

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No. 177/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2017-18**

Pranav Trust  
Baniya Para,  
Durg-491 001 (C.G.)-491 001  
PAN : AABTP9694C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-2(2), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rahul Jain, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.08.2023

घोषणा की तारीख / Date of Pronouncement : 21.11.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee trust is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 09.03.2023, which in turn arises from the intimation issued by the Centralized Processing Center (CPC)/A.O. under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 06.08.2018 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That the learned Dy. C.I.T., C.P.C. has erred in law in levying tax at maximum marginal rate and the learned C.I.T(Appeals), NFAC has erred in maintaining the same, though the appellant is a private specific Trust having simple beneficiary and is governed by the provisions of Section 161(1) of the I.T. Act, 1961 and the tax is leviable at the normal rate applicable to Individual /AOP.
2. That the appellant does not have any income from business or profession and, the share of the beneficiary is also specified/ determined being sole beneficiary hence levying tax at maximum marginal rate u/s.164(1) is wrong and bad in law & on facts.
3. That the appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing.”

2. Shri Rahul Jain, Ld. Authorized Representative (for short 'AR') at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 9 days. It was submitted by him that the delay in filing of the appeal had occasioned because the trustee of the assessee was at the relevant point of time taken medically unwell. The Ld. AR had drawn my attention to an “affidavit” dated 13.05.2023 filed by the trustee explaining the reasons leading to the delay along

with medical certificates. The Ld. A.R submitted that as the delay of 9 days in filing of the present appeal had occasioned for bonafide reasons, therefore, the same in all fairness to be condoned.

3. Per contra, the Ld. Departmental Representative (for short 'DR') did not seriously object to the seeking of condonation of delay by the assessee appellant.

4. I have considered the reasons leading to the delay in filing of the present appeal by the assessee appellant a/w. the medical certificates. Considering the fact that due to ill-health of the trustee, viz., Shri Pranav Kaser the appeal could not be filed within the stipulated time period, I have no hesitation in condoning the delay of 9 days involved in filing of the same.

5. Controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the CIT(Appeals) is right in law and facts of the case in approving the levy of tax on the income of the assessee trust at Maximum Marginal Rate (MMR) by the A.O.

6. As is discernible from the orders of the lower authorities, it is the claim of the assessee that as it is a private specific trust created by Dinesh Kaser, grand uncle for the sole beneficiary, viz. Shri Pranav Kaser and is governed by the provisions of Section 161(1) of the Act, therefore, in absence of any business income tax was leviable on its income at the normal rate applicable for individual/AOP, but the A.O was of the view that in the trust deed as there was no mention that the income from trust property was destined for the sole benefit of the minor beneficiary, viz. Shri

Pranav Kaser (supra) who would be vested with the rights towards the trust property and income accruing therefrom only after being major, i.e., after attainment of the age of 18 years, therefore, the income from the trust property had accrued and arisen in the hands of the trustees during the previous year when the beneficiary was minor in age, which, thus, in light of their indeterminate or unascertainable shares were liable to be brought to tax within the meaning of Section 164 of the Act, i.e., in the status as that of an "Association of Person" (AOP) at a maximum marginal rate.

7. On appeal, the CIT(Appeals) finding no infirmity in the view taken by the A.O, i.e., assessing of the assessee trust as an AOP and subjecting it to tax at a maximum marginal rate u/s. 164 of the Act, had approved the same by observing as under:

"5. Decision:

5.1 After a careful consideration of the statement of facts, grounds of appeal, contents the submission and the trust deed, I am unable to appreciate the arguments placed by the appellant. Assessment of a private trust in respect of its income and thereafter, recovery of tax has been provided in section 161, while section 164 sets out how such tax shall be charged. Therefore, section 164 cannot be a separate code by itself and cannot be operated in an isolated manner.

5.2 From the trust deed executed on 21.06.2011 one shri Dinesh Kaser, settlor, had created the trust by transferring Rs.1,00,000/- only for the benefit of his minor grandson Shri Pranav Kaser appointing his son Shri Pravin Kaser and daughter-in-law Smt. Aakanksha Kaser (Parents of Pranav Kaser, minor) as trustees. In such circumstances, any income accrues and arises from the transferred money is Chargeable to tax in the hands of Shri Pranav Kaser and as he is minor, such income should have been clubbed in the hands of either of the parents as per section 64 of the Act. But that is not done. Instead, the appellant trust has offered itself as a 'representative assessee' of the sole beneficiary who was minor during the previous year.

5.3 Now, the question arises whether the appellant trust can be a representative assessee. In the entire trust deed there is no mention that income from the trust property will to the minor beneficiary. As a matter of fact, in none of the clauses of the trust, income from trust property has been destined to the sole beneficiary. Instead, the income, after meeting expenses, shall be held by the trust itself as an accumulated fund as per clauses 3(A), (B) & (C) of the trust deed which reads as under:-

3. It is hereby agreed and declared between the parties to these presents that the trustees shall stand and be possessed of the said sum (and which sum and other assets and shares, stocks and securities and other investments" business, and properties and funds which may under the trusts of these present be substituted or added in the execution of the said trust are herein designated as "The Trust Fund") and the income thereof upon the trust as following, namely:-

(A) Until the specified day" the trustees shall receive the annual or other income of the trust fund and in the first place reimburse which may be incurred or about the administration of the trust thereof, including any income tax, wealth tax or other taxes levied upon the trustees and subject thereto the trustees shall accumulate the whole of the residue of such annual or other income by way of compound interest and all such accumulations as shall fall into, be treated as and form part of the trust fund.

(B) On the arrival of the "Specified day" the trustees shall hand over and transfer all the assets forming part of the trust fund to Pranav Kaser S/o Shri Pravin Kaser, resident of Baniya Para, Durg (C. G.), born on 14th of March 2008, for his own absolute benefit and in the event of he having died to his legal heirs according to the law of intestate succession applicable to Hindus as if he had died possessed of the said assets.

(C) The expression "Specified Day" shall in this deed mean the day on which Pranav Kaser shall attain the age of EIGHTEEN YEARS AND ONE DAY or the day of his death, whichever is earlier.

5.4 From the above clause, it is absolutely clear that right to trust property and income from such property will be vested to Shri Pranab Kaser being sole beneficiary only after being major after attainment of the age of 18 years and therefore, he does not have any right on it. As a matter of fact, he has not even been provided any right to receive income or benefit of income from trust property during the period of minority prior to become major. When he had no right to receive income and no income from property held by trust was accrued to him during the previous year for being a minor as per the above clauses of the trust deed, his share of 100% or whatsoever is absolutely immaterial in reference to provisions under section 164 of the Act. Thus, I find that the income from trust property was accrued and arose

in the hands of the trustees during the previous year when beneficiary was minor in age as per the aforesaid clauses of the trust deed.

5.5 Now the only question left whether the shares of two trustees are determinate or ascertainable. The answer is straight and simple- "No". Moreover, trustees have been provided huge authority and power to do whatever they like in respect of trust property and income derived therefrom in clause 5 of the trust deed which reads as under:-

5. The trustees shall be free to invest all money which shall require investment in any manner they may think proper (without being obliged to invest the same in the investments authorized by law for the investments of the trust funds) and to dispose off, sell or exchange such investments and other properties both moveable and immovable, as are forming part of the trust fund whenever they in their absolute discretion think it desirable to do so.

5.6 The trust deed has also provided unrestricted power the trustee [clause 5(G)], to purchase immovable property in India and abroad [clause 5(A)], purchase of debenture and bonds [clause 5(B)], taking loans [clause 5(C) & (D)], carrying on business [clause 5(E)], purchase of flat [clause 5(F)], and other investments even by using their personal credit. But the most important point of consideration here is the clause 5 particularly the portion "(without being obliged to invest the same in the investments authorized by law for the investments of the trust funds)" which clearly points to the fact that trustees are empowered not to oblige lawful investments of trust fund and this clause alone, by itself has made the trust a "private discretionary trust". It was not a specific trust as canvassed by the appellant in its arguments. It is also observed that it was a discretionary, with "very wide powers given to the trustees not to distribute the income. The provisions of the trust deed gave discretion to the trustees to accumulation of income within 18 years of age of the beneficiary or thereafter. The trustees were also given further powers in their absolute discretion to investment the trust fund without restricting to lawful investments. The discretion was entirely on the trustees to distribute or not to distribute the income even after 18 years of age of Pranav Kaser as the period of distribution of the trust fund had not been specified. It is also observed that the trustees were further empowered without any restriction to utilize trust fund either partly or completely or individually or severally in their absolute discretion. These facts, have showed that it was an out and out discretionary trust wherein shares of trustees are indeterminate and not a specific trust, as has been claimed by the appellant.

5.7 Accordingly, I confirm the action of the AO in treating the appellant assessee as an 'AOP' and charging tax at the maximum marginal rate by invoking section 164 of the Act. The appeal fails and therefore, is dismissed.

6. In the result, the appeal is dismissed."

8. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

9. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities as well as material available on record.

10. Before proceeding any further, it would be relevant to cull out the provisions of Section 161 r.w.s. 160(iv) and Section 164(1) of the Act to the extent relevant to the case before me:

“**160.** (1) For the purposes of this Act, "representative assessee" means—

(i) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

(v) xxxxx”

“**161.** (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of [section 160](#) is liable as representative assessee consists of,

or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :

**Provided** that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.”

“**164.** (1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of [section 160](#) are liable as representative assesseees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income", "part of relevant income" and "beneficiaries", respectively), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate:”

Admittedly, it is a matter of fact borne from record that the aforesaid two trustees, viz. Shri Pranav Kaser, S/o. settler Shri Dinesh Kaser & Smt. Aakanksha Kaser, daughter-in-law of the settler i.e. parents of the beneficiary, viz. Shri Pranav Kaser, minor grandson of Shri Dinesh Kaser (settler) were the trustees as per the trust deed executed on 21.06.2011.

11. As per Section 161(1) of the Act, every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment

shall be deemed to be made upon him in his representative capacity only. In such cases, tax can be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him. However, the representative assessee may not have any such capacity in respect of any income received by him as representative assessee to be assessed under any provision other than Chapter XV as mandated in Section 161(2) of the Act. Also, the liability of a representative assessee under Section 161(1) is a vicarious liability and it is co-extensive with the liability of a person represented by him. The legislature has made it clear in that sub-section, that the liability of a representative assessee should not in any case be larger or wider than the liability of the person represented by him.

12. On a careful perusal of the order passed by the CIT(Appeals), it transpires that he had drawn adverse inferences in the present case by giving superseding effect to Section 164 of the Act over Section 161 of the Act. If Section 161(1) is read with section 164, it appears that in case where individual share receivable by the beneficiary is indeterminable or unknown, then, the charge of tax shall be at the maximum marginal rate as per Section 164 but if the share of the beneficiary is determined or a fixed specific share on each beneficiary is provided, Section 161 would be applicable and the tax chargeable would be as per the normal rate provided. Therefore, the distinction between Section 161 and Section 164 can be summarized as that in the case of a trust, where specific share of the beneficiaries are provided, the rate of tax shall be as per the schedule but in the case of a trust

where the shares of the beneficiaries is unknown or indeterminable, tax chargeable shall be at the maximum marginal rate. My aforesaid view is supported by the judgment of the **Hon'ble High Court of Gujarat** in the case of **Neo Trust Vs. ITO (2015) 372 ITR 546 (Guj.)**

13. Backed by the aforesaid settled position of law, I am unable to concur with the view taken by the CIT(Appeals) who had held that the income of the assessee trust was liable to be assessed by treating it as an AOP and subjecting the same to the maximum marginal rate by invoking Section 164 of the Act. I have given a thoughtful consideration and find no justification in the view taken by the lower authorities who had taken recourse to Section 164 of the Act, which can be triggered only where the shares of the beneficiaries is unknown or indeterminable, and thus, had wrongly brought the income of the assessee trust to tax at a maximum marginal rate. Be that as it may, I am unable to comprehend that how the claim of the assessee trust that its income was liable to be brought to tax u/s. 161 of the Act could have been summarily dislodged by the A.O substituting it with the maximum marginal rate contemplated u/s. 164 of the Act u/s. 143(1) of the Act. I, say so, for the reason that the scope of the adjustments u/s. 143(1)(a) of the Act are circumscribed and limited to specific adjustments. For the sake of clarity, the adjustments that can be made under section 143(1)(a) of the Act are culled out as under:

**“143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—**

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

**Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode.”

Therefore, disallowing of the aforesaid claim of the assessee, which could have been done only after necessary deliberations, in my considered view does not fall within the realm of the adjustments prescribed u/s. 143(1)(a) of the Act. Accordingly, in terms of my aforesaid observations, I am neither able to persuade myself to concur with the dislodging of the claim of the assessee trust that its income was liable to be subjected to tax as per the normal rates u/s. 161(1) of the Act and substitution of the same by maximum marginal rate contemplated in Section 164 of the Act; nor able to concur with the manner in which the said claim has been disallowed, i.e., by taking recourse to section 143(1)(a) of the Act. I, thus, in terms of my aforesaid deliberations, set-aside the order of the CIT(Appeals) and vacate levy of tax at maximum marginal rate by the A.O.

14. In the result, appeal of the assessee is allowed in terms of the aforesaid observations.

Order pronounced in open court on 21<sup>st</sup> day of November, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 21<sup>st</sup> November, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.