

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1164/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

ACIT Non-Corporate Circle-15, Chennai.	बनाम/ Vs.	Ms. Anitha Kumaran No.10, Royal Enclave, Besant Avenue, Adyar, Chennai – 600 020.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAFPA-3255-N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri I. Dinesh (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/Revenue by	:	Shri ARV Sreenivasan (Addl.CIT) – Ld. DR

सुनवाई की तारीख/Date of Hearing	:	28-06-2022
घोषणा की तारीख /Date of Pronouncement	:	07-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 30-01-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 25-12-2017. The grounds taken by the Revenue are as under:

1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.
2. The Ld. CIT(A) erred in holding that the property received by the assessee vide Sale deed dated 23-01-2015 between the assessee and M/s Gay Travels Private Limited qualified as property received under a will or by way of inheritance when in

fact the company is a distinct person under the Act.

3. The Ld. CIT(A) erred in not appreciating the fact that once the sale of the property is authorized in the resolution passed by the Company/ board, the transaction between the company and the assessee as two distinct persons would have to be considered de hors the reason for which the board decided to sell the property.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

2. The Revenue has filed additional grounds of appeal, which reads as under:

1. The market value of the impugned property is Rs.6,10,51,500/- as per the Special Deputy Collection (Stamps), Madurai vide D. Dis. No. 266/115/KDNL dated 09-03-2017 and the same must be considered for the purpose of section 56(2)(vii) of the Act.

Since the ground does not require appreciation of new facts, the same is admitted.

3. The Ld. Sr. DR, drawing attention to the grounds of appeal, submitted that a corporate entity was the owner of the asset which was transferred to the assessee and therefore, the provisions of Sec.56(2)(vii) has rightly been applied in the case of the assessee. The Ld. DR pleaded for restoration of assessment framed by the Ld. AO, which has been controverted by Ld. AR. Reliance has been placed by Ld. Sr. DR on various decisions, the copies of which have been placed on record. The Ld. AR submitted that provisions of Sec. 56(2)(vii) of the Act would not apply to the facts and circumstances of the case. Reliance has been placed on the decision of this Tribunal in **SKM Shree Shivkumar vs. ACIT in ITA No.2278/Mds/2012 & 1965/Mds/2011 dated 17-07-2014**, a copy of which has been placed on record. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

Assessment Proceedings

4.1 The assessee being resident individual admitted income of Rs.763.95 Lacs which was subjected to scrutiny u/s. 143(3) of the Act. It transpired that the assessee purchased land measuring 64,687 sq. ft. along with residential house building thereon having a plinth area of 950 sq. ft. and common passage measuring 2026 sq. ft. and 4748 sq. ft. situated at Old Survey No.64-part at Convent Road, Kodaikanal Town and Taluk, Dindigul district for a consideration of Rs.10 Lacs vide registered sale deed dated 23-01-2015 executed by M/s. Gay Travels Pvt. Ltd. (GTPL). However, the stamp duty value as determined by registration authority was Rs.445 Lacs. Accordingly, Ld. AO held that the provisions of Sec.56(2)(vii) would apply which provide that in case any immovable property is received by an individual or HUF for a consideration which is less than the stamp duty value, the differential would be treated as 'income from other sources'.

4.2 The assessee pointed out that this clause would not apply in case the property was acquired under a will or by way of inheritance. It transpired that the property was held in the name of GTPL. The assessee's father Dr. B. Sivanthi Adityan expired on 19.04.2013 after which the family members decided to settle their family properties. The Ld. AO held that a corporate entity could not part with the property under a will or an individual could not acquire the property by way of inheritance. GTPL was an artificial juridical person and therefore, the assessee's submissions were rejected. Finally, the differential of the two i.e., Rs.435 Lacs was added to the income of the assessee.

Appellate Proceedings

5. Assessee's Arguments

5.1 During appellate proceedings, the assessee submitted that GTPL was a family-owned entity and 95% of its shareholding was held by assessee's father whereas remaining 5% was held by assessee's brother Shri S. Balasubramaniun. M/s GTPL was stated to be promoted by the founder (assessee's father). As Karta of his family, Dr. B. Sivanthi Adityan invested in various properties and business ventures. The investments include investment in closely held companies including GTPL and the said investments were done in his name and in the names of the family members since the entire investments were from joint family funds. The same was clear from the terms of the Deed of Declaration-cum-undertaking as executed by assessee's brother Shri S. Balasubramaniun on 09-12-2013 upon demise of Dr. B. Sivanthi Adityan on 19-04-2013.

5.2 It was further submitted that Dr. B. Sivanthi Adityan conveyed his oral will to the brother to settle the family properties. Dr. B. Sivanthi Adityan expired on 19-04-2013. As per his last wish, it was decided by the legal heirs to partition and settle the properties held by late Dr. B. Sivanthi Adityan. Accordingly, deed of declaration-cum-undertaking was executed wherein it was agreed that the properties in companies will be transferred in the name of the legal heirs through separate deeds. Accordingly, sale deed was executed in the name of assessee since the property was held in the name of GTPL since the settlement of the property by the company was not permitted by the statutes.

5.2 Reliance was placed on the decision of Hon'ble Supreme Court in the case **Tek Bahadur Bhujil V/s Devasingh Bhujil AIR 1966 SC 292**

wherein it was held that family arrangement could be arrived at orally and its terms may be recorded in writing subsequently as memorandum of what has been agreed upon between the parties at an early date and such a document do not require registration.

5.3 It was further submitted that a family settlement was nothing but an arrangement or an understanding between the members which resolves the family disputes and the rival claims of the members of the family are settled provided the settlement was bona-fide and fair in the allotment of properties amongst the members of the family. Settlement of bona-fide disputes, the purpose of which is to bring about harmony or maintaining peace or tranquility amongst family members would be sufficient consideration for a family settlement. The same emanate from the decision of Hon'ble Supreme Court in the case of **Ram Charan Das V/s Girja Nandini Devi AIR 1965 SC 323** wherein it was held that bona-fide family settlement amongst family members to put an end to disputes between themselves would not amount to 'transfer' and it is also not the creation of an interest. In a family settlement, each party would take a share in the property by virtue of independent title which is admitted to the extent by the other party. All the members of the family have a sole right for equitable division of properties. If any dispute arises, it may involve family arrangement which is nothing but a device by which disputes or foreseeable disputes between the family members as to their respective property rights are settled. The settlement only defines pre-existing joint-interest as separate interest and hence, there would be no conveyance. The decision of Hon'ble Madras Court in **CIT V/s Shanthi Chandran 241 ITR 371** was also referred wherein it was held that where an asset is acquired on a family

arrangement then it is at par with an asset acquired on partition or any other succession. Reliance was placed on the other decision of Hon'ble Supreme Court in **Rangasami Gounden V/s Nachiapa Gounden (AIR 1918 PC 196)** to support the submissions that family settlement was nothing but realignment of interest among the family members and such an arrangement would not amount to 'transfer'. Another decision as referred by the assessee was the decision of Hon'ble High Court of Madras in **CIT V/s AL Ramanathan (245 ITR 494)** wherein similar position was laid down. Similar was stated to the ratio of decision of Hon'ble Delhi High Court in the case of **CWT V/s Santosh Singh (252 ITR 707)**.

5.4 In the said background, it was further submitted that the corporate entity has separate independent existence having perpetual succession and common seal. However, the courts have permitted lifting of corporate veil to prevent injustice as held by Hon'ble Calcutta High Court in **Shaw Wallace & Co. Ltd. V/s CIT (119 ITR 399)**.

5.5 The assessee submitted that the consideration of Rs.10 Lacs as shown was to meet expenses on transfer (stamp duty etc.) and not on account of sale of property. The said property was received by the assessee as the full and final settlement of her share in family properties. The transfer was executed after obtaining necessary consent from directors as well as shareholders.

5.6 In the above background, the assessee assailed the applicability of s.56(2)(vii) and submitted that this provision would not apply in case the property was received under a will or by of inheritance.

5.7 The entire position as well as arguments was finally summed up as under: -

- The appellant has furnished direct evidences to demonstrate the family settlement i.e copy of legal heir certificate, copy of death certificate of Dr. B.Sivanthi Adityan, copy of deed of declaration cum undertaking and copy of certificate from the Managing director of M/s. Gay Travels Private limited, transferor.
- M/s.Gay Travels Private limited, transferor is a family owned company and 100% of the stake of the company is held by the family members.
- The Assessing Officer has stated that the company is the owner of the property and not it's of shareholders and at the same time the Assessing Officer also did not controvert to the fact that the Appellant and their family members have entered into partition and settlement agreement. Therefore, the decision of the Assessing Officer is based on partial view and not a wholistic view.
- The Assessing Officer has failed to look into the shareholding pattern of M/s.Gay Travels Private limited wherein 95.01% of the shares were held. by Dr.B. Sivanthi Adityan and all the legal heir have equitable rights on the stake of Dr.B. Sivanthi Adityan.
- The Appellant as legal heir getting her share of stake in the company and. the managing the affairs of the company is not feasible as the business of the company is a grey area to her and further it may also affect the business of the company and hence it was agreed among the members of the family to distribute the property of the Company. To understand this transaction, the Assessing Officer has to pierce the corporate veil and look into the actual transaction that has taken place.
- Dr.B.Sivanthi Adityan is the main shareholder holding 95.01% of shares and after his demise distribution of his shares to legal heirs may diversify the control of the affairs 'the company and in turn it may create dispute among the family members and which would result in liquidation of the very old company and therefore in order to run, the business of the company Dr. Late. B. Sivanthi Adityan has expressed, his Oral Will of continuance of company even after his demise.

6. First appellate findings and Adjudication

6.1 The Ld. CIT(A) noted that GTPL was family owned company and its entire shareholding was held by assessee's father and brother. The entity was founded by the father of the assessee. Dr. B. Sivanthi Adityan invested in various properties and venture and the said investments were made in the name of family members out of joint family funds. As per last wish of assessee's father, the declaration-cum-undertaking was executed by assessee's brother and accordingly the property devolved on the assessee as per family settlement.

6.2 Considering all the facts and circumstances, Ld. CIT(A) concurred with assessee' submissions and adjudicated the issue as under: -

4.3.10. I have considered both the points of view. I have taken note of the fact that Mr. S. Balasubramanian, Managing Director of M/s. Gay Travels Private Limited has confirmed that the property transferred to the Appellant, was out of partition among family members as per the last wish. of Dr. B. Sivanthi Adityan, and he has also clarified that the amount received by the company from the Appellant is used towards registration expenses and not a sale consideration. There is a force in the AR's argument that the of bona-fide disputes among the members of the family is a valid and sufficient consideration for a family settlement.

4.3.11. Now I come to the applicability of provisions of Section 56(2)(vii)(b). The Assessing Officer has invoked the provisions of Section 56(2)(vii) of the Income Tax Act, 1961 stating that the appellant has received the property for an inadequate consideration. However, the Assessing Officer has not considered the proviso to Section 56(2)(vii) which is reproduced below:

"Provided further that this clause shall not apply to any sum of money or any property received—

(e) from any relative; or

if) on the occasion of the marriage of the individual: or

(g) under a will or by way of inheritance; or

(h) to (h)....."

4.3.12 From the combined reading of S.56(2)(vii)(b) and Clause (c) of the proviso, it is clear that the S.56(2)(vii)(b) of the Act shall not apply to any sum of money or any property received under a will or by way of inheritance. In the facts and circumstances of the appellant's case, I am convinced that the question of taxability does not arise since the same is entrusted to the family members on the demise of the head of the family.

4.3.13. It is pertinent to note that the registration of property in the name of the appellant was made only to comply with the provisions of the Registration Act, 1908. Since, the appellant has received an immovable property out of a family settlement, it required compulsory registration as per provisions of S.17(I)(b) of the Registration Act, 1908.

4.3.14. Now I come to the rationale behind the introduction of provisions of S.56 which is to prevent money laundering. However, the exemption is wholly given when it is a gift between blood relatives. It is undisputed that the entire transaction is between blood relatives, and there are no outsiders or unrelated party involved in the transaction.

4.3.15. I have perused the case laws relied on by Appellant's AR which are briefly discussed hereunder:

A) The Hon'ble ITAT, Chennai in the case of SKM Shree Shivkumar v The Assistant Commissioner of Income Tax, Circle I, Erode in ITA No.2278/Mds/2012 & 1965/Mds/2011, has held that when there is any distribution of assets pursuant to family arrangement or HUF partial/total partition, such transactions will not amount to transfer of asset attracting tax liability in the hands of the recipient under the provisions of the Act. In that case, on piercing the corporate veil with respect to the two private limited companies viz. M/s. SKM Animals Feeds and Foods (India) Ltd. and M/s. SKM Siddha and Ayurvedic Medicines India Pvt Ltd., the entire Intermingled transactions could be seen only as the family settlement arrived at through Arbitration Award amongst Hindu family members. Further there are no transfers of assets with respect to the public limited company M/s. SKM Egg Products Exports (India) Ltd. Therefore, the Hon'ble ITAT came to a conclusion that considering the facts and circumstances of the case, the provisions of section 2(22)(e), 2(24)(iv) or Sec.56(2)(vi) could not be invoked and the Assessing Officer's addition was deleted.

B) The Hon'ble Gauhati High Court in the case of Commissioner of Income Tax V. S.N.Zaman And S.M.Elahi reported in [1996] 221 ITR 842 has observed that the Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement, and if such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it.

C) Further in the case of Ziauddin Ahmed's case [1976] 102 ITR 253 (Gauhati) quoting the decision of the Supreme Court in Ram Charan Das' case, AIR 1966 SC 323, it has been held that family dispute includes future dispute.

D) In the case of CIT v. Mrs. Bibijan Begum [1966] 221 ITR 836 (Income tax Reference No.43 of 1990), it has been held that, "Family arrangement presupposes either an existing dispute likely to occur in future and to resolve those disputes such family arrangement can be made."

E) The Hon'ble Madras High Court in the case of Commissioner of Income Tax V. AL. Ramanathan reported in [1998] 245 ITR 494 has held as under: -

"Held, that the dispute arose in the family and the family arrangement was arrived at in consultation with the panchayatdars and accordingly realignment of interest in several properties resulted. The family arrangement was arrived at in order to avoid continuous friction and to maintain peace among the family members. The family arrangement was governed by the principles which were not applicable to dealings between strangers. So such re-alignment of interest by way of effecting family arrangements among the family members would not amount to transfer. The Tribunal found that the family arrangement was a bona fide one inasmuch as it was made voluntarily and not induced by any fraud or collusion and the conduct of the parties was consistent with the bona fide family arrangement particularly when it was arrived at in the presence of panchayatdars. The family arrangement

involved in the above case did not amount to transfer. Therefore, no capital gains arose."

F) The Hon'ble Delhi High Court in the case of Commissioner of Wealth Tax V. Santhosh Singh reported in [2001] 252 ITR 707 held that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing and where a document was no more than a memorandum of what had been agreed, it did not require registration.

G) The Hon'ble Madras High Court in the case of Ld. CIT Vs. Shanthi Chandran reported in (2000) 241 ITR 347, has held that where an asset is acquired on a family arrangement, it is on par with an asset acquired on partition or any other succession.

H) In the case of Rangasami Gounden v Nachiapa Gounden 46 Ind. App 72; (AIR 1918 PC 196), it was held that, "Every party taking benefit under a family settlement necessarily be shown to have under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground, as say, affection"

I) The Hon'ble Supreme Court in the case of Ram Charan Das vs. Girja Nandini Devi AIR 1965 SC 323, has elaborated that a transaction of a family settlement entered into by the parties who are members of a family bona-fide with the object to put an end to disputes among themselves is not a transfer, and that it is also not the creation of an interest. In a family settlement, each party would take a share in the property by virtue of the independent title which is admitted to the extent by the other party.

J) The Hon'ble Calcutta High Court in the case of Shaw Wallace and Company Ltd. vs. Commissioner of Income Tax reported in 119 ITR 399 has held that the corporate veil can be lifted to ascertain the real nature of the transaction and the person behind the transfer.

K) The Hon'ble apex court in the case of *Teak Bahadur Bhujji vs. Devashingh Bhujji AIR 1966 SC 292* has held that family arrangement can be arrived at orally and its terms may be recorded in writing subsequently as a memorandum of what has been agreed upon between the parties at an earlier date and such a document does not require registration. From the above, it is evident that family settlement can be oral and registration is not necessary.

4.3.16. In support of his submission, the AR has furnished the following documents which were already furnished before the AO:

- a) Death certificate of Dr.B. Sivanthi Adityan
- b) Legal heirship certificate of Dr.B. Sivanthi Adityan
- c) Deed of declaration cum undertaking
- d) Deed executed on 23/01/2015
- e) Certificate issued by Mr. S.Balasubramanian, director of M/s. Gay Travels Private Limited

- f) Copy of the Annual Return i.e. Form 20B of M/s.Gay Travels Private Limited filed with the Register of Companies for the year ended 31.3.2013.

4.3.17 During the course of assessment, the appellant had furnished the above documentary evidences vide letter dated 18/12/2017 but the Assessing Officer rejected the submissions made by the appellant.

- a) It is abundantly clear that when there is any distribution of assets pursuant to family arrangement, such transaction will not amount to transfer of asset attracting tax liability in the hands of the recipient under the provisions of the Act.
- b) On piercing the corporate veil with respect to the private limited company viz. M/s. Gay Travels Private Ltd., the entire intermingled transactions can be seen only as a family settlement arrived at through an understanding among close family members.

4.3.19. From the foregoing discussion, I am of the considered opinion that the proviso to Section 56(2)(vii) is very clear that the provisions of S.56(2)(vii) shall not be applicable in respect of transfer of any property received under a will or by way of inheritance. Therefore, I am convinced that the immovable property received by the appellant through the oral will of Dr. B. Sivanthi Adityan is not covered under the ambit of provisions of Section 56(2)(vii). Therefore, the AO's aforesaid addition is deleted. The appellant's grounds are **allowed**.

It was thus held by Ld. CIT(A) that the provisions of Sec.56(2)(vii) shall not be applicable in respect of transfer of any property received under a will or by way of inheritance. The property under consideration was received by the assessee through the oral will of her father Dr. B. Sivanthi Adityan and therefore, this transaction would not be covered under the ambit of provisions of Section 56(2)(vii). Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

7. From the facts, it emerges that during assessment proceedings, the assessee was confronted with the applicability of s.56(2)(vii) since the assessee purchased a property from GTPL for a consideration of Rs.10 Lacs as against its stamp duty value which was much higher. The assessee was show-caused as to why the market value of

property as per s. 56(2)(vii) of the Act be not taken as 'income from other sources' and added to the income of the assessee. The assessee submitted that the provisions of Section 56(2)(vii) of the Act would not apply for any property received under a will or by way of inheritance. The question of taxability would not arise at the time of settlement or at the time of partition since the same is entrusted to the family members on the demise of other family member.

8. It could be noted that the assessee's late Father Dr. B. Sivanthi Adityan expired on 19-04-2013 and this property was held by M/s. GTPL. This entity is family-owned entity and its entire shareholding was held by assessee's father and brother, a fact which is undisputed since the same is evidenced by documents filed by GTPL to Registrar of Companies. It could be seen that the father was holding 95% shareholding whereas remaining 5% were held by the brother Shri S. Balasubramaniun. A fact to be noted is that GTPL is family promoted entity out of joint family funds. This is also clear from the recitals of Deed of declaration-cum-undertaking as executed by Shri S. Balasubramaniun on 09-12-2013 upon expiry of Dr. B. Sivanthi Adityan on 19-04-2013.

9. After the demise of the father, the family members decided to partition and settle their family properties including the movable and immovable properties. In terms of the said deed-cum-declaration dated 09-12-2013, the property devolved upon the assessee. However, since the property was held in the name of GTPL, such settlement could not be affected by GTPL, it being separate legal entity having separate legal existence. Accordingly, to settle the property, a sale deed was executed by GTPL at consideration of Rs.10 Lacs which was

shown to meet the transfer expenses and was not a sale consideration since the stamp duty value was much higher figure of Rs.445 Lacs. On the basis of these facts, it was alleged by Ld. AO that the GTPL parted with the property at much less than market value and the assessee being recipient of the property, would be assessable for differential amount as 'income from other sources'. However, this conclusion overlooks the basic fact that sale deed was executed pursuant to family settlement as agreed upon by the family members vide declaration-cum-undertaking. The genuineness of this document is not in doubt.

10. As rightly submitted by the assessee, a family settlement was nothing but an arrangement or an understanding between the members which resolves the family disputes and the rival claims of the members of the family are settled provided the settlement was bona-fide and fair in the allotment of properties amongst the members of the family. Settlement of bona-fide disputes, the purpose of which is to bring about harmony or maintaining peace or tranquility amongst family members would be sufficient consideration for a family settlement. Such settlement could not be termed as 'transfer' under the Income Tax Act.

11. The Hon'ble Supreme Court in the case **Tek Bahadur Bhujil V/s Devasingh Bhujil AIR 1966 SC 292** has held that a family arrangement could be arrived at orally and its terms may be recorded in writing subsequently as memorandum of what has been agreed upon between the parties at an early date and such a document do not require registration.

12. Further, Hon'ble Supreme Court in the case of **Ram Charan Das V/s Girja Nandini Devi AIR 1965 SC 323** held that bona-fide family settlement amongst family members to put an end to disputes between themselves would not amount to 'transfer' and it is also not the creation of an interest. In a family settlement, each party would take a share in the property by virtue of independent title which is admitted to the extent by the other party. All the members of the family have a sole right for equitable division of properties. If any dispute arises, it may involve family arrangement which is nothing but a device by which disputes or foreseeable disputes between the family members as to their respective property rights are settled. The settlement only defines pre-existing joint-interest as separate interest and hence, there would be no conveyance.

13. The decision in **CIT V/s Shanthy Chandran 241 ITR 371** also support the case of the assessee wherein it was held that where an asset is acquired on a family arrangement then it is at par with an asset acquired on partition or any other succession.

14. Further, in the decision of Hon'ble Supreme Court in **Rangasami Gounden V/s Nachiapa Gounden (AIR 1918 PC 196)** it was held that family settlement was nothing but realignment of interest among the family members and such an arrangement would not amount to 'transfer'.

15. The Hon'ble High Court of Madras in **CIT V/s AL Ramanathan (245 ITR 494)**, considering the principle laid down by Hon'ble Supreme Court in **Kale V/s Deputy Director of Collection (1976 AIR 807)**, held as under: -

2. A perusal of the records goes to establish that the dispute arose in that family and the family arrangement was arrived at in consultation with the panchayatdars and accordingly re-alignment of interest in several properties had resulted. The family arrangement was arrived at in order to avoid continuous friction and to maintain peace among the family members. The family arrangement is an agreement between the members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. So, family arrangements are governed by principles which are not applicable to dealings between strangers and the family arrangement among them is for the interest of the family, for the harmonious way of living. So, such re-alignment of interest by way of effecting a family arrangement among the family members would not amount to transfer.

3. This court has held in CIT v. R. Ponnammal [1987] 164 ITR 706 that (headnote):

". . . the family arrangement had been brought about by the intervention of the panchayatdars and this clearly showed that the sons and daughters of the assessee were laying claims to the property which the assessee got under the will of her father and it was not relevant at the time when the family arrangement was entered into to find out as to whether such claims if made in a court of law would be sustained or not. If the assessee found it worthwhile to settle the dispute between herself, her sons and daughters by making the family arrangement, the said arrangement could not be ignored by a tax authority. In view of the finding of the Tribunal, the family arrangement dated December 17, 1971, had to be held to be a valid piece of document and, hence, the Tribunal was right in its view that no transfer of property was involved within the meaning of Section 2(xxiv) of the Gift-tax Act and, hence, there was no liability to gift-tax either under Section 4(1)(a) or under Section 4(2) and consequently no question of inclusion of the income of the minor in the hands of the assessee would also arise."

4. It is the settled law that when parties enter into a family arrangement, the validity of the family arrangement is not to be judged with reference to whether the parties who raised disputes or rights or claimed rights in certain properties had in law any such right or not. In *Maturi Pullaiah v. Maturi Narasrmham*, AIR 1966 SC 1836, the Supreme Court has observed that (page 1841) ;

"Briefly stated, though conflict of legal claims in praesenti or de future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

5. In *Kale v. Deputy Director of Consolidation*, the Supreme Court has laid down the propositions which are the essentials of a family arrangement that (page 812):

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence ;"

6. The Tribunal, on the facts, found that the family arrangement involved in this case appears to be a bona fide one inasmuch as it has been shown to have been made voluntarily and not induced by any fraud or collusion and the conduct of the parties referred to by the Revenue is consistent with the bona fide family arrangement particularly when it was arrived at in the presence of panchayatdars. So, the family arrangement is a bona fide one and it was effected to dissolve the family dispute.

7. Applying the principles laid down in the decisions cited supra, we hold that the family arrangement involved in this case does not amount to transfer. The Tribunal is perfectly justified in taking the view that the transaction of the assessee being a family arrangement did not amount to transfer and therefore, there was no chargeable capital gain arising from that transaction. So, the transaction of the assessee did not amount to transfer and there was no chargeable capital gain arising from that transaction.

8. We answer the question of law in favour of the assessee and against the Revenue. No costs.

This case law also support the case of the assessee.

16. This Tribunal in the case of **SKM Shree Shivkumar vs. ACIT in ITA No.2278/Mds/2012 & 1965/Mds/2011 dated 17-07-2014**, has held that when there is any distribution of assets pursuant to family arrangement or HUF partial / total partition, such transactions will not amount to 'transfer' of asset attracting tax liability in the hands of the recipient under the provisions of the Act. In that case, on piercing the corporate veil with respect to the two private limited companies viz. M/s. SKM Animals Feeds and Foods (India) Ltd. and M/s. SKM Siddha and Ayurvedic Medicines India Pvt Ltd., it was held that the entire

Intermingled transactions could be seen only as the family settlement arrived at through Arbitration Award amongst Hindu family members. Further there would be no transfer of assets with respect to the public limited company M/s. SKM Egg Products Exports (India) Ltd. Finally, it was held that the provisions of section 2(22)(e), 2(24)(iv) or Sec.56(2)(vi) could not be invoked and the Assessing Officer's addition was deleted. This decision has been arrived at after considering various binding judicial precedents of higher judicial authorities.

17. We find that the ratio of all the above binding judicial precedents applies to the case of the assessee.

18. The Ld. Sr. DR has submitted that the corporate entity has separate legal existence and therefore, it could not enter into family settlement. However, considering the facts as noted by us in preceding paragraph that entire investment in properties was made out of joint family funds and the entire shareholding of GTPL was held by the family members, GTPL was to be considered as family-owned entity. Any transaction made pursuant to family settlement was to be looked at from that angle only and lifting of corporate veil could be resorted in such cases.

19. The Ld. Sr. DR has referred to the decision on Hon'ble High Court of Bombay in **B.A. Mohota Textile Traders Pvt. Ltd. V/s DCIT (ITA No.73 of 2002 dated 12.06.2017)**. However, this case law is not applicable since it deals with a situation wherein the assessee being a corporate entity held shares in other corporate entities which were transferred pursuant to arbitration award amongst a family. The family held only 80% of shareholding in the assessee company and it was not a case of family-owned entity. Further, in that case the dispute was

with respect to taxability of capital gains in the hands of assessee company which was not fully owned by the family. It was the case of the revenue that the transfer of shares by the assessee would give rise to capital gains. Therefore, this case law does not address the situation as prevailing before us. Rather it is the finding of Hon'ble Court in para-9 that family arrangement / settlement would not amount to transfer.

20. The case law of Ahmedabad Tribunal in **Gyanchand M.Bardia v/s ITO (ITA No.1072/Ahd/2016)** is in the context of gift received by HUF which is not the case here. Similarly the decision in **Kusumben Kantilal Shah V/s ITO (1995-LL-0728-8)** is factually different since in that case the assessee offered capital gain and the dispute was with respect to quantum only.

21. The case law of Hon'ble High Court of Madras in **New Ambadi Estates Private Ltd. V/s JCIT (2013-LL-0813-30)** deal with a situation where there was transmission of shares by the assessee to its subsidiary company at Book Value and the addition pertain to Gift Tax Act. The Hon'ble Court in concluding para observed that the transaction has to be seen in the context of provisions of gift tax act and not under the provisions of Income Tax Act. Therefore, this case law is not applicable.

22. Finally, on entirety of facts and circumstances, we would hold that the property was received by the assessee under a will / by way of inheritance and therefore, the provisions of s.56(2)(vii) would not apply to the case of the assessee. Hence, the impugned order could not be faulted with. The regular grounds of appeal as well as additional ground of appeal as filed by the revenue stand dismissed.

23. The appeal stand dismissed.

Order pronounced on 07th September, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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