(INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3727/Del/2018
(Assessment Year: 2014-15)

Manjula Finance Ltd, 28, Najafgarh Road, New Delhi PAN: AAACM6990N	Vs.	ITO, Ward-16(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri V. K. Bindal, CA Ms. Sweety Kothari, CA
Revenue by:	Shri Ajay Kumar, Sr. DR
Date of Hearing	19/11/2020
Date of pronouncement	18th/12/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by Manjula Finance Ltd (the assessee/appellant) against the order of the Commissioner Of Income Tax (Appeals) – 15, New Delhi (ld CIT(A)) dated 29.12.2017 for the Assessment Year 2014-15 wherein he dismissed appeal filed by the assessee against the order of The Income Tax Officer, Ward – 16 (2), New Delhi (the learned AO) passed u/s 143 (3) of The Income Tax Act (The Act) on 30 December 2016 assessing the total income of the assessee at ₹ 2,196,633,589 against returned income of ₹ 1,104,580/–.

2. The assessee has raised the following grounds of appeal:-

"*1. That the Commissioner of Income-tax (Appeals) [in short "CIT(A)"] erred on facts and in law in confirming the addition of Rs. 219,55,29,009/- made by the assessing officer, being the alleged business income arising on transfer of shares held in companies of O.P. Jindal Group.*

2. That the CIT(A) erred in dismissing the appeal of the appellant, without affording adequate opportunity of being heard, in gross violation of principles of natural justice.

3. That the CIT (A) erred on facts and in law in affirming the action of the assessing officer holding that the appellant had allegedly earned business income on transfer of shares held in companies of O.P. Jindal Group.

3.1 That the CIT(A) erred on facts and in law in not appreciating that the said shares were given by way of gift, without consideration as part of internal family realignment of O .P. Jindal group, and consequently, no income liable to tax arose to the appellant under the provisions of the Income Tax Act, 1961 ("the Act").

3.2 That the CIT(A) erred on facts and in law in affirming the action of the assessing officer holding that the transaction could not be regarded as "gift" since the transfer of shares was neither voluntary nor without consideration and further for the reason that there was no valid acceptance of gift by the donee.

3.3 That the CIT(A) erred in confirming the notional addition made by the assessing officer on account of alleged income on transfer of shares, without any receipt of consideration by the appellant.

3.4 That the CIT(A) in law in setting aside and/ or leveling various false/ bald/ baseless allegations, including holding that the appellant had tried to suppress taxable income under the garb of gift.

3.5 That the CIT(A) erred on facts and in law in not appreciating that making of gift was a voluntary act on the part of the appellant without any consideration and therefore the question of deliberating on 'business considerations' did not arise at all.

4. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in rejecting the books of accounts of the appellant alleging that income from transfer of shares was not credited to the profit and loss account.

5. That the CIT(A) erred on facts and in law in confirming levy of interest under section 234B of the Act."

3. Brief facts of the case shows that the assessee is a company engaged in the business of financing of goods, material, movable and immovable properties

and are also trading in shares, securities, stocks and debentures. It filed its return of income on 25th of September 2014 declaring income of ₹ 1,104,580/–. The case of the assessee was selected for scrutiny. During the course of scrutiny proceedings it was found that assessee has directors in the name of

(1) Mr. Sunil Mittal

(2) Mr. Ashok Goyal and

(3) Mr. P. D. Sharma.

Assessee is holding more than 10% of its equity in the companies namely

(1) Stainless investment Ltd (11.33%),

(2) Vrindavan services Ltd (11.11%),

(3) Abhinandan investments Ltd (13.3%).

According to the note number 26 of the annual statements of appellant it was found that the assessee has made gifts of shares held as stock in trade of (1) Jindal steel and Power Ltd, (2) Jindal saw Ltd, 3) Hexa Tradex Ltd, (4) Nalwa Sons investments Ltd, (5) JSW steel Ltd. The AO further found that the assessee has claimed gifting of the above shares whose market value is Rs. 2,307,316,710 whereas the cost of purchase of these shares is Rs 11,17,87,701/–. The shares were gifted to 4 different companies namely

(1) OPJ trading private limited (74,72,040 equity shares of Jindal steel and Power Ltd having market value of ₹ 2,080,963,140),

(2) Sahyog Tradecorp private limited (5000 shares of Jindal Saw Ltd having market value of Rs. 275,050/–),

(3) Virtuouse tradecorp private limited (1000 shares of Hexa Tradex Limited having market value of ₹ 21,790) and (1,95,964 shares of JSW steel Ltd having market value of ₹ 193,665,342/–),

(4) Danta enterprises private limited (54,923 shares of Nalwa Sons investment Ltd having market value of ₹ 32,391,388/–).

When assessee was questioned about the same, it produced copy of the board resolution of the assessee company wherein the gift of above shares were approved in the board meeting held on 18th of March 2014 along with the explanatory statement pursuant to Section 104 of the companies act,

2013. In the explanatory statement at item number [1] it was stated that as a part of the internal family realignment of the OP Jindal group it is proposed to gift those equity shares of various listed companies held by assessee to other companies. Consequent to that the shareholders were to pass a special resolution. This resolution was passed by the shareholders of the company. The learned assessing officer noted that in the Articles Of Association of this company there was no provision of making a gift prior to 1/4/2013 however the articles were amended on 26th of December 2013 just a few months before the above gifts to add a clause in the 'other objects' of the Articles Of Association to make a provision for making gift by the company. It was further noted that the donee companies were incorporated before few days of making of the gift. The learned assessing officer noted that assessee had never made or accepted any gift of shares during the year and in the immediately preceding assessment year. He further noted that the reasons for making such alleged gift were disclosed in the copy of resolution passed by the shareholders u/s 102 of The Companies Act stating that the shareholders are informed that as a part of the internal family realignment of the OP Jindal group it is proposed to gift the equity shares. Therefore he noted that it is evident from the statutory disclosure that shares were transferred to newly formed companies as a sequel to family realignment and therefore these gifts could not be held as a valid gift being 'voluntary' and in view of family arrangement. He noted that the financials of the assessee company also revealed that company was incurring huge losses and has a short-term borrowing of ₹ 48.68 crores therefore the gifting of the shares of Rs. 230.73 crores without consideration could not be a 'voluntary' act by any stretch of imagination. He further noted that these financials further corroborates that the transfer of shares to the donee company was under the compulsion as a part of family settlement and was not a voluntary act. He noted that assessee was supposed to transfer such shares as a part of predetermined family settlement. Therefore, he held that it is not a valid gift of shares but had actually transferred the shares in lieu of certain gains in the process of family settlement agreement. He further noted that the cost of the shares held by the assessee was ₹ 111,787,701 and those shares were not held as

investment but as stock in trade, accordingly, the question of capital gain does not arise but it is a case of business income from transfer of trading shares. He reproduced the balance sheet of the assessee company thereafter. Thus according to him it was clear that assessee has transferred shares having the value of ₹ 230 crores to various companies as a part of internal family settlement, however, sale proceeds of such shares which were held as stock in trade as evident from the profit and loss account had not been credited to the profit and loss account. Since the assessee has not disclosed the details of internal family arrangement leading to the transfer of the above share, he held that the assessee had deliberately withheld disclosure of the value of the consideration received by the assessee on transfer of the shares, therefore, he issued a show cause notice to the assessee that why the sum of ₹ 230.73 crore should not be credited to the profit and loss account as sale proceed on transfer of shares as a part of transactions involving family realignment.

4. The assessee made submission on 31st of October 2016 stating that a company, assessee, can give gift and it is not prohibited. The assessee further relied upon the several judicial precedents in the case. With respect to the taxation it was submitted that only real income can be taxed and no notional income can be taxed as a business income. Assessee further stated that there is no income accruing to the assessee on making the above gifts and therefore there cannot be any business income received or accrued to the assessee.

5. The learned assessing officer rejected the contention of the assessee. He noted that in the step number [1] assessee has introduced amendment in articles, in step number [2] formed the new companies, in step number [3] resolution was passed proposing the above gifts and in step number [4] the shares of ₹ 230 crores were gifted and no sum were not credited to the profit and loss account. He further stated that in step number [5] in order to hide true nature of the actual sale of shares it was claimed that since shares were gifted voluntarily without any consideration no tax was payable. However important facts that such transfer was part of the internal family realignment of the OP Jindal group was concealed and was not disclosed in audited account which was detected later on in the enquiry. Therefore,

According to ld AO, assessee created scheme of tax evasion involving artificially inserted steps to transfer the shares. He further examined that under the provisions of Section 122 of The Transfer of Property Act, whether a valid gift has been made or not. He held that the assessee has transferred the property in shares held as stock in trade; therefore there is a transfer of Movable property. He further held that whether the transfer was made voluntary or not, he held that financials of assessee corroborates that the transfer of shares to the donee company was under an compulsion as a part of family settlement and was not a voluntary act and therefore this condition is not satisfied and therefore assessee has not made any valid gift of shares but had actually transferred the shares in lieu of certain gains in the process of the family settlement agreement. However, he further stated that the transfer was not without consideration. According to him that the transfer of the shares were made under the alleged gift in lieu of substantial receipt by the assessee which may be if not more but matching value, however, the exact amount of receipt on transfer of shares having the quoted price of ₹ 230 crores could not be ascertained due to deliberate withholding of information of internal family realignment. Therefore, according to him, gift was made in view of a consideration and this condition of further valid gift was not met by the assessee, therefore, gift made by the assessee is void. With respect to the acceptance of gift by Donee , he held that the board resolution of the Donee companies has not been provided and therefore the acceptance of gift could not be proved. The learned assessing officer thereafter noted that as the assessee has not discharged its onus by furnishing the detail of internal family settlement in order to enable the assessing officer to compute correct amount of business income on transfer of the shares, he held that the assessee has received the business income of ₹ 230 crores being the fair market value of the shares. He further held that as assessee has not disclosed the business income accrued to the assessee on transfer of the shares, books of accounts of the assessee was rejected as it is also proved that the transfer of shares was not a valid gift but it was a transfer in view of internal family realignment for a consideration. Since the shares were held as stock in trade the business income of ₹ 219 crores (230 crores for market value – ₹ 11 crores cost of the

shares) accrue to the assessee on its transfer of shares and same was not credited to the profit and loss account, therefore, books of the assessee company were held not reliable. So he rejected the same applying the provisions of Section 145 of The Income Tax Act. Thereafter, he computed the total income of the assessee by making an addition of ₹ 2,195,529,009 to the returned income of the assessee and thereafter determining the total income of the assessee at ₹ 2,196,633,589 by passing an order u/s 143 (3) of The Income Tax Act 1961 on 30 December 2016.

6. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. The learned CIT – A held that assessee has not submitted the copy of internal family arrangement before the AO as well as before him, which was essential to ascertain exact quantum of business income accrued to the assessee on transfer of the shares was not disclosed. He further rejected the reliance placed by the assessee on several judicial precedents; therefore, he upheld the contentions of the learned assessing officer. Further he analyzed the financial statement of the assessee and found that during the year there is hardly any sales/turnover achieved on account of sale of stock in trade being shares. He further noted that for financial year 2012 – 13 the turnover of the assessee company is nil and for financial year 2013 – 14 it is just 1.6 lakhs. He further noted that 95% of the total revenue of the assessee is achieved by way of dividend on securities. Therefore the above fact and figures clearly shows that assessee is not engaged in the business of trading of the shares and assessee is incurring huge losses year after year. Therefore he held that there is absolutely no business sense by such a company who is already incurring huge losses should gift its stock in trade being shares held by it in other listed companies to 3rd companies. He further noted that assessee has taken a loan of ₹ 40.89 crores and interest paid on such loan is Rs 2.28 crores and stated that there is no business sense in making such a gift by assessee. Further on the basis of the financial statement analysis made by him, he held that assessee is hardly doing any trading in shares and wrongly claiming that it is engaged in the business of trading of shares, as it has hardly sold any shares in previous two financial years and the major part of revenue from operation has been achieved on account of receipt of

dividend from the investment made in shares, therefore such business receipts cannot be considered as business income. He further referred to the decision of the authority for advance ruling in case of Orient Green Power private limited (AR number 973 of 2010 dated 14/8/2012). He further upheld the action of the AO in rejecting the books of accounts of the appellant by invoking the provisions of Section 145 of the act. Thus he upheld the action of the learned assessing officer in treating the book value of shares gifted which was part of stock in trade of the appellant company amounting to Rs 219 crores as business income of the appellant. Accordingly, of the assessee was dismissed. Assessee aggrieved with that has preferred this appeal before us.

7. The ld AR submitted on merits of the case as under :-

i. In support of the contention of the assessee, it is stated that there was a Memorandum of Understanding dated 12/11/2012 amongst the four sons of late Shri O P Jindal specifically desiring to realign or rearrange the holding of listed equity shares of late Shri O P Jindal group companies amongst various other group companies under the control of four brothers and their families. A photocopy of the said Memorandum of Understanding dated 12/11/2012 has been filed in the paper book.

ii. This Memorandum of Understanding dated 12/11/2012 was filed by another group company Glebe Trading Pvt. Ltd before the ITAT, SMC-1, New Delhi, conducted by division bench ,in ITA No. 191/Del/2019 for the AY 2014-15 where vide order dated 12/05/2020, the Hon'ble ITAT took the said Memorandum of Understanding on record and gave a clear cut finding that the transfer of those listed equity shares of various Jindal group companies to various other Jindal companies in realignment or rearrangement is neither a gift nor a benefit nor a perquisite in the hands of the beneficiaries. The Tribunal categorically held that a family arrangement and internal family realignment

amongst the members of the family by transferring listed equity shares by various group companies to different companies and cannot be taken as gift.

iii. Original affidavits of two professionals (1) CA Ajay Kumar Mittal, a practicing Chartered Accountant and (2) CS Raj Kumar Yadav, a practicing Company Secretary who assisted the board of directors of the appellant to transfer the said listed equity shares without consideration in any manner in pursuance to the said family understanding of realignment have been placed in the Paper Book.

iv. Photocopies of Demat accounts of the said 4 donee companies have also been placed in the paper book as a proof that the gifts were complete as soon as the said listed equity shares were transferred in the Demat accounts of the donee companies.

v. Annual audited accounts as on 31/03/2014 of the 4 donee companies showing the said gifted shares duly disclosed therein as their assets have been placed in the Paper Book.

vi. Details of significant beneficial owners of the appellant as on 31/03/2014 have also been placed in the Paper Book.

vii. Details of shareholders of done companies and significant beneficial owners of those companies as on 31/03/2014 has also been placed in the paper book as a proof that those companies belong to Jindal Group.

viii. Evidence of receipt of dividends wherever declared after transfer of those shares by the donee companies have also been placed in the Paper Book.

ix. Dates of holding of the all the shares including the listed equity shares gifted by the appellant showing with no trading have also been placed in the Paper Book.

x. Copies of annual audited accounts of the appellant from the FY 2007-08 to 2012-13 have also been placed in the Paper Book.

xi. Copies of annual audited accounts of the appellant from the FY 2014-15 to 2017-18 along with details of sale of stocks and list of dividend received from various companies have also been placed in the Paper Book.

xii. On perusal of the above information, it is clear that the transfer of the listed equity shares of the group companies by the appellant to other group companies was in pursuance of a family realignment in pursuance to the MOU dated 12/11/2012.

xiii. On perusal of the appellate order dated 12/05/2020 of the Hon'ble ITAT in the case of Glebe Trading co P Ltd , it may be seen that three donor companies therein gifted listed equity shares of the five group companies to Glebe during the period relevant to the AY 2014-15 i.e. the same period which is under consideration.

xiv. Further, on perusal of the above assessment order of the appellant, it is clear that the appellant also gifted / transferred listed equity shares of five listed group companies to other four group companies. Thus, this by itself shows that there was going a process within the relevant period of realignment of the listed equity share holding only by different branches of late Shri O P Jindal

for future business development / management by the respective branches.

xv. It may kindly be appreciated that a family realignment document is a secret document and could not be put in public domain for confidentiality, investor's confidence, fake rumors, damaging the reputation of group, holding market value of listed equity shares of the group etc. However, the entire presumption by the Assessing Officer is without an exercise to seek direct confirmations from the donee companies whose complete details were on his record whether those companies paid any consideration to the appellant in lieu of the equity shares received as gifts.

xvi. In Clause (iii) on Page 43 of the CIT(A)'s order**,** the CIT(A) in his order has categorically held that the appellant was not in share trading business and all the equity shares held by the appellant were investments in shares and rather than was not at trading in shares. This finding has attained finality as the Revenue has not challenged the same in appeal.

xvii. The finding in clause (iii**)** as above has again been repeated by the CIT(A) on page 46 of his appellate order.

xviii. The authorities below have alleged that the appellant incurred huge losses during the relevant period and still opted to transfer the listed equity shares without any consideration to other group companies by ignoring that the appellant did not claim any loss on account of interest paid to the group companies from whom the loans were borrowed. This is clear from the copy of the return of income and a copy of the computation of assessable income placed in the Paper Book. In fact, the appellant

submitted a return of income declaring a net income of Rs 11,04,580/- as against the book loss. Further, besides the said interest, the appellant had provided a sum of Rs 2.03 crores as provision for depletion of stocks which was also written back while computing the assessable income. In fact, during the relevant period, the appellant had a gross total income of Rs 1.51 crores in which dividend of Rs 1.40 crores was exempt and taxable income came to Rs 11,04,580/-. The authorities below misguided themselves in harping upon the quantum of loss ignoring that the appellant had as on the balance sheet date investment in shares of Rs 33,34,00,000/- and had given short term loans and advances of Rs 7.49 crores.

xix. A photocopy of the letter dated 07/11/2001 vide letter no. REGN. MISC. (EXISTING COY)/2001-02 issued by RBI rejecting the NBFC application which has been placed in the paper book. Reference is also invited to Para 19 of the notes to accounts, which specifically mentions that after rejection of appellant's application by the RBI to carry on business as a NBFC, the assessee-company has restricted its activities mainly of holding shares as promoters in the investee companies which proves that the appellant is basically an investor and not a trader in the stocks, a finding given by the CIT(A) which has also attained finality as none has challenged the same in appeal before the Hon'ble ITAT. Thus, the said shares need to be considered as capital investment.

xx. Admittedly, the appellant could not produce the family arrangement / alignment agreement executed on 12/11/2012 by the four sons of late Shri O P Jindal with the Assessing Officer because it was executed at Hisar. It got mixed up with other papers there only because the 4

brothers visit Hisar together around Diwali every year and most of the time are at locations in different cities and countries for their business purposes. After a deep search, the said paper could be located and submitted in the appellate proceedings of Glebe first time as such and has come in the public domain.

xxi. Since, the appellant is an artificial incorporated body who acts through its directors and shareholders, who were informed by the Jindal family members of the said understating, passed the resolutions to transfer the desired / identified listed equity shares of the Jindal group companies to other Jindal group companies as a part of the family rearrangement / agreement.

xxii. It is a well settled law that a family realignment / rearrangement is not a consideration to be valued in monetary terms in any manner that too in lieu of the gifts / transfer within the family holding realignment. It is submitted that the motive cannot be confused with consideration. It is the motive of the family members / shareholders of the appellant to give gift of the share for achieving the family realignment but this not a consideration for making the gift by the assesse-company. Consideration is one which is handed over by the transferees to transferor. This family realignment was neither owned by the donee companies nor was in any manner given to the appellant as a consideration.

xxiii. Such transactions are voluntarily without consideration and complete as soon as the beneficiary accepts the same. In this case, all the shares were transferred in the Demat account of the beneficiaries and dividend thereon were received by them.

xxiv. Therefore, the revenue is wrong in taxing fictitious / imaginary gains under the head business and profession. On the basis of this undisputed finding only capital gains could have been charged which in the present case is exempt u/s 47(iii) of the Act being gift without any valuable consideration. Hence, appeal should be decided in our favour.

xxv. Alternatively, even if it is presumed that the said shares were not capital asset and stock in trade, still the presumption that those were transferred / sold for valuable consideration is completely untenable legally. It is trite law that abstracts like natural love and affection, succession planning, family realignment, etc. are not valuable considerations in terms of money or monies worth which is the basic requirement under Sales of Goods Act, Contract Act, and Transfer of Property Act. It is submitted that when no transfer / sale is valid without valuable consideration and in absence of consideration, no income under the head business can be presumed.

xxvi. Whether the shares are treated stock in trade or investment is not very relevant for the dispute since the owner has absolute right of ownership which includes alienation, discarding or destroying the property at his Will. Factum of gift has been rejected by the revenue authorities, firstly, on the ground that the transfer involves consideration i.e. family realignment. As submitted earlier, the consideration has to be in money or monies worth and not abstract considerations.

xxvii. Second ground, adopted by the revenue authorities is that the evidence of transfer of equity shares in full was not

produced by the assessee and therefore, the transfer was not complete. It is submitted that it is self-contradictory finding as in a case where transfer of movable property is not complete, no income can anyway accrue. The transfer of movable property is only by handing over the possession if no possession is handed over then no question of any income of any type arise.

xxviii. Without prejudice, in catena of cases of Apex Court and all other courts have held that such an abstract consideration is not capable of any valuation and when computation provision fails charging section cannot be applied.

8. He further submitted a short gist of various judicial precedents relied up on :-

i. The assessee was the absolute owner of the gifted shares and had full enjoyment rights including for alienation, discard and even demolish, unless prohibited by some statute or legal restraints / injections. [Podar Cement Case laws Paper Book CLPB 29, Mysore Minerals Ltd. CLPB48]. 'Why' or purpose of such alienation or motive behind this act of alienation cannot be questioned, least by an outsider like the revenue.[PendurthiCLPB 71,88 Para 23]

ii. Corporate are competent to give gifts / receive lifts [Supreme Court in Hindustan Lever CLPB 580, D.P.World CLPB598, Ultima Search CLPB 752,Dwarka Prasad CLPB760, Dev Kumar CLPB 790, Jayneer CLPB494 , KDACLPB 608 and 733,Direct Media CLPB860,ShahrukhCLPB 849, Amiantit CLPB 339, Dana Corp CLPB 309, DeeraCLPB 835 and more.

iii. Gift between two legally competent persons can at best be voidable and can only be avoided by the concerned parties, not by outsiders least the AO.[Supreme Court in JOHRILAL SONI CLPB433,Motilal Ramswaroop CLPB 440, K.N.Narayana CLPB 444.]

iv. Without prejudice, if gifts were void / sham, then it would mean that no title actually transferred and therefore, no question of any income. [Supreme Court in JOHRILAL SONI CLPB 433, Escorts Ltd CLPB 449, 470, Motilal Ramswaroop CLPB 440 , K.N.Narayana CLPB 444.]

v. The AO alleged that the gifts were not voluntary nor shares actually handed over to the donees. Without prejudice, sale / transfer can never be alleged when contract is not voluntary and moveable property (shares) not handed over to the buyer / transferee. Consideration has to be in the form of money or money's worth. [Supreme Court Dhampur Sugar CLPB 185]. Approbate & reprobate – Gift is treated invalid alleging that proof of handing over to the donee not provided – then, how can it be sale/ transfer when movables are sold/ transferred by handing over possession – It is also held that gifts were not voluntary – then, no sale can be presumed since sale is always voluntary agreement between two parties

vi. Shares were shown as stock in trade and when assessee decided to gift i.e. withdrawing from trading, no income accrues. [Supreme Court Kikabhai CLPB 100, Special Bench ITAT in DLF CLPB 111, Bright Star CLPB 163, Aditya Medisales CLPB 170]. Kind reference to the finding of the CIT(A) in para 17 page 46 that the shares were held by the assessee as investment has not been challenged by revenue or assessee before the Hon'ble ITAT here.

vii. When the stock in trade is withdrawn for gifting out, it gets converted into capital asset in nature[Special Bench DLF Universal CLPB 111].The character of the asset at the time of its transfer alone is relevant, and what was the nature at the time of its acquisition, is altogether irrelevant. Therefore, in the present case the character of shares after withdrawal from trading was capital and there is no question of business profit [Special Bench DLF Universal]. *Stand of revenue in para 16.26 of DLF and recorded reasons in Dhruv Deepakbhai CLPB 883 was same.*

viii. It is, therefore, submitted that withdrawing stocks from the business for gifting, tantamount to its conversion into capital asset and on gifting the same to the donee companies, the capital gains in view of the S. 47(iii) could not arise.

ix. The averment of the revenue that the shares were transferred for a consideration 'in lieu of the consideration under the family realignment' is against the settled law that the abstracts like natural love and affection, obedience and submission, spiritual benefits, intention to settle family disputes, realignment of family assets etc. can never be treated as consideration. [Supreme Court Sonia Bhatia CLPB210, Gujarat High Court in Patel Ramanbhai CLPB226, Dana Corporation CLPB309, SET India Pvt. Ltd CLPB323, Amiantit International CLPB 339, Heeral Constructions CLPB350, Sunil Siddharthbhai CLPB 914, B.C. Srinivasa Setty CLPB 925].

x. No one was owner of 'in lieu of the consideration under the family realignment', donees were not capable of paying this alleged consideration nor were the assessee capable of receiving same.

xi. Factum of gift cannot be ignored on whims and fancy. [Supreme Court of India in IllothValappil Ambunhi CLPB427]

xii. Charge of tax evasion scheme levied when no taxable event was forthcoming nor any assessee claimed loss to be set off [Jayneer CLPB 494, 508]. Steps prior to gifts have no bearing. Set India CLPB 331. The donor was loss making etc. has no bearing on the matter. [Jayneer CLPB 507 Para 26(1)]

xiii. The allegation that family MOU was not provided. Appellate order in GLEBE furnished to the ITAT which has been decided in its favour. CLPB20.

xiv. In any case, the MOU had no bearing on the issue of taxing business profit [Jayneer CLPB 494] since the family realignment was motive which cannot be confused with the consideration [*Supreme Court in Sonia Bhatia CLPB210,* Bombay High Court in Ormerods CLPB195, Apex Court in Seth R. Dalmia CLPB 201, P&H in Satish Bala CLPB886, Kanak Sunder Bibivs Ram Lakhan Pandey & Ors.CLPB 375].

xv. Without prejudice, B.A. Mohota CLPB 899- family settlement would not cover the corporate – therefore, the gifts between the donor company and the done companies must be viewed without considering the issues of the family which controls these corporate. CLPB 904 para 9.

9. Ld AR further relied up on several documents filed in his paper book containing 509 pages. He referred to many of those documents including the annual accounts of the assessee appellant, annual accounts of the Donee companies and the way shares have been transferred by assessee and accepted by the donee companies.

10. The learned departmental representative vehemently supported the order of lower authorities .

11. We have carefully considered the rival contentions, various decisions cited as well as the paper books supplied by assessee and orders of lower authorities. Simple facts before us shows that assessee appellant company was holding some shares of certain listed companies of O P Jindal Group as stock in trade. As stated these shares were gifted by the appellant company to four different companies of the same group. It was claimed that these gifts have been made as part of family settlement/ arrangement of O P Jindal Group.

12. The first contention that we deal with is whether the appellant company has transferred those shares as part of O P Jindal Group family settlement. A family arrangement is an arrangement between members of the same family intended to be generally for the benefit of the family by compromising doubtful or disputed right or by preserving the family property for peace and security of the family by avoiding litigation or by saving its honour. Therefore, the family settlement should necessarily comprise of a dispute or possible dispute to be settled amicably between the members of a 'family'. The first question that arises is whether a company, appellant can be considered to be a member of the 'family' of the Jindal group or not. The categorical answer that we give for the proposition is that a company being a separate and distinct entity and, hence, it does not form part of a family. Therefore, a corporate entity cannot be considered to be a part of the family. The honourable Bombay High Court considered the identical question in case of B. A. MOHOTA TEXTILES TRADERS PVT. LTD. *v.* DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER 397 ITR 616 (2017) as Under :-

> "9. We have considered the rival submissions. There is no dispute before us that a family arrangement/settlement would not amount to a transfer. In fact, all the three authorities under the Act have not disputed the aforesaid position in law. So far as the members of Mohota family are concerned, who are parties to the family settlement, any transfer inter se between them on account of family settlement

would not result in a transfer so as to attract the provisions of the capital gain tax under the Act. However, in the present case, we are not concerned with the members of Mohota family who were parties to the family settlement, but with transfer of share done by the company incorporated under the Companies Act having separate/ independent corporate existence, perpetual succession and common seal. This company is independent and distinct from its members. In fact, this principle dates back to the decision of the House of Lords in Salomon v.

Salomon and Co. Ltd. [1897] AC 22. Our court in T.R. Pratt (Bombay) Ltd. v. E. D. Sassoon and Co. Ltd., AIR 1936 Bom 62 has observed as under :

"As held in Salomon v. Salomon and Co. Ltd. [1897] AC 22, under the law, an incorporated company is a distinct entity ; and although all the shares may be practically controlled by one person, in law a company is a distinct entity and it is not relevant to enquire whether the directors belonged to the same family or whether it is, as compendiously described 'a one-man company'."

10. However, the courts have permitted the lifting of corporate veil to prevent injustice. One such class of cases, where the court has disregarded the corporate entity is where it is used for tax evasion. A classic illustration of this is found in Dinshaw Maneckjee Petit, In re [1927] AIR 1927 Bom 371, where the court lifted the corporate veil as it found that "the company in this case was formed by the assessee purely and simply as a means of avoiding super tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as a legal entity to ostensibly receive dividends and interest and handed them over to the assessee as pretended loan". In the present case,

the Revenue does not seek to lift the corporate veil. It is not the case of the Revenue that the corporate identity is a sham and it has been formed only to circumvent the law. In this case, it is the assessee which seeks to lift the corporate veil so as to identify the members of the assessee-company as those who entered into family settlement as reflected in the arbitration award dated April 30, 1994 and call upon the authority to ignore the corporate existence of the appellant. This lifting of the corporate veil is not allowed when it is not for the benefit of the Revenue. The apex court in the case of Mrs. Bacha F. Guzdar v. CIT [1955] 27 ITR 1 (SC) ; [1955] 25 Comp Cas 1 (SC) has inter alia observed that "A shareholder has no interest in the property of the company . . . It has only a right to participate in the profits of the company as and when the company decides to divide them. The company is a juristic person and is distinct /different from its shareholders. It is the company which owns the property and not the shareholders". Therefore, the attempt of the shareholder to lift the corporate veil at the instance of the shareholder was rejected. In this case also, shares in M/s. R. S. Rekhchand Mohota Spinning and Weaving Mills Ltd. and M/s. Vaibhav Textiles Pvt. Ltd. are held by the appellant-assessee and not its members. The members, therefore, cannot claim any rights to the property of appellant/assessee-company, i.e., shares of M/s. R. S. Rekhchand Mohota Spinning and Weaving Mills Ltd. and M/s. Vaibhav Textiles Pvt. Ltd. as rightly held by the authorities under the Act.

11. The submission of learned counsel Mr. Thakkar that the entire transaction should be looked at wholistically bearing in mind the purpose and object of the settlement as recorded in the arbitration award dated April 30, 1994 so as to settle the dispute between members of the family and it was to achieve the aforesaid objective that the shares in the appellant-

assessee were directed to be transferred. The objective/purpose of family settlement would restrict itself only to the persons who entered into the family arrangement and are part of the settlement. It cannot extend to the persons who are strangers to the settlement. In this case, admittedly, the appellant- assessee is not a member of Mohota family so as to be a part of the family settlement. The appellant-assessee having been formed under the Companies Act have certain advantages and disadvantages attached to it. But once a company comes into existence under the provisions of the Companies Act and it is considered to be an independent entity, then its obligation under the law as a separate legal entity has to be complied with and settlement arrived at between its members cannot discharge the appellant- assessee from complying with its obligations under the law. It was also contended that the appellant-assessee had no volition in transferring the shares. This submission overlooks the fact that an artificial entity such as a company only acts through its directors and in no case, does the company have a mind of its own to decide the course of action to be adopted.

13. Further Honourable Karnataka High Court in case of Commissioner Of Income Tax And Another Versus Sea Rock Investments Ltd (2009) three and in 17 ITR 253 (Kar) has also held that though in that case the respondent assessee is a private limited company even though its shareholders are members of the joint family, shareholders have no right over the assets of the company and they would get a right over the assets of the company only in the event of the company is liquidated under the provisions of the companies act and assets are to be distributed to the members of the company. If it is so, by virtue of the arbitration award of shares of the private limited company are transferred to others for consideration, it was held that the respondent assessee being a legal entity is liable to pay the capital gain tax.

14. In view of the above to decision of the honourable High Courts we are of the view that that gift made by the appellant company cannot be said to be a part of a family arrangement as a company cannot be a member of a family but a separate juridical entity having its own separate existence. We are also conscious of the fact that family in said family settlement is not limited to the meaning conferred to it by succession laws. It has been specifically held that family should not be given a narrow meaning under a family settlement it includes not only members belonging to one family but also those who are in near relation to each other. But it cannot also be so farfetched that a different corporate entity merely, if the shares are held by some of the members of family is also part of Family for considering tax impact under the family arrangement. The company cannot be said to be in real relation to any of the family members but a separate legal entity. Therefore, if there is a transaction between two family members of the family, a corporate entity is not entitled to get any benefit which a member of the family is entitled to.

15. In view of the above facts, whether the assessee has produced said family settlement deed or a family memorandum of understanding or not does not make any difference and the transaction is required to be tested devoid of any consideration for a family arrangement.

16. Now coming to the facts of the case, assessee is a corporate entity who has made gifts to another corporate entity. According to Section 122 of The Transfer Of Property Act certain conditions are required to fulfilled to qualify as a valid gift. Section 122 of The Transfer Of Property Act postulates that the gift is a transfer of certain existing movable or immovable property made voluntary, and without consideration by one person called the donor to another, called a donee and accepted by or on behalf of the donee. Therefore the essential elements of the gift are (1) the absence of consideration, (2) the existence of donor, (3) the existence of donee, (4) to be voluntary, (5) the subject matter, (6) the transfer, (7) the acceptance. For the purpose of making a gift of movable property, the transfer may be effected either by registered instrument signed by delivery. In other words, to constitute a valid gift an important requirement is the acceptance thereof. In the present case it is not in dispute that the company transferred shares

held as stock in trade and having market value of Rs 230 crores to the four companies and therefore there is no dispute that there was a transfer of movable property. It is also not in dispute that appellant company was the sole owner of those shares which were transferred as gift to four donee companies. The appellant has amended its articles of association on 26th of December 2013 by adding/inserting clauses 54, 55 and 56 of the 'Other objects' to include a provision for making a gift by the appellant company. Further resolution was also passed in the meeting of the board of directors of the assessee company on 18 March 2014 proposing gift of equity shares to the other four companies. Further an extraordinary general meeting was called on 20th of March 2014 and there also the above resolution was passed by the shareholders of the assessee company. On careful analysis of the shareholding pattern of the assessee it is apparent that there are 12 different corporate entities who are shareholder of the appellant company. Though, the shareholders of these corporate entities who are holding shares in the appellant company are either some other corporate entities or some family members of OP Jindal group. When shareholders amend the articles of association of company, which is a rule book of a corporate entity, the shareholders vote for approval of such an amendment. Therefore, it is their unfettered right to amend any article of the company in the articles of association, which they deem fit and appropriate and is in consonance with The Companies Act 2013 or The companies Act 1956. Further, a resolution is also passed in the extraordinary general meeting of the shareholders approving those gifts. As shareholder , they could have also rejected the proposal of the Board of Directors and such resolution could have been defeated in Extra Ordinary General meeting of Shareholders. . Therefore it cannot be said that the gift made by the appellant is not voluntary. The financial condition of the assessee vis-à-vis is the shares gifted also cannot be interpreted to mean that that the shares transferred by the assessee as a gift are not voluntary. Even the note number 26 in the annual financial statement for the year ended on 31st of March 2014 also states that pursuant to shareholder resolution dated 20 March 2014 and the resolution of the meeting of the Board of Directors shares of OP Jindal group companies held by the assessee have been gifted to other companies and

the value of such shares at cost have been adjusted against the reserves and surplus of the assessee. Consequently the reserves and surplus of the assessee was debited by the cost of those shares. Even after making of the gift asset base of the appellant company is more than Rs 41 crores. It has inventory of shares of Rs 33.34 crores. For proving that gift was executed with free and voluntary consent of the donor, it must be proved that the physical act of signing the deed coincided with the mental act, intention to execute the gift. In that case a bare allegation of gift not valid would not help the case of the ld AO when the appellant itself admits its execution and donee accepts its receipt. Merely because the shareholders of the appellant company are some of the corporate and the family members of OP Jindal family and assessee has incurred some losses but has still good net worth, it cannot be said that amendment to the articles of association, passing of the resolution by the board of directors of the appellant company (none of them belong to the family member of the OP Jindal family) and passing of the resolution by the shareholders in an extraordinary general meeting cannot be said to be a non-voluntary act by the appellant. The criteria is laid down u/s 122 of The Transfer Of Property Act 1882 clearly shows that there has to be an absence of consideration. The learned AO at page number 14 of assessment order has held that the above transaction is of gift made by the assessee, however substantial receipt by the assessee which may be if no more but with matching value. However the exact amount of receipt on transfer of shares could not be ascertained due to withholding of information of internal family realignment. We find that there is no fund credited in the books of account of the appellant, no assets are acquired by the appellant, no benefit is received by the appellant, there is no promise of any future consideration in lieu of the alleged gift. On the basis of the financial statements produced before us also we could not find that assessee has been benefited in any manner for the alleged gift. Therefore, assessee appellant company which is a separate independent entity as a donor has not received any consideration or benefit in lieu of the above gift. Needless to state that only real income can be taxed in the hands of the assessee and there is no scope for taxing any hypothetical income, unless law mandates to do so. Further there is no doubt that the donor i.e. the

appellant company as well as the donee are the persons who can make and receive the gift. Assessee has also produced the evidence about the subject matter of gift of those shares owned by the assessee. Those shares were also disclosed in the annual accounts of the assessee company as stock in trade. The acceptance of the above gift in case of the recipient of the above gift has also been established as all of them have disclosed the above subject matter of the gift i.e. shares in the annual accounts and they are also assessed u/s 143 (3) of the act for assessment year 2014 – 15, 2015 – 16 and 2016 – 17. The relevant assessment orders are also placed at page number 332 – 334, 399 – 404, 335 – 337, 447, 448 and 449 of the paper book. These shares have also been transacted trough dematerialized account with NSDL . The annual accounts of the donee and donor are also approved by the shareholders and directors. Thus, acceptance of the above gift is also proper. In view of this the requisite conditions as envisaged u/s 122 of The Transfer Of Property Act, 1882 are satisfied.

17. It is important to note that u/s 45 (2) of the act provides for taxability in case of conversion of a capital asset into stock in trade however, there was no specific provision with respect to the reverse situation i.e. taxability arising on conversion of stock in trade into capital asset. The finance act, 2018 has plugged this lacuna by amending certain provisions applicable with effect from 1 April 2019 by inserting clause (via) u/s 28 stating that the fair market value of inventory as on the date on which it is converted into or treated as a capital asset determined in the prescribed manner shall be charged to tax as business income. Further Section 2 (24) has also insertion of clause (xiia) to include fair market value in the definition of income. Provisions of Section 49 were also amended by inserting subsection (9) so as to provide that for the purpose of computation of capital gain arising on transfer of such capital assets, the fair market value on the date of conversion is held to be the cost of acquisition. Further Section 2 (42A) has also an insertion of clause (ba) in explanation 1 of clause (i), which provided that the period of holding such a capital asset shall be reckoned from the date of conversion treatment. The above provisions have been amended with effect from 1 April 2019 and therefore even if it is to be presumed that by gifting of the shares assessee converted its stock in trade

into a capital asset before gifting, same are not liable to be taxed in assessment year 2014 – 15 i.e. impugned assessment year. However, there is no act on part of the assessee for the reason that no allegation of the revenue that before transferring the above share as a gift to the different donee companies, assessee converted its stock in trade into a capital asset. The fact remains that revenue also says that the assessee has transferred its stock in trade as a gift.

18. The learned assessing officer rejected the books of accounts of the assessee for the reason that according to him, assessee has not disclosed business income accrued to it on transfer of the shares to the audited profit and loss account. He also rejected the argument of the assessee that no income has accrued to the assessee and only real income can be taxed. The assessee also stated that as assessee has transferred its stock in trade as a gift, the income is required to be computed in accordance with ordinary principles of accounting. The learned assessing officer noted in para number 6.14 that it is an undisputed fact that the impugned shares having value of ₹ 230 crores on the date of transfer disclosed in the profit and loss account as stock in trade as evident from note number 15 of the statement of the profit and loss account for the year. As according to him the gift was not a valid gift he computed the business income of the assessee at Rs 219.55 crores as consideration accrued to the assessee on transfer of the shares. He therefore held that the books of accounts are not reliable and provisions of Section 145 of the act were invoked. We do not find any purposes in rejecting the books of accounts when issue is whether there is any real income earned by assessee or not.

19. As the assessee has gifted the share, there is no accrual of any revenue to the assessee. According to accounting standard (9) of Revenue Recognition, Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. As there is no sale of security by the assessee,

there is not any inflow of cash, receivables or other consideration, there is no question of accrual of any consideration to the assessee. Even otherwise we hold that according to the Section 122 of The Transfer Of Property Act, 1882 there is an absence of consideration in case of a gift.

20. It is an undisputed fact that the assessee being the absolute owner of the shares gifted , had full enjoyment rights including to alienate, discard and even demolish, unless prohibited by some statutory provisions, it is within the powers of the assessee to make gift at its free will. Further the shares were credited in the books of account of the donor. The gift is also authorised by articles of association, approved by Board of Directors and Shareholders. Assessee heavily relied upon the decision of the coordinate bench in case of Glebe Trading Private Limited Versus Income Tax Officer (2020) 116 taxmann.com 866 (Delhi) to state that when the assessee in that case received certain shares from various companies as gift without paying any consideration the same was also not chargeable to tax in view of family settlement of Jindal group. We have carefully considered the facts of that case and found that those facts are distinct with the case before us. In that particular case there was no addition in the hands of the appellant donee company but the appeal was merely against a direction by the learned assessing officer to tax the above sum in the hands of the beneficiary by applying the provisions of Section 2 (24) (iv) of the income tax act in the hands of one Ms Arti Jindal while assessing the case of the appellant company. The only grievance in that appeal was that despite no addition was made in the hands of that appellant company, the learned assessing officer's jurisdiction was challenged wherein it has been held that benefit arose to the shareholder of the appellant company by invoking the above provisions of the income tax act. Here we do not have any issue about the taxability of sum in the hands of the donee companies. In fact those have been assessed and there is no addition in the hands of those companies, even otherwise we are not concerned with that /and issue before us is only about taxation of gift in the hands of the donor company. Therefore reliance on that particular judgment does not apply to the facts of the present case.

21. It would be proper here referred to the judgment of the coordinate bench in case of Gagan Infra Energy Ltd (2018) 94 taxmann.com 301 (Delhi) wherein the matter was set aside to the file of the learned assessing officer only with a direction with respect to establish the genuineness and validity of the alleged transaction as also in that case the memorandum of family settlement in case of OP Jindal group family was not produced and there was no power with the assessee to give f gift in Articles of association of the company. Assessee , in that particular case could not show that articles of association of that company provided for authorizing the company to make gift. However in the present case before us, we have already held that in view of the decision of the honourable Bombay High Court and honourable Karnataka High Court (317 ITR 253) clearly state that the corporate entity is cannot be part of family so far as the taxability of family arrangement is to be determined. Further there is a provision in articles of association in the case before us for making gift of the assets of the company, which is also not disputed by revenue. Further above judgment did not consider the above two decisions of the honourable High Courts and further it went on the issue of nonproduction of family agreement. In the impugned case, we have held that the transfer of shares held by assessee as stock in trade shown as a gift to a corporate donee it does not have any impact of any family arrangement as corporate entity is cannot be held to be part of a family by any extent.

22. The revenue has relied upon the decision of The Authority For Advance Ruling, New Delhi dated 14 August 2012 in AARs number 973 of 2010 in case of Orient Green Power Pte Ltd. The facts stated in that particular ruling was that the applicant was a company incorporated in Singapore. It gifted shares of one Indian company to another Indian company. In that particular ruling the shares were held as capital asset and claim was that on transfer of such capital asset i.e. shares of one Indian company transferred as a gift to another Indian company , does not involve any consideration and therefore no capital gain is chargeable to tax. The authority in that ruling held that u/s 82 of the companies act, the shares in any company shall be movable property transferable in manner provided by the articles of the company. In that particular case, the authority did not find any provision in

the articles of association for gifting of the shares to another corporate. Further there was a specific mention that the purpose according to the revenue was for avoiding the payment of tax and to get out of the clutches of provisions of Section 56 (2)(viia) of the act which came into effect from 1 June 2001. The facts of that case are clearly on different parameters then the case before us. In the present case what have been transferred are stock in trade and not a capital asset. Further, in the present case there is a provision in the articles of association of making the gift thus, it meets the provisions of the companies act also.

23. We have also asked the learned departmental representative to specifically show us any provision in the Income tax Act which provides for taxation of gift of stock in trade in the hand sof the Donor by imputing market value. No such specific references to section were made. No such provision was shown to us by the ld DR. The issue before us is prior to insertion of Chapter X- A in The Income Tax Act.

24. Honourable Supreme Court in case of Kika Bhai Premchand V CIT 24 ITR 506 on the facts of the case that assessee was a dealer in silver and shares and he was the sole owner of the business. The assessee maintained his accounts according to the mercantile system and valued his stock at cost price both at the beginning and at the end of a year. During the relevant year of account the assessee withdrew some silver bars and shares from the business and settled them on certain trusts in which he was the managing trustee. In his books the assessee credited the business with the cost price of the bars and shares so withdrawn. The Income-tax authorities held that the assessee derived income from the stock-in-trade thus transferred and assessed him on a certain sum being the difference between the cost price of the silver bars and shares and their market value at the date of their withdrawal from the business. The coordinate bench and the honourable High Court upheld the action of the Income-tax authorities. On appeal to the honourable Supreme Court, it was held that no income arose to the assessee as a result of the transfer of shares and silver bars to the trustees. The facts of the present case are identical as assessee also withdrew stock in trade and debited it to reserve and surplus by gifting those shares to different corporate entities , Ld assessing officer taxed as income the

difference between the cost and market value of such stock in trade. Thus, the issue is also squarely covered by the decision of the honourable Supreme Court in favour of the assessee.

25. In view of above facts, we reverse the orders of the lower authorities and hold that gift made by a corporate entity, appellant to 4 different corporate entities, in absence of any consideration, no business income can be charged to tax in the hands of Donor appellant. Accordingly ground number [3] and [4] of the appeal of the assessee is allowed.

26. Ground number [1] is general in nature and ground number [2] is with respect to not providing adequate opportunity to the assessee, nothing was argued by the learned authorised representative, hence, both these grounds are dismissed.

27. Ground number [5] is with respect to the levy of interest u/s 234B of the income tax act which is consequential in nature and hence same is also dismissed.

28. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 18 December 2020.

Sd/-	Sd/-
(H.S.SIDHU)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated : 18th /12/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	18.12.2020
Date on which the typed draft is placed before the dictating member	18.12.2020
Date on which the typed draft is placed before the other member	18.12.2020
Date on which the approved draft comes to the Sr. PS/ PS	18.12.2020
Date on which the fair order is placed before the dictating member for pronouncement	18.12.2020
Date on which the fair order comes back to the Sr. PS/ PS	18.12.2020
Date on which the final order is uploaded on the website of ITAT	18.12.2020
date on which the file goes to the Bench Clerk	18.12.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	