P&G, the Selling Poddar Shareholders and one more brokers appointed in connection with the OFS, a termination agreement (“Termination Agreement”) would be entered into in respect of the shareholders agreement dated July 10, 1996 between SKP and the Gillette Company (now P&G) (the “SHA”) . The Termination Agreement would become effective and consequently the termination of the SHA would become effective, after the OFS has been completed and SKP has received the Compensation (as defined below) from P&G.”

10 The assessee has claimed severance compensation of Rs.200 crore received from Procter & Gamble (P&G) Netherlands during the year in pursuance to these agreements, as a capital receipt and hence not subject to tax as income, under the Income Tax Act, 1961.

11. The relevant clauses of the “Severance Agreement” relating to the compensation are extracted for ready reference :

*“(iv)The contents of the SEBI Approval, along with full particulars of the SEBI Applications that culminated in the SEBI Approval, will be fully disclosed in the explanatory statement accompanying the Shareholder Notice. The explanatory statement shall also disclose the severance compensation ("Compensation") that will be paid by P&G to SKP for SKP and the existing shareholders acting in concert with him agreeing to remove the special rights held by them in Gillette through the SHA and the Articles, and for P&G asserting its rights as the sole surviving promoter of Gillette. The members of the Poddar Group agree and acknowledge that the Compensation is the sole right of SKP and that the Compensation is being paid to SKP in his individual capacity' and no other shareholder has an right nor is entitled to receive the Compensation or any portion thereof. P&G shall have no recourse to Gillette for payment of the Compensation to SKP, and no interests of the minority shareholders are being affected as this payment is being made to SKP in his personal capacity for removal of the special rights held by the Poddar Group as an original promoter and founder of Gillette at the time of its incorporation and thereafter pursuant to the Articles and the SHA. Subject to compliance with the conditions set out in the SEBI Approval, all parties agree and 'acknowledge that payment of the Compensation will not require an open offer to be made under the Takeover Regulations.*

*(vi) The deletion of articles listed in Schedule 5 from the Articles and the termination of the SHA shall be effective (a) after the OFS is completed and the sale consideration is received by SKP and the Selling Poddar Shareholders pursuant to the OFS and (b) upon SKP receiving the Compensation from P&G”.*

#### **“Calculation of Compensation**

11. For the purpose of calculating the Compensation payable to SKP for termination of the SHA and the special rights incorporated in the Articles, P&G and SKP have mutually agreed that the measure of reasonable compensation payable for such termination is the difference between (i) the weighted average price per share received by P&G, SKP and the Selling Poddar Shareholders, collectively, for sale of their equity shares of Gillette to members of the public in the OFS ("Realisation per Equity Share"); and (ii) INR 3,000 per share. The Realisation per Equity Share shall be the weighted average price at which the

*OFS is consummated. net of applicable brokerage, service taxes and securities transaction taxes.*

*12. The parties agree that Compensation shall be measured only on 6% (1,955, 100) of the total issued share capital of Gillete to be sold by SKP and the Selling Shareholders in the OFS and not the entire 7.87% to be sold by SKP and the Selling Poddar shareholders in the OFS.”*

### **Termination Agreement**

12. The ‘Termination Agreement’ dated 11<sup>th</sup> November, 2013 was entered into in pursuance of the ‘Severance Agreement’. The relevant clauses are extracted for ready reference :

*“D In order to comply with the terms and conditions set forth in the SEBI Approval Letter red with the SEBI Applications, the Parties are desirous of expressly terminating the SHA after completion of the OFS and receipt of the sale consideration by SKP and his affiliates, payment of severance compensation to SKP by Procter & Gamble India Holdings BV and compliance with the other terms and conditions of the Severance Agreement, subject to the terms and conditions and in the manner set forth herein below.*

#### ***1. AMENDMENT OF CLAUSE 7.1. OF THE SHA***

*1.1 With effect from November 11, 2013, the existing Clause 7.1 of the SHA shall stand replaced by the following clause:*

*This agreement shall terminate automatically upon either:*

*(a) Procter& Gamble Holdings BV and its affiliates ceasing to hold in aggregate at least 5.00% of the paid-up equity' capital of Gillette India Limited; or*

#### ***LIABILITIES AND CLAIMS***

*The Parties agree that after the termination of the SHA in accordance with the provisions of the revised Clause 7.1 of the SHA as forth above, each Party shall have and/ or be deemed to have discharged and extinguished all rights, duties, liabilities and obligations under the SHA and each Party releases and discharges each other Party and each of their respective affiliates from its obligations to give effect to any of the provisions of the SH.A and shall have no right against any other Party or any of its affiliates under the SHA.”*

D. The Explanatory Statement Pursuant to Section 102 of the Companies Act, 2013 dated 20<sup>th</sup> November, 2013 issued by the Company is extracted for ready reference :-

*“ Item No. 1*

*Your Company is required to complete the required steps towards ensuring compliance with the Minimum Public Shareholding (MPS) requirement (atleast 25% public stake) directed by the Securities & Exchange Board of India (SEBI) consequent to the amendments to the Securities Contracts (Regulation) Rules, 2010 (SCRR) read with the Listing Agreement. In terms of the said requirements, your Company was required to comply with the said MPS requirement by June 3, 2013, since the public shareholding in the Company was only 11.24% whereas the promoter groups namely the Procter & Gamble Group (P&G Group) and the Poddar Heritage Group (poddar Group) held 75.90% and 12.86% stakes in the Company respectively. A proposal-in this regard which was submitted to SEBI was not accepted by SEBI. and the same was also over-ruled by the Securities Appellate Tribunal (SAT).*

*Thereafter due to the pro-active engagement of the promoters with SEBI, SEBI finally approved a proposal through Us letter dated September 25, 2013 (SEBI Approval), inter alia, involving the following steps:*

*(i) Termination of a shareholders' agreement dated 10th July 1996 (SHA) between the P&G Group and Mt. S. K Poddar so as to remove the special rights enjoyed by the Poddar Group;*

*(ii) Offer for safe (OFS) of 7.87 % stake to be made by the Poddar Group to the public and of 0.90% to be made by the P&G Group;*

*(iii) Amendment of Articles of Association of the Company so as to delete/modify/alter the respective Articles which confer special rights on the Poddar Group pursuant to the SHA as set out in the Notice;*

*(iv) Payment of severance compensation by the P&G Group to Mr. S. K. Poddar for relinquishing the-special rights enjoyed in the Company pursuant to the SHA This compensation shall be paid without any recourse to the Company and the interest of the existing minority shareholders would not be affected. The quantum of the severance compensation shall be disclosed in the Explanatory Statement to the Notice of the Postal Ballot seeking shareholders approval for amendment of the Articles, as afore-said.*

*(v) The balance 4.99% stake held by the Poddar Group would be re-classified and would form part of 'public shareholding' raising the public shareholding in the Company to 25% thereby achieving compliance with the MPS requirements.*

*(vi) Mr. S. K. Poddar (Chairman) and Mr. Akshay Poddar shall step down from their positions as Directors of the Company;*

*The following developments have subsequently taken place:*

*(1) The promoter groups viz.. the P&G Group and the Poddar Group have signed a termination agreement on November 11, 2013 in connection with terminating the SHA;*

(2) P&G Group sold 0.90% of its stake. involving 2,93,277-Equity shares pursuant to the OFS: The offer under the OFS was made on November 13, 2013 and was settled on November 9,2013. The balance stake of P&G Group in the. company is now 75.00%;

(3) The Poddar Group sold 7.87% of its. stake involving 25,64,467 Equity shares pursuant to the OFS. The offer under the OFS was made on November 13, 2013 and was settled on November 19, 2013. The balance stake of the Poddar Group in the Company now stands at 4.99%, which shall be re-classified to form part of 'Public Shareholding':

The P&G Group would pay a severance compensation amount of Rs. 200 Crores (Rupees Two Hundred Crores) to Mr. S. K. Poddar for termination of the SHA and consequent relinquishment of all special rights conferred on the Poddar Group pursuant to the SHA and the Articles of Association'. As the Articles of Association are being amended in connection with the Termination of the SHA, the amendment of the Articles of Association and the vacation of the positions as Directors of the Company of Mr. S. K. Poddar (Chairman) and Mr. Akshay Poddar shall be effective after .payment. of the above. mentioned severance compensation by the P&G Group to Mr. S.K Poddar.

The public shareholding in the Company would resultantly increase to 25%, in compliance with the SEBI MPS requirements. The said severance compensation would have no impact on the Company and would not impact the interests of the minority shareholders. . '

Mr. S.K. Poddar, Chairman and Mr. Akshay Poddar, Director are deemed to be interested in this item of business.

The Board of Directors recommends the proposal for approval by the Members, by exercising their vote through the Postal Ballot.”

Portion of the ORDER of SEBI dated 10<sup>th</sup> February, 2014 in WTM/PS/76/CFD/FEB/2014 as under :-

“ 6. Pursuant to the interim order, the Poddar Heritage Group (the Poddar group. one of the promoter groups of the Company) vide letters dated August 23, 2013 and September 02, 2013, had made a revised proposal with SEBI in respect of the Company's compliance with the MPS norms, In terms of-the revised proposal:

i. Promoters of the Company would undertake an OFS for 8.77% (7.87% by Poddar group and 0.90% by the P & G group) of the paid-up share capital held by them, This would reduce their share holding in the Company to 199%.

*ii. Once the OFS is consummated fully, prior agreements (SHA) between P & G and*

*the Poddar group would be terminated and consequently the Articles of Association “ AoA “ ) of the Company would be suitably amended after convening an EGM for the purpose.*

*iii). Severance compensation would be directly paid by P & G to the Poddar Group without involving the Company in this bilateral transaction.*

*a. SEBI has no objection regarding the proposed payment of severance compensation; provided that the same would be paid by P & G without any recourse to the Company and interest of the exiting minority shareholders of the Company is safeguarded.”*

13. The issue before us is whether, the severance compensation of Rs.200 crore received by the assessee is chargeable to tax as income under the Income Tax Act, 1961 (The Act). The AO held that the compensation in question is taxable as income. He held that the Company “ Gillette India Ltd.” has no involvement in the said transaction of payment of Severance compensation. He rejected the contentions of the assessee that the compensation in question is a capital receipt and hence cannot be regarded as income under the inclusive definition of the term “income” under the “ Act”. He discussed several alternatives to bring this amount to tax. Ultimately he held that an amount of Rs.1,74,20,35,742/- was taxable u/s 56 of the Act. At para-40 of his order he held as follows :-

*“40. Since assessee has made elaborate submissions to show that compensation is not taxable under any of the heads of the Income, it is essential to determine, based on the facts available on record in the right perspective and on the basis of relevant provisions of Law in this regard, that the same Compensation which assessee is claiming as not to be taxable under any provision of the Act, is actually taxable under different provisions / heads of income of the Act, alternatively. The above discussion is for refuting / invalidating / rebutting/ the various multiple exemptions claimed by the assessee regarding the Compensation received and underscoring the areas as to where the said compensation may be brought to taxation as per the provisions of the I T Act,1961, if the different contentions are made by the assessee at subsequent stages in a bid to save the said compensation from taxation. The purpose here is to underscore the fact that the said amount is taxable under different provisions of IT Act, 1961 even if assessee takes a different presumption and interpretation of said compensation in due course. This should not be taken as a plea by the assessee that since the same is being discussed as taxable under more than one heads, it is not taxable at all.”*

14. Alternatively and without prejudice to the above stand that the amount in question is taxable u/s 56 of the Act, the AO held that receipt in question was taxable u/s 28(ii) (a) of the Act. He held that the assessee was substantially managing “Gillette India” as the Chairman and his son being one of the directors that he had special rights as mentioned in SHA dated 10<sup>th</sup> January, 1984 and under the Article of Association of the company.

15. At para 119 page 66 he held as follows :-

*“119. Therefore, even if the amount of Rs.200 Crore received by the assessee as Severance Compensation is deemed to be a capital receipt and even if it is understood that the Compensation was not to be received by the other members of the Group as held earlier in this Assessment Order, the said Compensation of Rs.200 Crs would be taxable u/s 28(ii)(a) because of the specific provision in the Act for taxing such Compensation as clear from the discussion made in foregoing part of this assessment order.”*

16. The ld. AO also held that the compensation in question can also be taxed as capital gains u/s 45 of the Act. At Para-122 he computed the long term capital gain on the receipt. Thereafter at para 123 and 124 the AO concluded as follows :-

*“123. Tax Treatment- The taxability of assessee's income on account of receipts of payment of Rs 200 Crs, which has already been mentioned in Para-71, earlier, is being once again underscored at the cost of repetition from which it is clear having regard to the facts of the case discussed in detail now that such taxability may involve two situations which are given below: ----*

*1. The entire compensation is not receivable by the Assessee and there has been an gift or dividend from the Assessee's group companies and family member to the assessee*

*2. Or the entire amount is belonging to the Assessee and hence there was substantial management rights being enjoyed by the Assessee.*

*Both the situations have been discussed between Para (v) and Para 71 (treating said payment to be taxable as income from other sources) and between Para 72 to 123 treating said payment to be taxable as business income and income from capital gains respectively in the earlier part of this assessment order.*

*It may be noted that discussions from para 72 to 123 is on the point that if the assessee takes the stand that the compensation was to be received by him alone,*

*then he also needs to establish as to how the amount is not taxable under section 28(ii)(a) or section 45 of the Income Tax Act, 1961. However it is clear from the record that the assessee was representative of the entire Poddar group and hence the compensation received only by him is the income of all the members gifted to him. The said discussion is made in pursuance of paras 42 and 43 of this assessment order.*

*124. As stated above, it is a clear case of tax evasion by both the Assessee and the Group Companies and the Compensation received is taxable as “income from other sources” u/s 56 as per the discussion made in the earlier portions of this assessment order mentioned in para 70(vi) in the following manner :*

<b>Shareholder</b>	<b>% transfer</b>	<b>Amount</b>	<b>Taxability</b>
<i>Assessee</i>	<i>0.69</i>	<i>Rs.10,72,26,107/-</i>	<i>No Not taxable as per the above discussion</i>
<i>Family Members of assessee</i>	<i>0.97</i>	<i>Rs.15,07,38,150/-</i>	<i>No Not taxable as per the above discussion and exempt as received from relatives</i>
<i>Group entities of Assessee</i>	<i>11.21</i>	<b><u>Rs.174,20,35,742/-</u></b>	<i>Taxable under section 56</i>
<b>Total</b>	<b>12.87</b>	<b>Rs.200,00,00,000/-</b>	

17. Aggrieved the assessee carried the matter in appeal, raising various grounds before the Id. CIT(A). The CIT(A) has extracted the grounds raised by the assessee from pages 1 to 5 of his order and thereafter extracted the submissions of the assessee from pages 5 to 20 of his order and in one paragraph at the end of page 20 he held as follows :-

*“I have considered the submissions of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The assessing officer has already discussed the issue in details with various grounds and alternatives grounds. The AO has elaborately mentioned the reasons for taxing the amount under various options. I agree with the views as taken by the AO. There is no doubt that the appellate has received huge amount from the company which is liable to be taxed and accordingly, the AO ha taxed the amount with alternative grounds to protect the interest of the revenue. The assessing officer has also made enquiry from SEBI and discussed the issue in details in the order. In view of above, the order of the AO is upheld. These grounds of appeal are dismissed.”*

18. Aggrieved the assessee is in appeal before us.

19. The learned Senior Counsel for the assessee Shri J.D.Mistry, at the outset, referred to the interim orders passed by the Tribunal dt 3<sup>rd</sup> April, 2018 as well as on 3<sup>rd</sup> July, 2018 and submitted that the department has not granted refund to the assessee till date, in compliance of these orders. He vehemently contended that, this violation of the orders of the ITAT by the department, should be viewed seriously and the revenue be barred from the proceedings. Shri J.D.Mistry further pointed out that the paper books filed by the department is not as per rules, as it is not certified and even pagination is not done. He objected to the same.

19.1. In reply the learned Special Counsel for the department Shri Girish Dave submitted that, it is not the intention of the department to defy the orders of the Tribunal and every effort was being done to comply with the directions of the Bench. He pointed out that certain technical difficulties have arisen, as the refund in question has to be given through a computerised system and that it could not be done manually and that it requires certain procedural approvals. He submitted that every effort is being made in this regard to comply with the order of the ITAT at the earliest. Regarding the paper book, the learned Special Counsel submitted that he agrees that it is not in accordance with the rules and submitted that every effort would be made to rectify the defects in the paper book during the course of hearing itself. He submitted that the additional evidence contained in the paper book is in the public domain and hence no separate application is required to be filed u/s 29 of the ITAT Rules for admission of the same. He prayed that the department be allowed to defend the order of the Id. CIT(A) and to refer to the paper book filed by it.

20. The learned Senior Counsel Shri J.D.Mistry, without prejudice to the above stated objections, started his arguments on merits, by taking the bench to the facts of the case. He submitted that the AO ultimately chosen to tax the assessee by invoking section 56(2) (vii) of the Act and holding that Rs.25.79 crore(approx) out of Rs.200

crores of the severance compensation received is not taxable and that only Rs.174 crores (approx.) is only to be taxed. He further submitted that the AO has alternatively discussed a number of possibilities of bringing the amount in question to tax u/s 28(ii)(a) of the Act or alternatively u/s 45 of the Act. He submitted that the AO has not acted on these possibilities and had not based his assessment of income on these sections and hence these sections cannot be invoked by the revenue at this stage. He filed elaborate written submissions on the issue of taxability of the severance compensation u/s 56(2) of the Act, applied by the Assessing Officer to tax the receipt in question. He argued that the ITAT cannot go beyond the issue of examining the applicability of Section 56(2) of the Act as the AO has not chosen to tax the amount in question under any other section of the Act. Nevertheless he proposed to make detailed submissions on all the sections discussed by the AO in his order.

21. At this stage, the Bench sought to know from the learned Special Counsel for the Revenue Mr.Girish Dave, as to whether he would support the order of the AO wherein, ultimately he chose to tax the receipt of Rs.200 crores in question to tax u/s 56(2) of the Act. The Id. Special Counsel submitted that he would not be pressing the argument that, the amount in question can be brought to tax u/s 56(2) of the Act. As per Mr.Girish Dave, the amount cannot be brought to tax u/s 56(2)(vii) of the Act as done by the AO. He submitted that his arguments in this case would be that the receipt in question is taxable u/s 28(ii)(a) of the Act and also on the ground that, the receipt in question is taxable as capital gains u/s 45 of Act in view of Section 55(2)(a) of the Act. To a specific query from the Bench, the Id. Special Counsel for the revenue Shri Girish Dave submitted that he is not putting forth any other argument in support of the conclusions of the AO, for bringing the receipt in question to tax, except that the receipt in question is income u/s 28(ii)(a) of the Act and that the amount in question is also alternatively and without prejudice to the above contention that the amount is taxable u/s 28(ii)(a) of the Act is also taxable as capital gains in u/s 45 of the Act r.w. section 55(2)(a) of the Act.

22. Thus in view of the above submission of Sri Girish Dave the Id. Special counsel for the revenue, this Bench would not be adjudicating the sections that were considered at length by the AO and the conclusions drawn by the AO that the amount in question is taxable as income under those Section except, the AO's finding that the receipt in question is taxable u/s 28(ii)(a) of the Act and that it is alternatively u/s 45 of the Act under the head 'capital gains' specifically with reference to section 55(2)(a) of the Act.

23. The learned Sr. Counsel Shri J.D.Mistry submitted that as the learned Special Counsel has stated that the stand of the AO as confirmed by the Id. CIT(A) is basically wrong, as the receipt in question cannot be brought to tax u/s 56(2)(vii) of the Act and hence nothing survives and that the appeal of the assessee has to be allowed. He contended that, though the AO, in an elaborate order, considered various possible Sections based on which the receipt in question can be brought to tax under Income Tax Act, 1961 ultimately, the receipt was brought to tax only u/s 56(2)(vii) of the Act and not under any other section in the Act. His contention is that once the "Special Counsel" has given up the departmental stand that the receipt in question is taxable u/s 56(2)(vii) of the Act, then no other section can be brought into play or relied upon to bring the receipt in question to tax by the revenue before the Tribunal. He argued that the ITAT has to adjudicate the correctness of the final basis/ground taken by the AO to tax the receipt in question.

24. Alternatively and without prejudice to the above the learned Senior Counsel submitted that, as the AO has brought to tax only an amount Rs.1,74,20,35,742/- the Tribunal cannot bring to tax the amount in excess of the same, as the ITAT has no power of enhancement.

25. Without prejudice to the above submission the Id. Sr. Advocate made oral and written submissions. The written submissions which sufficiently captures the oral submissions including replies to the submissions of the Id. Special Counsel for the revenue are extracted below :-

*“ Section 28(ii)(a) is not applicable in the present case as the Appellant was not managing the whole' or 'substantially the whole' of the affairs of the Company-*

*Section 28(ii)(a) reads as under-*

*"28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession ".*

*(ii) any compensation or other payment due to or received by -*

*(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at in connection with the termination of his management or the modification of the terms and conditions relating thereto:"*

*Therefore. the assessee submitted that for the aforesaid section to be applicable. the person receiving the compensation must have been in the management of "whole" or "substantially the whole' of the affairs of the company, which management rights were terminated. In the present case. the assessee submitted that the assessee only has certain rights under the SHA which are enumerated as under-*

***(i) the Appellant would be the chairman of ISP;***

***(ii) the Appellant to nominate one more director at Board of ISP;***

***(iii) the Appellant would be consulted, for appointment of the Managing Director of the company.***

***(iv) The managing director will consult in timely manner with the Appellant on all matters to be placed on the board agenda and on important decisions including those of policy and principle.***

*The Appellant submitted that the aforesaid rights which were vested in the Appellant. would in no way amount managing the "whole" or "substantially the whole" of the affairs of the company. The Appellant submitted that the same is also apparent from the following submissions-*

*(i) The Appellant together with other group entities held only 12.86% shares of the Company whereas P&G held 75.90% shares of the Company. (Pg. 14 of the AO's Order) Therefore, it is clear that P&G was the majority shareholder having three fourth majority and the Appellant was only holding a small percentage of 12.86% of the total share. This would clearly show that the management of the company was with P&G and not the Appellant.*

*(ii) Under clause 3.3 of SHA (Pg 2) the managing director was to be nominated by Gillette. Further clause 3.5 of SHA (Pg 3) provided that the managing director will have management of whole of the affairs of the company subject to applicable provisions of the Companies Act. The chairman i.e. the Appellant will*

*only be consulted by the managing directors on issues relating to policy and principle. Therefore, it is clear that the company-was being managed by the managing director which was the nominee of P&G and not the Appellant. In fact. Appellant had also submitted a letter from Company Secretary of Gillette that at all times managing director was always appointed by Gillette and different MD from time to time*

*Further, clause 3.1 of SHA (Pg. 2) provides that only 2 directors of the board of 7 directors would be appointed by the Appellant, including the Appellant himself.*

*Therefore, of the board of directors of the Company, on the contrary, the 5 directors in the board of directors were appointed by P&G, and hence the board was always controlled by P&G.*

*(iv) The Appellant was only a non-executive chairman and, hence, the Appellant was not looking after the management of the affairs of the company.*

*The Appellant submitted that for section 28(ii)(a) of the Act to apply, the management of the company must almost wholly be done by the Appellant, which is clearly not the position in the present case.*

*The Appellant submits that on the reading of the SHA, it is clear that the Appellant does not have the right to manage the whole or almost the whole of the affairs of the Company.*

*The Appellant submitted that the revenue has also not pointed out any material to justify the finding that the company was being managed almost wholly by the Appellant. The Appellant submitted that the Revenue has not even been able to point out even a single instance of the Appellant being carrying on the activity of management of the Company.*

*The Appellant further submitted that the finding given by the AO in paragraph 87 & 88 of the Assessment Order, only shows that the Appellant had certain rights as per the SHA (shareholders right) but on the basis of the said rights it is impossible to conclude that the whole of the management was with the Appellant.*

*It is further submitted that, the reliance was placed by the learned counsel of the revenue on (i) the Articles of Association of the Company; and (ii) the financial Accounts of the Company and particularly the message/speech from the chairman: and (iii) separate office space is provided for the chairman at the office in Gurgaon. The Appellant submits that the submission made by the Revenue does not support the contention of the Revenue. the Appellant submits as under-*

*(i) none of the articles pointed out by the counsel for the Revenue show that the management of the Company was wholly in the hands of the Appellant. The*

articles as pointed out by the Counsel merely show that the Appellant had certain rights in the company but from the same it is impossible to conclude that the management of the Company was wholly with the Appellant. In fact Article 117(2) 125(3) support the case of the Appellant. Article 73. 117(1) provide that the Chairman does not even have the casting vote in the board meetings.

(ii) The Appellant has only carried on activity as a non executive chairman of the Company and has not done anything further. The message from the non executive Chairman in the annual accounts does not mean that the Appellant is managing the Company.

(iii) Similarly, having a separate office space by itself is also an irrelevant factor to decide on the issue of management of the Company.

## 2. The receipt must be of income character even to come within section 28(ii)(a)-

The Appellant submitted that even for a compensation to be charged under section 28(ii)(a) of the Act, it must be a revenue receipt and not a capital receipt. The Appellant submitted that section 2(24)(v) provide that any sum chargeable to income tax under clause (ii) of section 28 will come within the ambit of income. As clause (ii) of section 28 falls under the chapter profits and gains of business or profession, the same would only include a receipt which is revenue in nature and not a capital receipt.

Reliance is placed by the Appellant on the following decisions-

(i) CIT Vs. David Lopez Menezes (336 ITR 337)(Bo01)

(ii) Carnival Investment Ltd Vs. ITO (ITA 568/Kol/2011) affirmed by Calcutta High Court in ITA 160 of 2013 dated June 18, 2018

In view of the aforesaid, the Appellant submitted that in any view of the matter, as the AO has accepted that the receipt of the compensation of Rs. 200 crores by the Appellant is a capital receipt (by himself not taxing compensation equivalent to Appellant's shareholding), the same is not chargeable to tax under section 28(ii)(a) of the Act.

## 4. Compensation of Rs. 200 Crore is not chargeable to tax as capital gains-

The Appellant submitted that, although, as without prejudice finding the AO held that the compensation of Rs. 200 Crore is chargeable to tax under the head 'capital gains' being consideration for transfer of shares, the learned special counsel, appearing for the revenue conceded that the said amount cannot be charged to tax as "capital gains" for transfer of shares. However, it was the contention of the learned special Counsel that provisions of section 55(2)(a) are applicable in the present case, as there is a transfer of an alleged 'right to carry on business' by the Appellant by virtue of the non compete agreement entered into by the Appellant on 18 January 1996, with Gillette company, USA.

*The Appellant submitted that as the learned special Counsel has admitted that the compensation of Rs. 200 Crore received by the Appellant cannot be charged to tax as consideration for the transfer of shares, the Appellant is not making any further submission on the said issue.*

*Insofar as the new argument raised by the special Counsel limited to allege the taxability of the compensation of Rs. 200 crores as capital gains, the Appellant submits as under-*

*1. The Appellant submitted that the revenue is not permitted to make out a completely new case to justify the addition made by the AO which was not even the basis of the addition made in the assessment order.*

*2. In any case. the Appellant submitted that the capital gains cannot arise on account of the non-compete agreement entered into by the Appellant on 18 January 1996. The Appellant submits that firstly the compensation of Rs. 200 crores received by the Appellant has no relation to the non-compete agreement dated 18 January 1996 entered into by the Appellant. The compensation of Rs. 200 crores has been received by the Appellant on account of the termination agreement and the severance agreement entered into by the Appellant with P&G.*

*3. Secondly. the Appellant submitted that the amount received by the Appellant under the non-compete agreement has already been held to be a capital receipt by the decision of the jurisdictional High Court of Calcutta in the case of CIT v Saroj Kumar Poddar [151 Taxman 153 ]. There has been no breach of the said agreement and hence there is no question of any further consequence flowing from the said agreement.*

*4. Thirdly. the Appellant submitted that, under the non-compete agreement the Appellant had taken an 'obligation not to compete' and not a right' and had received the compensation for the same. Therefore, the Appellant submitted that there is no question of receiving compensation for giving up an obligation. Therefore, the question of correlating the compensation of Rs. 200 crores received by the Appellant with the non-compete agreement is wholly erroneous and bad in law.*

*Hence, the Appellant submitted that the compensation of Rs. 200 crores received by the Appellant cannot even be charged to tax under the head' capital gains.' ”*

26. The Learned Special Counsel for the Revenue, Sri Girish Dhare on the other hand, opposed the contentions of the assessee and submitted that the main issue is whether the “ Managing Director” appointed by the “ Board of Director “ , can be considered as managing the wholly or substantially the whole affairs of the company or whether the ”Board of Directors” are managing the whole or substantially the

whole of the affairs of the Indian company through the Managing Director. He once again took this Bench through the promoters agreement 1992 and the agreements dated 05.06.1992 and 18.01.1996. He also drew the attention of the Bench to the manner in which the assessee sought to evade compliance with SEBI regulations and the adverse order suffered from SAT and ultimately how the assessee and the company GI was forced to take steps to comply with the rules of the SEBI.

27. Further, he referred to non compete agreement dated 18<sup>th</sup> January, 1996 and submitted that the agreement was for a period of the continuation of the assessee as a "Chairman of GI" and further for the period of three years thereafter. He pointed out that, after the termination agreement, the assessee ceased to be the Chairman of this company GI, but that the prohibition under the non competing agreement persisted, for a period of three years after he quit as Chairman of the company. He refer to Section 55(2)(a)/52(2)(a) of the Act and submitted that the issue in question falls within the ambit of that section and hence taxable under the Head "Income from Capital Gains".

28. He further argued that the receipt in taxable u/s 28(ii)(a) of the Act as income. He argued that the Managing Director of the company is appointed only with a consultation of the chairman and hence the chairman gets supervising rights. He referred to section 255 of the Companies Act and submitted that the Managing Director of a company has to act under the control and direction of the "Board of Directors". He took the bench through various clauses of the Articles of Association and submitted that the shareholder agreement along with the Article of Association of the company, would lead to a conclusion that "Shri Saroj Kumar Poddar" was managing "substantially the whole affair" of the company. He submitted that the chairman and the director appointed in terms of the "SHA" by the assessee, cannot be considered to be the non executive directors of the company. He drew the attention of the bench to the annual reports, and submitted that the Chairman has reported on the performance of the company year after year and hence it would be wrong to conclude that he was not managing "substantially the whole of the affairs" of the company. He

argued that the bench should draw any inference from the SHA and Articles of Association. He submitted that the assessee is a “key management personnel” of the company GI and that he has given up those rights by way of Termination Agreement and Severance Agreement, for a price.

He referred to the following decisions in support of his contention that the assessee is a key management personnel:-

- a) Ramchandiram Mirchandani vs The India United Mills AIR 1962 Bom 92
- b) CIT Kerala vs M/s Alagappa Textile (Cochin )Ltd. (1980) 1 SC 214 ;
- c) R.B.Seth Multanimal and Sons vs CIT, U.P. AIR 1953 All 31.

We would refer to these case law if necessary.

29. He submitted that the term “Income “ under the Act is a inclusive definition and that this section deems every receipt to be income and if the assessee seeks to claim that a particular receipt is not income, the burden is on the assessee to prove its claim that a particular receipt is not income. He relied on the order of the AO for his arguments that the amount is taxable u/s 28(ii) of the Act and alternatively and without prejudice that the amount in question can be taxed under the head ‘Capital gains’ u/s 45 of the Act.

30. On query from the Bench the Id. Special Counsel submitted that the ITAT being the final fact finding authority, has the power to initiate enquiry and arrive at the truth of the matter and argued that this bench of the ITAT can go into the issue of taxability of the above receipt under the head “income from business or profession” as well as under the head “capital gains”, as the AO has concluded that the amount in question is taxable.

31. Heard rival contentions and on careful consideration of the facts and circumstances and on perusal of the papers on record and the orders of the authorities as well as the case laws we hold as follows :-

The first issue that has to be considered is whether the ITAT can examine the issue whether the receipt in question is taxable u/s 28(ii)(a) of the Act or alternatively

u/s 45 of the Act or under any other section of the Act either considered or not considered by the Id. Assessing Officer, when the Assessing Officer has based his assessment ultimately on Section 56(2)(vii) of the Act under the facts and circumstances of this case.

32. The AO in this case has examined various provisions of the Act under which he was of the opinion that the receipt in question is taxable. He sought to protect the interest of revenue and to assess the receipt in question under the head “income from business “ as well as under the head “income from capital gains”. After holding that the receipt in question is taxable under those heads, he ultimately held that the receipt is taxable under the head “income from other sources” for the reasons as given in his order. The law, in our view, does not place limitations as to the manner in which the AO proposed to tax particular receipt. To protect the interest of revenue, in our view, it is open for the assessing officer to bring to tax receipt under various sections when he is in doubt. Alternative/Multiple reasoning by the assessing authority while arriving at a conclusion that the receipt in taxable is permissible.

The Hon’ble Supreme Court in the case of Lalji Haridas vs I.T.O. and Anr. 43 ITR 387 (SC) on the issue of Protective assessment held as follows :-

*“ In cases where it appears to the income-tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant income-tax authorities to determine the said question by taking appropriate proceedings both against A and B. That being so, we do not think that Mr. Nambiar would be justified in resisting the enquiry which is proposed to be held by respondent No. 1 in pursuance of the impugned notice issued by him against the appellant. Under these circumstances we do not propose to deal with the point of law sought to be raised by Mr. Nambiar.*

In the case of *CIT vs. Ram Chand Tilli Works (2013) [2013] 35 taxmann.com 80 (Allahabad)*, it was held as follows:-

*“If the Assessing Officer has doubt about the genuineness and veracity of the claim made by the person, who has filed the return in that event he will be well within his rights to make a protective assessment. We may mention here that in the case of doubt or ambiguity about real entity in whose hands a particular income is to be assessed the Assessing Authority is entitled to have recourse to make a protective assessment. That being the position we are of the considered opinion that the Tribunal was not justified in holding that in the absence of the*

*real owner and as the Assessing Officer was not aware as to who is the real owner of the income a protective assessment should not have been made and instead a substantive assessment has to be made.”*

No doubt these case law refer to circumstances where, the Assessing Officer could not decide as to in whose hands the income is to be assessed. In our opinion the intention of the Courts and the propositions laid down in this line of cases would extend to this situation when the Assessing Officer is unsure as to which section could be applicable to a particular fact or situation or if he is of the opinion that the facts would warrant and attract multiple sections separately or jointly. This law was laid down by Courts to prevent tax evasion and to protect the interest of the revenue. Hence we are unable to persuade ourselves to accept the contentions of the Id. Counsel for the assessee that such alternate reasoning cannot be gone into. Hence, in our view we can examine the taxability of the receipt both u/s 28(ii)(a) and Section 45 of the Act.

33. Even otherwise, on the issue as to whether the Tribunal has power to examine the taxability of the receipt in question under Section 28(ii)(a) and Section 45 fo the Act, we find that the powers of the Tribunal have been considered by both the Hon’ble Delhi High Court as well as by the Hon’ble Karnataka High Court.

34. The Hon’ble Karnataka High Court in the case of M/s Fidelity Business Services in ITA No.512 of 2017 judgment dated 23.07.2018 as at paras 59 to 67 held as follows :

*“59. Thus on the analysis of the provisions of the Act and the case laws discussed above, we are of the clear and considered opinion that the directions of the learned Tribunal in para 7 for holding an inquiry into the matter by the Assessing Authority into the aspect of fair market price of the shares bought back by the Assessee from its major share holding Mauritius Holding Company is not beyond the jurisdiction of the learned Tribunal and the said remand direction of the Tribunal to hold such an enquiry not only falls within the ambit and scope of the "subject matter" of the appeal filed by the Assessee by which he claimed that the remittance by the Assessee Company to its Mauritius Holding Company could not be taxed as dividend, forgetting the aspects relating to Clause (e) of [Section 2\(22\)](#) of the Act and therefore the said directions were within the subject matter or the issues raised by the Assessee and making a direction to hold an enquiry into the aspect of fair market value of shares cannot be said to be beyond the subject matter of the appeal. The said directions cannot be said to be per se amounting to taxability of the said pay-*

out by the Appellant Assessee as 'Dividend' but the same would depend upon the nature of enquiry to be conducted by the Assessing Authority and findings arrived at in pursuance of the said direction. The power to remand including for conducting an enquiry in the aspect of the matter which was not earlier adjudicated upon by the lower Authorities, cannot, in our considered opinion, be questioned by the Assessee or the Revenue.

60. The words "as it thinks fit" employed in [Section 254](#) of the Act is only bound by the requirement of giving an opportunity of being heard to the parties to the appeal.

61. [Section 254\(1\)](#) of the Act clearly stipulates that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such Orders thereon as it thinks fit. The emphasis on the word 'thereon' sought to be placed by the learned counsel for the Assessee, Mr. Pardiwala on the basis of case laws relied upon by him as against the words 'as it thinks fit' is slightly misplaced. The emphasis while analyzing the powers of the Tribunal should be on the words 'as it thinks fit' rather than on the word 'thereon'. The word 'thereon' only relates to the 'subject matter' of the appeal in first part of the Sub-section (1) and therefore while the Tribunal is dealing with the subject matter of the appeal, it can pass any such relevant Order as it thinks fit, which would be rational, germane, reasonable, appropriate, necessary and expedient in the opinion of the learned Tribunal subject to the requirement that it gives an opportunity of hearing to both the parties to the appeal, viz., the Assessee and the Revenue. Neither the powers are restricted nor the power to allow the fresh and new ground to be raised before it is restricted nor the powers to enhance an assessment or tax liability or reduce the tax especially enumerated in the Proviso to Sub-section (2) of [Section 254](#) of the Act also is restricted.

62. The powers under [Section 254](#) of the Act with the Tribunal to pass such Orders 'as it thinks fit' cannot be lesser than the powers conferred upon the lower and first Appellate Authority, viz., the Commissioner of Income Tax (Appeals) who under [Section 251\(1\)\(a\)](#) of the Act has power to dispose of an appeal against the Order of assessment and he may confirm or reduce or enhance or annul the assessment. The higher and final Appellate Authority under the Act cannot be intended by the Parliament to have lesser power than the first Appellate Authority as is well settled that the powers of the Appellate Authorities are always co-extensive with that of the Assessing Authority and therefore what the Assessing Authority or the first Appellate Authority could do in the matter of assessment, the Tribunal cannot be said to have any lesser power to do so.

63. [Section 254](#) of the Act, in our opinion, does not have any narrower scope to put fetters on the powers of the Tribunal as is sought to be canvassed before us that the Tribunal could not have exceeded the grounds raised before it by the Appellant Assessee. The Appellant may be either Assessee or Revenue before the Tribunal and the Tribunal has also powers to allow fresh ground of appeal or allow the other party to the appeal to file its cross objections and even suo motu pass appropriate Orders 'thereon' and therefore the words 'as it thinks fit' in our opinion, confer wide powers upon the Income Tax Appellate Tribunal to pass such Orders on the subject

*matter of appeal 'as it thinks fit' whether the issue is raised by either party to the appeal or not. The Tribunal is not bound to decide the appeal in a particular or narrower manner or limited to the grounds raised in the appeal before it. The confines or boundary limit is only "subject matter" of the appeal.*

*64. The powers of the Tribunal are not limited or circumscribed by the grounds raised before it and any order on the subject matter of appeal can be passed if it is found to be necessary, expedient and relevant by the learned Tribunal.*

*65. Truth being the cherished ideal and ethos of India, pursuit of Truth should be the guiding star of the entire justice system. For justice to be done, truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system. Concern for and duty to seek the Truth should not become the limited concern of the Courts or Tribunals and adjudicating Authorities but should percolate down in other Executive wings of the State as well.*

*66. 'Truth' has a strange but a firm character of finding its way and coming out and revealing itself even though embedded at the bottoms of time periods and piles of papers bound through the chain of litigation in the Courts of law but the quest for truth should not get bogged-down merely because a long period has lapsed.*

*67. The ultimate object of providing the multiple Tiers of appellate forums and mechanism in the Income Tax law and then further providing for remedies by way of Appeals before the Constitutional Courts on the substantial questions of law is nothing but to allow the quest for Truth to be taken to its logical end."*

35. Similarly the Hon'ble Delhi High Court in the case of CIT vs Jansampark Advertising & Marketing (P)Ltd. (2015 56 Taxmann.com 286 (Delhi) held as follows :

*"42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld."*

36. Applying the proposition of law laid down in this case, to the facts of the present case, we are of the considered opinion that we have the power to examine the action of the Assessing Officer in holding that, the receipt in question can also be brought to tax u/s 28(ii)(a) of the Act and u/s 45 of the Act. There is no bar under the statute to the powers of the Tribunal to remand the matter back to the file of the Assessing Officer or to the file of the Id. CIT(A) with or without directions.

36.1. With these observations, we now examine the applicability of Section 28(ii)(a) of the Act. The Id. CIT(A), in this case has not adjudicated the various contentions raised by the assessee. In our view he has not applied his mind to the issues on hand nor considered the law on the matter and has in a summary and cryptic manner dismissed the appeal of the assessee.

What is clear from the facts of this case is that, the assessee along with his group has valuable rights pertaining to the management of the company ISP. These rights are :-

- a) The assessee shall be the Chairman of ISP and in the event of his death or disability, only a surviving member of the assessee's family would be named as Chairman of the company, subject to consultation with Gillette.
- b) The managing director shall be nominated only after consultation with the assessee.
- c) The assessee shall be inducted as Director through direct nomination by Sonali.
- d) The managing director will in a timely manner consult the chairman on all matters to be placed before the Board and on other important decisions including those of policies and principles.
- e) The assessee, as Chairman, shall retain the same rights and privileges as he held on the date of share holder agreement (These rights and privileges may have to be specified)
- f) Gillette and the assessee would determine involvement of the assessee in planning process, business reviews, investor relationships etc. as per

terms to be agreed in writing. (These agreements may have to be examined)

36.2. The above mentioned rights and privileges are valuable rights in management of ISP. It is nowhere stated that these rights are a source of income of the assessee and the termination of these rights have resulted in extinguishment or termination or impairment of source of income. These valuable rights in management were relinquished by the assessee and its group to P & G Group for a negotiated consideration/payment of Rs.200 Crores. These rights of the assessee and its Group got extinguished contractually. The agreements and amendments to the articles of association led to the cessation of all special rights in the management of GI, held by the assessee and its Group. Right from the year 1996, till the time of termination of these special rights referred above, the assessee and its group had enjoyed important rights which had some substance in management and control of the company ISP, pursuant to the share holders agreement of 1996.

37. As already stated that the severance compensation for termination of special rights enjoyed by the assessee and Poddar Group in GI was a negotiated amount arrived between the parties. This is not a case of *ex-gratia* payment or windfall much less a casual payment. The payment in question is definitely for extinguishment of special rights, in addition to termination of the significant control and say of the assessee and its group in the affairs of the management of GI.

In our view, the Id. CIT(A) should have examined whether such extinguishment of rights in management falls within the ambit of taxability under the head capital gains i.e. Section 45 of the Act. This is not done. Even the arguments of the assessee that the receipt in question is not taxable u/s 28(ii) of the Act, has not been dealt by the Id. CIT(A). The finding of the Assessing Officer is that, the assessee manages substantially the whole of the affairs of GI. The Id. Counsel for the assessee argues that the rights that the non-executive Chairman has, does not tantamount to managing the whole of the affairs of the Indian company or substantially the whole of the affairs of the Indian company.

37.1. The term “substantially” has not been defined u/s 28 of the Act. We find the term “substantially” in Section 2(22)(e), Section 40(A)(2)(iv)/(v)/(vi) and in explanation to Section 73 of the Act.

The term “substantial” as per the Oxford Large Print Dictionary means “of considerable amount, intensity or validity.”

In Cambridge Dictionary (online) “Substantial” large in size, value, or importance

Collins Dictionary defines “Substantial” as large in amount or degree.

It is not the case of the Assessing Officer that the assessee is managing the whole of the affairs of GI. It is his case that the assessee has a significant role which is of some substance or worth in the affairs of the company because of his special rights by virtue of the share holder agreement and hence it is a case where the assessee is managing substantially the whole of the affairs of the Indian company. This aspect has to be examined by the Id. CIT(A).

37.2. We are of the considered view that, to come to an appropriate conclusion on the matter, further enquiries may have to be conducted with P&G Group as well as with the assessee, as to why the assessee was only paid the entire severance compensation of Rs.200 Crores. The assessee submitted in the written arguments that he is exclusively paid this compensation and no other person in the group has any right for the compensation. The facts thrown up during the course of negotiations between the groups may throw light on this issue. It has also to be brought on record as to what were the existing rights and privileges of the assessee, as on the date of entering into the share holder agreement which were retained by him till the date of termination of these rights.

38. As the Id. CIT(A), as passed a cryptic order, we set aside this issue to the file Id. CIT(A), for fresh adjudication, in accordance with law after giving the assessee adequate opportunity of being heard. While doing so, the Id. CIT(A) may, if he thinks

for or necessary call for a remand report, so as to bring all the facts of the issue on record.

The Id. CIT(A) shall, adjudicate the matter *de-novo*, in accordance with law, uninfluenced by the observations and statements made by us in this order.

39. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 16.11.2018**

**Sd/-**  
[S.S.Godara]  
Judicial Member  
Dated :  
[SC Sr.PS]

**Sd/-**  
[ J.Sudhakar Reddy ]  
Accountant Member

Copy of the order forwarded to:

1. Shri Saroj Kumar Poddar, Hongkong House, 31, B.B.D.Bag (South), Kolkata-700001.
2. D.C.I.T., Circle-6(1), Kolkata.
3. C.I.T.(A)- 2, Kolkata      4. C.I.T-2, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Assistant Registrar  
ITAT Kolkata Benches