

# TAX FLASH NEWS

15 May 2020



## Shares received as a part of a family arrangement is not sham or colourable transaction to avoid tax

Recently, the Delhi Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of Glebe Trading Pvt Ltd.<sup>1</sup> dealt with the issue of taxability of shares received as a part of a family arrangement. The Tribunal held that from the Memorandum of Understanding (MOU), it was evident that it was a family arrangement. Internal family realignment amongst the members of the family cannot be treated as gift or perquisite. Further the Assessing Officer (AO) by lifting the corporate veil, without providing any cogent reasons cannot assume that the transaction is sham and bogus.

### Facts of the case

The taxpayer is an investment company. During the Assessment Year (AY) 2014-15, the taxpayer had received shares of various companies as gift without paying any consideration as a part of internal family realignment amongst members of the family of late O.P. Jindal.

Mrs. Arti Jindal holds 99.9 per cent shares of the taxpayer company. The AO observed that 99.6 per cent of shareholding of the taxpayer company was transferred to P R J Holdings Private Trust as gift. The AO held that the transaction of gift of shares held by Mrs. Arti Jindal to PRJ Holding Private Trust was not valid and was a sham and void transaction. It was undertaken to avoid tax. Accordingly, the AO made additions in the hands of the beneficiary<sup>2</sup>. However, no addition was made in the hands of the taxpayer.

### Tribunal's decision

The AO did not make any addition in the hands of the taxpayer but held that the benefit arose to the taxpayer through receipt of shares from various companies and the same was taxable under Section 2(24)(iv) of the Income-tax Act, 1961 (the Act) in the hands of Mrs. Arti Jindal as the beneficiary.

On one hand the AO stated that there was a benefit to the taxpayer and on the other hand he stated that the transaction of gift of shares held by Mrs. Arti Jindal to PRJ Holding Private Trust was not valid and was a sham and void transaction which was undertaken to avoid tax. But from the MOU submitted by the taxpayer it was evident that it was a family arrangement. Internal family realignment amongst the members of the family of Late Shri O.P. Jindal cannot be treated as gift or perquisite.

The AO by lifting the corporate veil, without providing any cogent reasons, and without appreciating that the beneficiary never obtained any benefit from this transaction at any time cannot assume that the said transaction was sham and bogus.

Thus, the observations made by the AO in the assessment order were without any jurisdiction. Further, the AO overstepped the provisions of Section 2(24)(iv) and made 'nil' assessment in the case of taxpayer and commented on the third party which is not permissible under the Act.

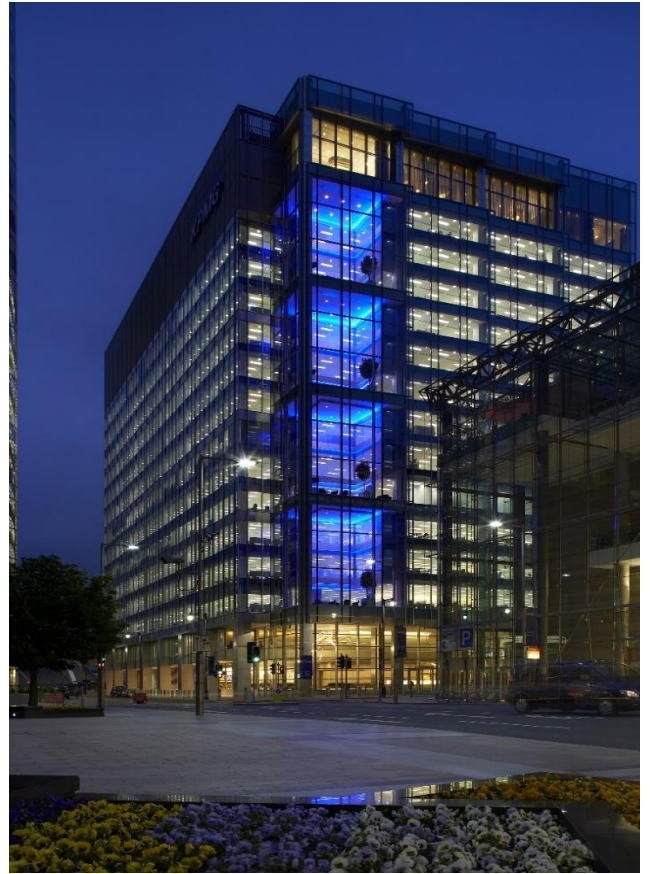
### Our comments

In the present case, the AO lifted the corporate veil and argued that the entire transaction was sham and bogus without providing any cogent reasons for the same. This decision pertains to AY 2014-15.

<sup>1</sup> Glebe Trading Pvt Ltd. v. ITO- [ITA No. 191/Del/2019, AY- 2014-15]- Taxsutra.com

<sup>2</sup> As per Section 2(24) (iv) of the Income Tax Act, 1961

Subsequently, from Assessment Year 2018-19<sup>3</sup> the provisions of General-Anti Avoidance Rules (GAAR) have been introduced in the Act. GAAR provides enough powers in the hands of AO to disregard, combine, recharacterise, etc. the impermissible avoidance arrangement. Therefore, in such type of transactions taxpayers should take necessary precautions to avoid the rigor of GAAR.



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<sup>3</sup> Financial Year 2017-18

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