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# Income Tax Update

## Tribunal examines the taxability of a settlement of property made to a private discretionary Trust

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## 1. Facts of the case:

- Assessee is a private discretionary trust established under the provisions of Indian Trust Act, 1882.

- The settlor settled investments amounting to INR 669 Crores in the form of interest in partnership firms/shares settled by the settlor in favor of the Trust.

- The Trust was settled for the benefit of relatives of the settlor and as per trust deed, trustee may, at any time during the trust period add any person or class of persons (whether or not in existence or ascertained) or charity as beneficiaries.

- During the course of 263 proceedings, one of the main contention was whether the receipt of INR

669 crores by the trust should be taxable under Section 56(2)(x).

## 2. Key arguments raised by the Assessee

- On merits of the case, the assessee argued that the transactions involved in this case are out of the purview of section 56(2)(x) as the trust has been established exclusively for family members of the Settlor covered in the definition of relative in the said section.

- The Assessee further contended that the ‘interest in partnership firm’ are not covered in the definition of “property” as given in section 56(2)(x) of the Act.

- Assessee next contended that the amount received by assessee cannot be said to be an amount received without consideration as the same is received in Fiduciary capacity, which was overridden with an obligation to use that amount only for the benefits of the beneficiaries

## 3. Key arguments raised by the Department

- The trust deed allowed the addition of beneficiaries beyond relatives, which led the PCIT to argue that the trust was not created solely for relatives, making Section 56(2)(x) applicable.

- The Revenue contended that it is categorically mentioned in the trust deed that this amount can be utilized for the outsiders also.

## 4. Tribunal's ruling on key arguments

The Tribunal held that it is evident from the clauses of the trust deed that the benefits of the trust were not restricted to relatives only.

On the second issue, the Tribunal observed that in the present case the assessee has not only received the interest in partnership firm rather has also received preferential shares and equity of M/s Silver Niddel.

The Tribunal further held that the term shares as used in explanation-2 of section 56(2)(vii) is not restricted to the shares of companies only, rather it is wide enough to mean a part or portion of something. Tribunal held that literal interpretation in the present case is giving an absurd meaning and consequentially held that interest in partnership firm is nothing rather shares of partnership firm.

Therefore “interest in partnership firm” falls in the category of “shares” and the same is covered by the provisions of explanation (d) of section 56(2)(vii).

For more details, please refer the entire judgement at:

*https://itat.gov.in/public/files/upload/1735624480-urq7dV-1-TO.pdf*

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