

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 191/DEL/2019 (A.Y 2014-15)

Glebe Trading Pvt. Ltd. 28, Shivaji Marg, Ramesh Nagar, Najafgarh Road, New Delhi AAECG0208K (APPELLANT)	Vs	ITO Ward-10(2) C. R. Building New Delhi (RESPONDENT)
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Appellant by	Sh. Vinod Kumar Bindal, CA, Ms. Sweethy Kothary, CA, Ms. Rinky Sharma, ITP
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	02.03.2020
Date of Pronouncement	12.05.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 24/09/2018 passed by CIT(A)-35, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

“1. That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in dismissing the appeal filed by the assessee and failing to adjudicate the grounds raised by the assessee, challenging the extraneous and extra-jurisdictional findings/observations of the Assessing Officer in the assessment order.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the following observations/findings in the assessment order were in total disregard of appellant's factual and legal submissions, were erroneous, extraneous, unsubstantiated, false, baseless and founded on conjectures and surmises, and therefore ought to have been set aside by the Ld.CIT(A).

2.1. That the assessing officer erred in holding that shares of listed companies received by the appellant company as gift without consideration, as part of internal family realignment amongst members of the family, could not be regarded as valid "gift", and further grossly erred in alleging the same to be sham and colorable transactions, without any cogent reasons. That the assessing officer ought to have appreciated that the gift was given in compliance with necessary statutory provisions, after obtaining necessary authorizations and after following the due process under the law.

2.2 That the assessing officer, despite making no addition in the hands of the Appellant, exceeded his jurisdiction in alleging that benefit arose to the Appellant through receipt of shares from various companies and holding the same to be taxable under section 2(24)(iv) of the Income Tax Act, 1961 ("the Act") in the hands of Mrs. Arti Jindal alleged to be the beneficiary, by lifting the corporate veil, without providing any cogent reasons, and without appreciating that the alleged beneficiary never obtained any benefit from this transaction at any time.

2.3. That the assessing officer erred in holding that the transaction of gift of shares held by Mrs. Arti Jindal in the Appellant company to M/s PRJ Holding Private Trust was not valid and was a sham and void transaction which was undertaken to avoid tax.

3. That on the facts and circumstances of the case and in law, Ld. CIT(A) ought to have appreciated that the findings in the assessment order

pertaining to taxation of alleged benefit in the hands of the alleged beneficiary under section 2(24)(iv) of the Act, besides being beyond jurisdiction, are capricious and violative of principles of natural justice and fair play.

3. The assessee is an investment company. Return of income was electronically filed on 29/09/2014 declaring total income of Rs. 2,75,836/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee company has claimed to receive shares of various companies from various companies as gift without paying any consideration. The details of which are as under:-

S. NO.	Donor	No. of Shares	Name of the companies whose equity shares has been gifted
1	M/s JSW Inv. Pvt. Ltd.	17,15,793/-	M/s JSW Steel Ltd.
2	-do-	14,53,32,820/-	M/s JSW Energy Ltd.
3	M/s Gagan Infra engery Ltd.	1,76,94,108/-	M/s Jindal & Steel Power Ltd.
4	M/s Groovy Trading Pvt. Ltd.	1,22,306/-	M/s Nalwa Sons Inv. Ltd.
5	-do-	4,35,511/-	M/s JSW Holdings Ltd.

The Assessing Officer further observed that the financials filed by the assessee company clearly shows that Smt. Arti Jindal was holding 99.9% shares of the assessee company. However, during the Financial Year 2013-14 relating to the Assessment Year 2014-15, 99.6% of shares holding of M/s Glebe Trading was transferred to M/s P R J Holdings Private Trust as gift. The Assessing Officer made addition of Rs. 1593,19,34,79/- in the hands of the beneficiary within the provisions of Section 2(24) (iv) of the Income Tax Act, 1961. There is no addition made in the hands of the assessee company.

4. The assessee filed appeal before the CIT(A) raising therein the following grounds:-

1. That on the facts and circumstances of the case and in law, the assessing officer erred in holding that shares received by the appellant as gift without consideration, as part of internal family realignment amongst members of the family of late Sh. O.P. Jindal, could not be regarded as valid gift.

1.1. That the assessing officer erred in facts and in law in leveling various false/bald/baseless allegations, including holding the transaction of receipt of shares to be sham.

1.2 That the assessing officer erred on facts and in law in making/returning the aforesaid extraneous observations/findings, despite accepting that the transaction of receipt of shares as gift does not result in any tax incidence in the hands of the appellant.

1.3. That the assessing officer exceeded his jurisdiction in observing that the transaction of receipt of shares, was taxable in the hands of the beneficiary under section 2(24)(iv) of the income tax Act, 1961 (the Act).”

The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that there is a delay of 18 days in the present appeal and applications seeking condonation of delay is filed by the assessee.

6. The Ld. DR did not object to the application of condonation of delay.

7. We have heard both the parties and perused the material available on record. The delay in filing the present appeal is explained by the assessee through affidavit filed by the Director of the assessee company. The delay is genuine. Therefore, we are condoning the delay and hearing the appeal on merit.

8. As regards Ground No.1, the Ld. AR submitted that the CIT(A) failed to adjudicate the grounds raised by the assessee, challenging the extraneous and extra-jurisdictional findings/observations of the Assessing Officer in the assessment order. The Ld. AR further submitted that the Assessing Officer failed to appreciate that the shares of listed companies received by the assessee company as gift without consideration, as part of internal family realignment amongst members of the family, could not be regarded as valid "gift", and further grossly erred in alleging the same to be sham and colorable transactions, without any cogent reasons. The Ld. AR further submitted that the assessing officer ought to have appreciated that the gift was given in compliance with necessary statutory provisions, after obtaining necessary authorizations and after following the due process under the law. The Ld. AR submitted that the assessing officer, despite making no addition in the hands of the assessee, exceeded his jurisdiction in alleging that benefit arose to the assessee through receipt of shares from various companies and holding the same to be taxable under section 2(24)(iv) of the Income Tax Act, 1961 ("the Act") in the hands of Mrs. Arti Jindal alleged to be the beneficiary, by lifting the corporate veil, without providing any cogent reasons, and without appreciating that the alleged beneficiary never obtained any benefit from this transaction at any time. The Ld. AR submitted that the assessing officer erred in holding that the transaction of gift of shares held by Mrs. Arti Jindal in the assessee

company to M/s PRJ Holding Private Trust was not valid and was a sham and void transaction which was undertaken to avoid tax. The Ld. AR submitted that the findings in the assessment order pertaining to taxation of alleged benefit in the hands of the alleged beneficiary under section 2(24)(iv) of the Act, besides being beyond jurisdiction, are capricious and violative of principles of natural justice and fair play. The Ld. AR further submitted that it is a family arrangement and internal family realignment amongst the members of the family of Late Shri O.P. Jindal and cannot be taken as gift. The Ld. AR submitted the MOU for realignment of equity share holdings dated 12/11/2012. The Ld. AR further pointed out the extract of the resolution passed at the meeting of the Board of Directors held on 18th March, 2014 thereby giving the approval for the acceptance of the gift of equity shares from J S W Investment Pvt. Ltd., Gagan Infra Energy Pvt. Ltd and Groovy Trading Pvt. Ltd. The name of the company whose shares are gifted are J S W Steel Ltd and J S W Energy Ltd as well as Nalwa Sons Investment Ltd, J S W Holdings Ltd.

9. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

10. We have heard both the parties and perused the material available on record. It is pertinent to note here that the Assessing Officer did not make any addition in the hands of the assessee but held that benefit arose to the assessee through receipt of shares from various companies and holding the same to be taxable under section 2(24)(iv) of the Income Tax Act, 1961 in the hands of Mrs. Arti Jindal as the beneficiary. Firstly we will look into Section 2(24)(iv) which is as follows:

2(24) "income" includes –

.....

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

.....”

The words benefit and perquisite are used in this clause of sub-section (24) to Section 2. Whether gifting shares amounts any benefit or perquisite has to be looked into. In the present case at one point the Assessing Officer has stated that there is benefit to assessee company but at the same time states that the transaction of gift of shares held by Mrs. Arti Jindal in the assessee company to M/s PRJ Holding Private Trust was not valid and was a sham and void transaction which was undertaken to avoid tax. But from the MOU submitted by the assessee company it can be clearly seen that it a family arrangement and internal family realignment amongst the members of the family of Late Shri O.P. Jindal and cannot be taken as gift. The chart reproduced in para 3 hereinabove from the Assessment Order clearly shows that it is not a gift but a family arrangement and these kind of family arrangement cannot be termed as gift/benefit or perquisite. The Assessing Officer by lifting the corporate veil, without providing any cogent reasons, and without appreciating that the beneficiary never obtained any benefit from this transaction at any time cannot comment on the said transaction as sham and bogus. Thus, the observations made by the Assessing Officer in the present assessment order are without any jurisdiction. In fact, the Assessing Officer overstepped the provisions of the Income Tax Act wherein the Assessment is nil in the case of present Assessee company and commented on the third party assessee which is not permissible under the Act. Thus, Ground No. 1 of the assessee's appeal is allowed. As

relates to other grounds, the same are consequential to Ground No. 1, hence are allowed. The appeal of the assessee is allowed.

11. In result, appeal of the assessee is allowed.

Order pronounced on this 12th Day of May, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 12/05/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.03.2020
Date on which the typed draft is placed before the dictating Member	03.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	13.05.2020
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	