

Receipt of shares pursuant to internal family realignment not a gift/benefit: Delhi ITAT

Issued on: 28 May 2020



Summary

Delhi bench of the Income Tax Appellate Tribunal (ITAT) has ruled in favour of the taxpayer, quashing tax officer's observations that shares of group companies received by the taxpayer as part of internal family realignment amongst family members are sham and colourable transactions.

The ITAT further ruled that receipt of shares pursuant to a family arrangement cannot be termed as gift/benefit or perquisite¹.

Facts of the case

- The taxpayer² is an investment company. It received notice against the return filed for assessment year (AY) 2014-15.
- During assessment proceedings, the tax officer observed that Arti Jindal held 99.9% shares in the taxpayer, during the year, out of which 99.6% of the shares were transferred to **M/s P R J Holdings Private Trust** ('trust') as gift.
- The tax officer observed that, as part of an internal family realignment, the taxpayer has received shares of certain listed companies as gift without consideration. The receipt of shares was taxed in the hands of Arti Jindal, by

holding her to be the alleged beneficiary. A total of INR 159.32 crore were taxed in her hands³.

- The taxpayer filed an appeal against the order of the tax officer. However, the appeal was dismissed by the commissioner (Appeals).
- Aggrieved by the order, the taxpayer preferred an appeal before the ITAT.

Taxpayer's contention

- **No cogent reasoning given by the tax officer:** The taxpayer submitted that the tax officer failed to appreciate that the shares of listed companies received by it as a gift were pursuant to an internal

¹ for the purpose of section 2(24)(iv) of the Income-tax Act, 1961 (the Act)

² M/s Glebe Trading Pvt. Ltd. (ITA No. 191/Del/2019)

³ under section 2(24) (iv) of the Act

family realignment. Further, the tax officer has failed to provide any cogent reason while alleging that the transaction was sham and colourable undertaken to avoid tax.

- **Compliance with statutory provisions:**

The taxpayer submitted that the said gift of shares were given, in compliance with necessary statutory provisions, after obtaining necessary authorisations and following due process under law. The taxpayer also submitted the memorandum of understanding (MoU) for realignment of equity share holdings entered between the family members.

- **No benefit received by the shareholder:**

The tax officer exceeded his jurisdiction in observing that the receipt of shares was taxable in the hands of the shareholder, by lifting the corporate veil, without appreciating the fact that the alleged beneficiary never obtained any benefit from this transaction at any time.

ITAT's observations and order

- **Discrepancy in tax officer's approach:**

The ITAT noted that the tax officer did not make any addition in the hands of the

taxpayer but taxed the same in the hands of the shareholder of the taxpayer by holding it to be a beneficiary. The ITAT also noted the discrepancy in tax officer's approach. On the one hand, the tax officer stated that the taxpayer has benefited from the transaction, on the other hand, it alleged that the transaction of gift of shares by the shareholder to the trust was not valid and was a sham and void transaction undertaken to avoid tax.

- **Gift pursuant to family arrangement:** The

ITAT took note of the MoU submitted by the taxpayer and held that share transferred pursuant to a family arrangement and an internal family realignment amongst the members cannot be considered as a gift.

- **Taxpayer's appeal allowed:** The ITAT held

that the tax officer cannot comment on a transaction to be sham by lifting the corporate veil without providing any

cogent reasons⁴. Thus, the ITAT ruled that since the tax officer cannot comment on a third party (i.e., the shareholder), the observations made by him are without any jurisdiction. Therefore, the ITAT allowed the appeal filed by the taxpayer.

Our comments

The ruling reiterates the principle that transactions pursuant to a family arrangement/family realignment cannot be considered as gift/perquisite/benefits received and hence non-taxable.

Further, the ITAT has also emphasised that lifting of corporate veil by the tax officer without providing any persuasive reasons to tax a third party is impermissible under the Act.

⁴ and appreciating that the beneficiary never obtained any benefit from this transaction at any time.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II Indiabulls Finance Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2020 Grant Thornton India LLP. All rights reserved.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered