

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)**

आयकरअपील सं./ I.T.A. No. 7353/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO – 22(1)(6) R. No. 104, 1 st floor Piramal Chambers, Lalbaug, Mumbai-400 012	बनाम/ Vs.	ARCIL AARF-I-1 TRUST 10 th floor, The Ruby 29 Sepapati Bapat Marg, Dadar (W), Mumbai-400 028
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. ACTA-0755-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Brajendra Kumar– Ld. Sr. DR
Assessee by	:	Shri Jitendra Jain – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	02/09/2021
घोषणा की तारीख / Date of Pronouncement	:	15/09/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income-Tax (Appeals)-33, Mumbai [CIT(A)], dated 17/09/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 19/02/2016. The ground read as under: -

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in changing the status of assessee as "Trust" and not AOP and allowing expenses of Rs.6,18,21,763 which was made by the assessee for protection preservation and insurance expenses and management fees from such investment activity upon redemption of the principal amount of Security Receipts(SR)."

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering that assessee is a trust which does not fall within the meaning of section 61 to 63 of the I.T. Act, 1961."
3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering that the assessee trust, setup and functioning in accordance with the mechanism of the SARFAESI Act, 2002 and under guidance of RBI whereas it is clear that trust is a smoke screen and colourable device to evade taxes."
4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering that assessed has carried on business from the contribution of various beneficiaries as per common motive to earn income and hence, it is an AOP."

The Ld. AR, at the outset, submitted that the issue is squarely covered by various judicial pronouncements. The copies of the same have been placed on record. The attention has been drawn to the fact that Ld. CIT(A) has merely followed these decisions. The Ld. DR relied on the order of Ld. AO. However, the legal position as put forward by Ld. AR, remain uncontroverted. No distinction in facts could be pointed out by revenue. In the said background, our adjudication to the appeal would be as given in succeeding paragraphs.

Assessment Proceedings

2.1 The material facts are that the assessee is a Trust created by Asset Reconstruction Company India Ltd. (ARCIL) for the purpose of liquidating / recovering / realizing the non-performing assets. The assessee has been created pursuant to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (SARFAESI Act) and the guidelines of RBI to acquire financial assets of the borrowers classified as non-performing assets (NPAs). ARCIL is registered with RBI under Sec. 3 of SARFAESI Act as a Securitization and Reconstruction Company. ARCIL acts as a trustee of the assessee in pursuance to the provisions of the aforesaid Act and the RBI guidelines. Accordingly, ARCIL acquires stressed financial

assets that are classified as NPAs from the banks / Financial Institutions. The assessee derived income from asset reconstruction activity and handling of NPAs of banks and Financial Institutions. The assessee declared Nil Income in its return of income. The shareholding of the assessee was as under: -

No.	Name of Shareholders	Percentage of equity shares held
1	Assets Reconstruction Company India Ltd.	11.59%
2	Bank of Baroda	4.07%
3	Bank of Maharashtra	0.10%
4	Exim Bank	39.55%
5	HDFC Bank	16.54%
6	HDFC Standard Life Insurance Co. Ltd	0.81%
7	ICICI Bank Ltd,	8.14%
8	ICICI Lombard General Insurance co. Ltd.	1.63%
	Total Shareholding	100%

2.2 During assessment proceedings, Ld. AO called upon the assessee to explain as to on what basis it had claimed its receipts as not liable to tax in its hand. Also, the assessee was directed to put forth an explanation as to why the income/loss derived by it may not be taxed in its hands in the status as that of a trust/AOP.

2.3 In reply, it was explained that ARCIL was a registered entity with RBI to acquire financial assets classified as Non-Performing Assets (NPAs) from banks, financial institutions and housing finance companies operating in India (collectively referred to as banks/FIs). The concerned bank/FI, which intends to transfer the financial assets to ARCIL must ensure that the same are classified as NPA in accordance with the guidelines of RBI in this regard. Accordingly, ARCIL acquires financial assets that are classified as NPAs from the banks/FIs. The stressed

assets are acquired by ARCIL by setting up trusts and formulating schemes there-under pursuant to Section 7 of the SARFAESI Act and RBI Guidelines issued to Securitization Company and Reconstruction Company (SC/RCs). ARCIL declares the trusts and acts as a trustee of the trusts pursuant to provisions of the SARFAESI Act and RBI Guidelines. The trust accepts contributions from Security Receipt holders (SR holders) for acquisition of financial assets. The contributions are raised from qualified Institutional Buyers (QIBs) as defined under SARFAESI Act for which trusts issue Security Receipts (SRs) to QIBs. QIBs include Banks, Financial Institutions, Insurance Companies, SC/RCs, mutual funds, eligible Non Banking Finance Companies (pursuant to RBI Guidelines in this regard) and Foreign Institutional Investors. SRs represent contribution of such QIBs in the trust and are in the nature of undivided right, title and interest in the trust fund (essentially financial assets held in trust) evidenced by the SRs issued to it. Subscription to SRs are governed by the terms and conditions mentioned in the transaction document (trust deed etc.). The contributions of the SR holders are revocable. Therefore the income arising from revocable transfer shall be assessed in the hands of the contributors pursuant to section 61 of the Act. As per Section 61, all income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income tax as the income of the transferor and shall be included in his total income. The term 'revocable transfer' has been defined in Sec.63. On a conjoint reading of all the provisions of section 61 to section 63, it would be evident that in case of revocable transfer of the assets by the transferor, the income is taxed in the hands of the transferor. This is based on the reasoning that if the transferor has

the right to reassume the assets or the income, then it is but natural that income should obviously be taxed in the hands of the transferor. Thus, under these sections, where a transfer of asset (in this case - contribution by the Security Receipt holders) is made, but a power of re-assumption or retransfer of the assets or income is retained by the transferor (i.e. security holders), it is treated as a case of revocable transfer. In such a case, the income is to be assessed in the hands of the transferor i.e. the security receipt holders. Thus, if the trust is a revocable trust, the income is taxable in the hands of the transferor (i.e. SR holders). Hence, there is no income chargeable to tax in the hands of the trust and is taxable entirely in the hands of SR Holders. It was pointed out that the trust deed itself mentions that the SR Holders are entitled to revoke the contribution made by them. The relevant portion of the trust deed was brought to the notice of Ld. AO. On the basis of these submissions, it was submitted by the assessee that the income was to be taxed in the hands of the transferor i.e. in the hands of SR Holders. Further, the assessee was not to be considered as an 'Association of Persons' (AOP).

2.4 However, rejecting the same, Ld. AO opined that the assessee was to be assessed as AOP and not as a Trust. Alternatively, even if the status of the assessee was to be accepted as that of a trust, the same being in the nature of a non-revocable trust would thus not be eligible to avail the benefit of Sec. 61 to 63 of the Income Tax Act, 1961. As regards the claim of the assessee that since the income distributed to the various contributors had been taxed in their hands, taxing the same in the hands of the assessee would lead to double taxation, was rejected by the A.O as being totally baseless. Further, it was observed by the A.O

that as the shares of the beneficiaries were not specified in the trust deed, and were thus indeterminate, therefore, the provisions of Sec. 164(1) of the Act would get attracted and the assessee would be liable to be assessed at the maximum marginal rate which was 30% plus surcharge, if any, and also education cess. Lastly, it was observed by the A.O that the claim of the assessee that there was no inter se arrangement between one contributory/beneficiary and the other contributory/beneficiary as each of them had entered into a separate contribution agreement with the assessee trust which was just a pass through entity, was merely a facade with an ulterior motive to evade taxes. The A.O was of the view that the assessee had merely relied on the 'form' of the transaction and the artificial device created by it to generate income and avoid taxability, while for the 'substance' of the transaction was that the assessee had carried on business from the contributions of various beneficiaries with a common motive to earn income, which proved beyond doubt that in sum and substance the assessee was an AOP. Finally, rejecting assessee's various submissions, the income was determined at Rs.618.21 Lacs.

Appellate Proceedings

3. Upon further appeal, Ld. CIT(A) chose to rely upon its predecessor order in the case of Scheme A1 of ARCIL CPS 002 XI Trust for AY 2013-14. Accordingly, it was held that there was no prohibition in the Trust Act on the settler becoming beneficiary. The assessee was established under SARFAESI Act following guidelines of RBI and therefore, its validity was beyond doubt. Further. Sec. 61 to 63 does not imply that the right of revocation should be without any conditions. The terms of trust deed made it clear that the contributions was revocable and therefore,

the income was to be taxed in the hands of SR holders as per the provisions of Sec. 61 to 63 of the Act. The assessee could not be called an AOP since there was no agreement amongst beneficiaries inter-se. The beneficiaries were mere recipients of income earned by the trust. Therefore, the income was not taxable in hands of the assessee but it was taxable in the hands of the contributors. Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

4. We find that the prime case law being relied upon by Ld. CIT(A) came up in further appeal by revenue before this Tribunal. The coordinate bench, in revenue's appeal ITA No.2293/Mum/2018 order dated 10/09/2020 titled as **CIT V/s Scheme A1 of ARCIL CPS 002 XI Trust**, dismissed the appeal with the findings that the assessee was a valid trust. Since it was revocable Trust, the provisions of Sec. 61 to 63 were applicable and the assessee could not be assessed as AOP. The income was to be taxed in the hands of the SR holders. Since the respective shares were known since inception, it could not be considered as indeterminate Trust. Finally the appeal of the revenue was dismissed.
5. We find that factual matrix is quite identical in present appeal before us. Therefore, respectfully following the same, we confirm the appellate order and dismiss the appeal of the revenue.
6. The appeal stand dismissed.

Order pronounced on 15th September, 2021.

Sd/-
(C. N. Prasad)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 15/09/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.