

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH  
(Conducted Through Virtual Court)  
Before: **Shri Amarjit Singh, Accountant Member**  
And **Ms. Madhumita Roy, Judicial Member**

**ITA No. 2336/Ahd/2017**  
**Assessment Year 2014-15**

M/s. Aquagel Promoters Group Share Holders Trust, 147, GIDC Estate, Vartej, Bhavnagar PAN: AADTA7358N (Appellant)	Vs	The ITO, Ward-2(3), Bhavnagar (Respondent)
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**Revenue by: Shri L.P. Jain, Sr. D.R.**  
**Assessee by: Shri Tushar Hemani, Sr. A.R. with  
Shri P.B. Parmar, A.R.**

Date of hearing : 29-07-2021  
Date of pronouncement : 30-07-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A)-6, Ahmedabad dated 24-08-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The solitary ground of appeal of the assessee is directed against the order of Id. CIT(A)-6, Ahmedabad in confirming the action of the Assessing

Officer in making an addition of Rs. 9,66,170/- by holding that the share of the beneficiaries is taxable in the hands of the assessee trust.

3. The fact in brief is that the assessee has filed return of income declaring total income at Rs. nil on 11 Sep, 2015. The case was subject to scrutiny assessment and notice u/s. 143(2) of the Act was issued on 2<sup>nd</sup> August, 2016. During the course assessment, the Assessing Officer noticed that assessee is an association of persons and as per the disclosures made in the note to computation of income filed by the assessee, income earned by the assessee shall be charged to tax in the hands of the beneficiaries. During the year, the assessee trust earned interest out of its saving bank deposits and fixed deposits of Rs. 6,81,000/- and Rs. 1,27,18,381/- and same was distributed among the beneficiaries. The Assessing Officer has noticed on making verification u/s. 133(6) that five beneficiaries have refused to receive the share out of the aforesaid income from the trust. The detail of such income shown by the assessee trust as distributed to the five beneficiaries were namely Bharat P. Raut Rs. 6,25,700/-, Bharat Raut HUF Rs. 2,08,122/-, Vidya R. Raut Rs. 3,78,889/-, Manas Raut Rs. 11,76,103/- and Ms. J.P. Raut Rs. 1,65,430/-. The Assessing Officer has held that since the above five beneficiaries have not disclosed the share aggregating to Rs. 15,59,245/- in their return of income, therefore, the same is taxable in the case of the trust only.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee holding that the beneficiaries had not disclosed the same in their books of account and return

of income, therefore, stated that interest income of Rs. 15,54,245/- was income from other sources and taxable in the hands of the assessee trust.

5. During the course of appellate proceedings before us, at the outset the ld. counsel has submitted the copy of order of ITAT vide ITA Nos. 1348/Ahd/2017 & 553/Ahd/2018 dated 02-06-2020 of the Co-ordinate Bench of the ITAT in the case of the assessee itself wherein the similar issue on identical facts was decided in favour of the assessee. The ld. Departmental Representative could not controvert this undisputed fact that similar issue on identical facts has been adjudicated by the Co-ordinate bench of the ITAT in favour of the assessee.

6. Heard both the sides and perused the material on record. The assessee is a special purpose trust created for the benefit of its beneficiaries and there were 38 members who were having definite shares as beneficiaries in the trust. During the course of assessment proceedings, the assessee has submitted that the shares of the persons who are entitled to are determinate and known and the recipients are only to be subjected to tax. It is also submitted that the trust in fact is only escrow mechanism in the form of specific trust created for the purposes. It is also submitted that assessee was liable to distribute such income to its beneficiaries which was claimed as expense by the assessee. With the assistance of the ld. representatives, we have gone through the decision of Co-ordinate Bench of the ITAT in the case of the assessee itself pertaining to Assessment year 2013-14 and 2015-16 vide ITA Nos. ITA Nos. 1348/Ahd/2017 & 553/Ahd/2018 dated 02-06-2020. The relevant part of the decision is reproduced as under:-

"13. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case are not in dispute which has been elaborated discussed in the preceding paragraph. Therefore we are not inclined to repeat the same for the sake of brevity and convenience. Admittedly, the assessee is a private trust comprising of 38 members as beneficiaries having definite shares and its income is available only to the beneficiaries. The assessee distributed its income among the beneficiaries in their agreed shares as provided in the deed of trust. Accordingly, the taxes on the income of the trust have been paid by the beneficiaries in their respective share.

14. However, some of the beneficiaries denied to have accepted their share of income from the trust. There is no dispute to the fact that the assessee has not made the payment to such beneficiaries but admittedly the assessee has accounted for their share in the books of accounts which was shown as payable to them. As such the payment was not made by the assessee due to some dispute. As the payment was not made by the trust to the beneficiaries amounting to Rs. 15,54,245/- the AO treated such amount as income of the assessee which was subsequently confirmed by the learned CIT (A).

15. However, in our considered view the revenue has taken contradictory stand by taxing the share of beneficiaries who have not claimed in the hands of the trust and allowing the deduction to the trust for the amount of share of the beneficiaries who have accepted the same. In our humble understanding, the revenue cannot pick and choose certain amount representing the share of the beneficiary's and tax in the hands of the trust and simultaneously not charging the tax in the hands of the trust with respect of majority of the beneficiaries as discussed above.

16. The provisions of section 160(1)(iv) provides that the trustees of the trust having valid instrument shall be chargeable to tax in the capacity of representative assessee.

17. The provisions of section 164(1) further provides that the income of the trust shall chargeable to tax at the maximum marginal rate in a case where shares of the beneficiaries are indeterminate or unknown. Conversely, if the shares of the beneficiaries are determinate or known then the maximum marginal rate will not be applicable. Thus it is transpired that in such a situation the tax can be levied in the hands of the beneficiaries. In holding so we draw support and guidance from the order of Tribunal in the case of TVS Investments Fund versus ITO reported in 81 taxmann.com 296 wherein it was held as under:

**5.2** Section 164 of the IT Act reads as "Charge of tax where share of beneficiaries unknown" lays down the conditions to give "pass through" status to a Trust. As per Explanation 1 to the section, the trust shall be considered to be a 'determinate trust', if it fulfils two conditions:

- (i) name of the beneficiaries are specified in the trust; and
- (ii) the individual share of the beneficiaries are ascertainable on the date of the trust.

Therefore, it is essential that the Deed of Trust itself specifies the category of the Beneficiaries therein and prescribes the methodology for determination of share of each Beneficiary; such trust shall be a determinate trust.

**5.3** As per section 164(1), if the trust does not satisfy the above test of determinacy, then the income of trust would be chargeable to Maximum Marginal

*Rate (MMR), subject to certain exceptions as laid down in the section. However, if the trust satisfies the test, then the trust will be treated as "pass through" conduit subject to the provisions of section 160 of the IT Act. By virtue of section 160 of the IT Act, the ITD has an option to assess the tax in the hands of the beneficiary or in the hands of the trustee, as the case may be. Section 160 lays down the meaning of representative assessee who shall be deemed to be an assessee for the purposes of the IT Act. Section 160(1)(iv) states that trustee(s) appointed under a trust will be treated as representative assessee, in respect of income received or income which the trustee is entitled to receive on behalf of any of the beneficiaries under a trust.*

**5.4** *Further, section 161 read with section 160(1)(iv) of the IT Act, a trustee of a trust is treated as a representative assessee, and the representative assessee is liable to pay tax on the income in respect of which he is a representative assessee, "in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him".*

**5.5** *For getting a "pass through" treatment, the trust should be a determinate and non-discretionary trust. In order to form a determinate trust, the beneficiaries should be known and the individual share of those beneficiaries should be ascertainable as on the date of trust deed. But in the case under consideration the beneficiaries are not incorporated in the Trust deed. The investment manager gathers the funds from the contributors and the benefit is passed on to the contributors based on their proportion of investments in the assessee Trust. The exception to this rule, and providing "pass through" status to a Trust, even though the contributing beneficiaries are not mentioned in the Deed of Trust, is only extended to AIF (VCF) which are Registered with SEBI and eligible for exemption under section 10(23FB) r.w.s. 115U of the Act.*

18. *In view of the above, we hold that the assessee being a trust in the present case cannot be chargeable to tax merely on the ground that the beneficiaries have not claimed their amount of share from the trust. As such the assessee in its books accounts has made the provisions for the amount payable to beneficiaries as per the mercantile system of accounting. The entries shown in the books of accounts have not been doubted by the authorities below. Accordingly we are not convinced with the finding of the authorities below. Hence we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is allowed."*

It is noticed that same group of beneficiaries comprising of five members have also not claimed their share of income on account of similar dispute with the assessee trust as was in the earlier assessment year 2013-14 and 2015-16. The Co-ordinate Bench held that revenue cannot pick and choose certain amounts representing the share of the beneficiaries and tax in the hands of the assessee and simultaneously not charging the tax in the hands of the assessee with respect to majority of the beneficiaries. The facts of the

case and issue involved in the present appeal are identical to the assessment year 2013-14 and 2015-16, therefore, respectfully following the decision of the Co-ordinate Bench of the ITAT as supra, on similar issue and identical facts, this ground of appeal of the assessee is allowed.

7. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 30-07-2021

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 30/07/2021**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद