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Tax Flash News

1 August 2025

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Category-III AIFs not indeterminate trusts merely for not naming investors in the trust deed

Executive summary

In the case of *Equity Intelligence AIF Trust*[1], the Delhi High Court applied the doctrine of impossibility to read down CBDT Circular No. 13/2014[2] (the 2014 Circular), finding it inconsistent with SEBI Regulations[3] for Alternative Investment Funds (AIFs).

The 2014 Circular requires the AIF to mention the investor names and their beneficial interests in the original trust deed for 'determinate trust' classification under the Income-tax Act, 1961 (the Act). On the other hand, the SEBI Regulations prohibit any investment to be received before obtaining SEBI registration certificate. Accordingly, naming investors or their share in the trust deed which is required at the time of registration would have violated these Regulations.

Accordingly, Category-III AIFs cannot be deemed indeterminate trusts solely due to the absence of investors' identity and their share mentioned in the trust deed on the execution date and should not be taxed at the Maximum Marginal Rate (MMR).

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1 *Equity Intelligence AIF Trust* v. *CBDT & Anr.* (W.P.(C) 9972/2024 & CM APPL Nos.40840/2025, 69940/2024 & 1448/2025)

2 Circular No.13/2014 [F. No. 225/78/2014-ITA.II] dated 28 July 2014 issued by the Central Board of Direct Taxes

3 Section 12(1) and 12(1C) of the SEBI Act, 1992 read with Regulations 3, 4, 6 and 7 of the SEBI (Alternative Investment Funds) Regulations, 2012

Facts of the case

The taxpayer was a Category-III AIF Trust, registered with the SEBI.

It launched an open-ended scheme, executed contribution agreements with various investors and issued units to such investors.

In its tax return, the taxpayer took the position that as the share of the beneficiaries/ investors is ascertainable, it qualified as determinate trust, and its income was taxable at the normal tax rates.

To obtain clarity on future tax treatment, the taxpayer sought an advance ruling from the Authority for Advance Rulings (AAR), which was later transferred to the Board for Advance Rulings (BAR), post AAR abolition by the Finance Act, 2021.

The BAR held that as the names of the beneficiaries were not mentioned in the original trust deed, the taxpayer would be treated as an indeterminate trust and resultantly be taxed at the MMR under the Act[4].

Aggrieved by the BAR's order, the taxpayer filed a writ petition[5] before the Delhi High Court.

[4] Section 164 read with Explanation 1 thereto
[5] Issue relating to maintainability of writ petition is not covered in this note

Relevant provisions

- Under the Act, any income earned by a trust is taxed in the hands of the trustees as a 'representative assessee' for and on behalf of the beneficiaries of such income[6]. In this regard, the trustee would be taxed in the like manner and to the same extent as if it was the income of the beneficiaries.
- However, the trust is considered as indeterminate, and its income is taxable at MMR if on the date of trust deed:
  - Name of the beneficiaries is not expressly stated in the trust deed or is not identifiable; or
  - The individual shares of the beneficiaries are not expressly stated in the trust deed or are not ascertainable.
- MMR is defined under the Act[7] as the tax rate applicable in relation to the highest slab of income in the case of an individual, association of persons or body of individuals.

[6] Section 160(1)(iv)
[7] Section 2(29C) applicable in financial year 2017-18

- As per the 2014 Circular, where names or beneficial interests of investors are not specified in the trust deed at the time of creation of the trust, the entire income of such trust is taxable at MMR. However, Paragraph 6 of the Circular exempts its applicability only in those States where jurisdictional High Courts have issued contrary ruling.
- The SEBI Regulations prohibit an entity from acting as an AIF or from receiving any investment unless and until it has obtained the certificate of registration from SEBI. In order to register, the AIF is required to be registered under the Registration Act, 1908 and submit its trust deed to SEBI.

Taxpayer's contentions

The taxpayer qualified as determinate trust as each investor's share of income was based on units held by it. The identity of investors and their income share was determined in accordance with the contribution agreements executed post the trust deed.

Under the SEBI Regulations, registration was mandatory before any investments could be received.

Naming investors in the trust deed prior to registration would have violated these Regulations, disqualifying the taxpayer from obtaining registration.

Invoking the doctrine of impossibility, the taxpayer argued that the 2014 Circular's requirement to disclose investor's names or their beneficial interests in the trust deed was not feasible due to SEBI's restrictions[8].

Cited the decision of the Karnataka High Court *in India Advantage Fund VII*[9] and the Madras High Court in *TVS Shriram Growth Fund*[10] and *Tamil Nadu Urban Development Fund*[11], wherein it was affirmed that not naming the beneficiaries in the trust deed did not render a trust indeterminate.

The aforesaid (non-jurisdictional) High Court decisions were also binding on the Revenue and Paragraph 6 of the 2014 Circular cannot be applied selectively based on the geographical location of the AIF.

The CBDT Circular No. 281 issued in 1980 (the 1980 Circular) clarified that naming beneficiaries in the trust deed is not mandatory for a trust to be considered determinate. Since the 2014 Circular neither rescinded nor referenced the 1980 Circular, it cannot override or negate its guidance.

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[8] *Cochin State Power & Light Corporation Ltd*. v. *State of Kerala* 1965 AIR SC 1688*; Raj Kumar Dey* v. *Tarapada Dey 1987 AIR SC 2195*

[9] *CIT* v. *India Advantage Fund-VII* [2017] 392 ITR 209 (Karnataka)

[10] *CIT* v. *TVS Shriram Growth Fund* [2020] 429 ITR 440 (Madras)

[11] *CIT* v. *Tamil Nadu Urban Development Fund* [2019] 263 Taxman 318 (Madras)

Revenue's contentions

As the names or beneficial interests of the investors were not mentioned in the trust deed at the time of execution, the taxpayer was an indeterminate trust, taxable at MMR.

The Private Placement Memorandum issued by the taxpayer to prospective investors acknowledged the tax implications under the Act and cautioned investors about potential taxation at MMR.

The High Court decisions relied upon by the taxpayer either pertained to the period prior to the notification of SEBI Regulations and the 2014 Circular or were distinguishable on facts.

The 1980 Circular cannot be relied upon as the same was issued three decades prior to the SEBI Regulations and was not issued in the context of a trust created for the purpose of Category-III AIFs.

High Court's decision

The Delhi High Court decided the matter in favour of the taxpayer and held that the taxpayer was not an indeterminate trust, and hence, not taxable at MMR.

Key observations of the Court include:

SEBI Regulations versus the 2014 Circular

The SEBI Regulations provide that unless and until a trust registers the original trust deed under the provisions of Registration Act, 1908 and obtains the SEBI registration, it cannot accept any funds or investment from a beneficiary.

The 2014 Circular mandating mentioning of the names of the investors or their beneficial interests in the original trust deed, conflicted with the provisions of the SEBI Regulations and was therefore, legally impossible to comply with.

As per the doctrine of impossibility, no entity can be expected to commit an act under any enactment which is impossible to be performed.

Arbitrary enforcement of the 2014 Circular

Paragraph 6 of the 2014 Circular, which provides that the Circular shall not be operative in the States where a contrary decision has been rendered by the jurisdictional High Court, contradicted the well-settled judicial principles of law.

An issue of law, settled by a Constitutional Court, neither challenged nor set aside by a higher

Constitutional Court, would be binding upon the Revenue authorities all over the country and cannot be implemented State specific or area specific.

The decisions of Karnataka and Madras High Courts (though non-jurisdictional) were binding on the Revenue and applicable to the taxpayer's case.

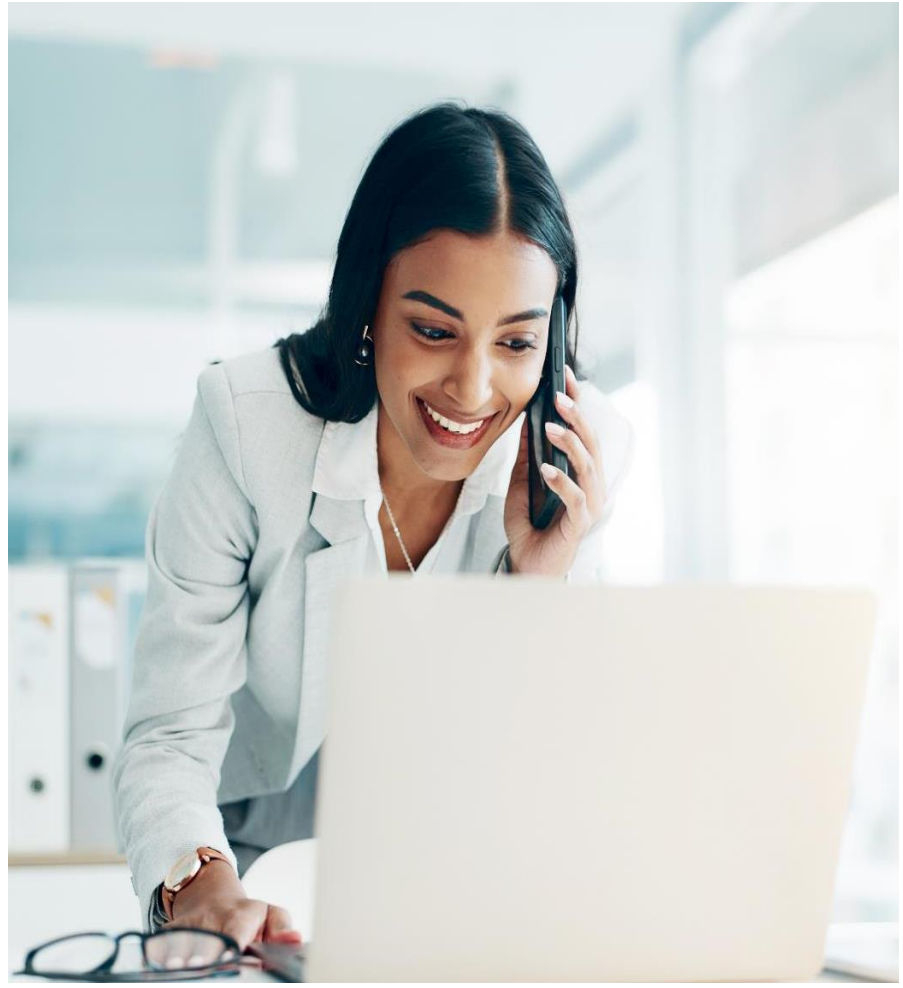
Affirmed the ratio laid down in the aforesaid High Court decisions that the real test in case of taxation of trusts is the determination of the shares of the beneficiary, either at the time of trust formation or later.

Applicability of the 1980 Circular

The 1980 Circular could not be relied upon as it was not part of the enacted Finance Act, 1980 which amended the relevant provisions under the Act[12].

Our comments

This is a landmark ruling, significantly impacting the taxation framework for AIFs in India. The ruling underscores the importance of interpreting tax provisions in conjunction with allied regulatory laws to ensure consistency and fairness in the taxation of AIFs.



[12] Section 164

KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor, 902, Near Vodafone House, Corporate Road, Prahlad Nagar, Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Hyderabad
Salarpuria Knowledge City, Orwell 6th Floor, Unit-3, Survey No 83/1, Plot No 2, Raidurg, Hyderabad – 500 081.
Tel: +91 40 6111 6000

Noida
Unit No. 501, 5th Floor, Advant Navis Business Park, Tower-A, Plot# 7, Sector 142, Expressway Noida, Gautam Budh Nagar, Noida – 201 305.
Tel: +91 0120 386 8000

Bengaluru
Embassy Golf Links Business Park, Pebble Beach, 13/02, 'B' Block, 1st & 2nd Floor, Off Intermediate Ring Road, Bengaluru – 560 071
Tel: +91 80 6833 5000

Jaipur
Signature Towers, Office No. 402, Fourth Floor, S Plot No. DC-II, Lal Kothi District Shopping Center, Tonk Road, Jaipur – 302 001
Tel: +91 141 – 672 1000

Pune
9th floor, Business Plaza, Westin Hotel Campus, 36/3-B, Koregaon Park Annex, Mundhwa Road, Ghorpadi, Pune – 411 001.
Tel: +91 20 6747 7000

Chandigarh
Elante Offices, Unit No. A505, 5th Floor, Plot No.178-178A, Industrial Area Phase-1, Chandigarh – 160 002.
Tel: +91 172 664 4000

Kochi
Syama Business Centre, 49/179, 3rd Floor, NH 47, Bypass Road, Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Chennai
KRM Towers, Ground, 1st, 2nd, & 3rd Floor, No. 1, Harrington Road, Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Kolkata
Unit No. 604, 6th Floor, Tower – 1, Godrej Waterside, Sector – V, Salt Lake, Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
Lodha Excellus, Apollo Mills Compound, 2nd Floor, N M Joshi Marg, Lower Parel, Mumbai- 400 011.
Tel: +91 22 3989 6000

Vadodara
Ocean Building, 303, 3rd Floor, Beside Center Square Mall, Opp. Vadodara Central Mall, Dr. Vikram Sarabhai Marg, Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
PR heights, 4th Floor, NH 16 Service Rd, opp. Manipal Hospital Road, Tadepalle, Andhra Pradesh – 522 501.
Tel: +91 0864 536 2000

Gurugram
Building No.10, 8th Floor, DLF Cyber City, Phase II, Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Lower Parel, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000