

DETERMINATION OF RATES OF TAXES IN CASE OF PRIVATE TRUST**161 (1) CHARGE OF TAX WHERE SHARE OF BENEFICIARIES KNOWN OR IN CASE REPRESENTATIVE ASSESSEE.**

Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him. I.e. rates of taxes would be the same rate as applicable to person represented.

In the case of a private trust, where the shares are determinate, there is option to assess the trustee or the beneficiary. But where the trustee is assessable, it has to be done “in like manner and to the same extent” as it would have been leviable and recoverable from the person represented by him as provided under section 161(1) of the Act. Though lottery winnings by a group of persons are ordinarily assessable in the hands of an association of persons, it cannot be so done, when such lottery winnings form part of the trust income in view of the mandatory provisions under the law as was found after a review of case law in CIT v. Muthukrishnan [2003] 260 ITR 526 (Mad) in the light of the statutory law and the precedents on the subject including the decision in CIT v. Kamalini Khatau [1994] 209 ITR 101 (SC).

Section 164 indicating the choice to assess either the trustee or beneficiary, it was held, did not come in the way, where the income was not assessable in the hands of the beneficiary. The decision of the Gujarat High Court in this case would dampen the view, that such trusts would help tax planning. Since a representative assessee is assessable “in like manner and to the same extent”, it was felt that the representative-assessee cannot be liable where the beneficiary is not liable. But then the beneficiary was not liable only in the year of accrual of income for the trust. The High Court has taken the view that such income is assessable in the hands of the trustee in the view that it is not that the beneficiary has no income during the year, but his right to the income stands postponed, so that it should be possible to assess the trust.

Even if the trustee were not assessable or was not assessed, the beneficiary cannot possibly avoid tax in his own hands on the bunched income, when he receives the amount, if such income had not been assessed in the hands of the trust. Hence the tax planning prompted by Doshi’s case had certain uncertainties now highlighted by the Gujarat decision in Ganesh Chhababhai Vallabhai Patel’s case.

STATUS OF TRUST

The question, whether deduction under section 80L will be available to the discretionary trust, where an assessment is made under section 143 had arisen in CIT v. Ramesh Mahesh Sanjay Trust [1998] 231 ITR 752 (Mad). The High Court following its own earlier decision in CIT v. Venu Suresh Sanjay Trust [1996] 221 ITR 649 held that the sole trustee being an individual is not denied the right to deduction under section 80L which is available to individuals and Hindu undivided families. The High Court in both cases had overlooked the decision of the Supreme Court in CIT v. Trustees of Nizam's Family (Remainder Wealth) Trust [1977] 108 ITR 555, wherein it has been decided that the status of a trustee in respect of the benefits of each of the beneficiaries will depend upon the status of the beneficiary and not on the fact whether the trustee was one or more than one.

BRIEF TIME TABLE FOR MAY 2005 C.A. FINAL EXAMINATION. SUBJECT : DIRECT TAX

EXAMINATION	BRANCH	COMMENCING	ADMISSION STATUS
MAY 2005 (A.Y. 2005-2006)	ANDHERI	17-01-2005	Few Seats Available
MAY 2005 (A.Y. 2005-2006)	CHARNI ROAD	22-11-2004	FULL
MAY 2005 (A.Y. 2005-2006)	GHATKOPAR	15-01-2005	Few Seats Available

Course Coverage for all the branches is the same.

All lectures are conducted by Professor Mr.Kalpesh Sanghavi Only.

**CHARGE OF TAX WHERE SHARE OF BENEFICIARIES UNKNOWN
SECTION 164.**

Where any income in respect of which the persons being trustees of trust or Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager are liable as representative assessee or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate

Tax shall be charged on the relevant income or part of relevant income as if it were the total income of an association of persons. I.e. Individual rates of taxes. If any of the following conditions are satisfied.	
	(i) None of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or
	(ii) The relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him ; or
	(iii) The relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created <i>bona fide</i> exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or
	(iv) The relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created <i>bona fide</i> by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

161(1A) RATES OF TAX WHEN TRUST HAS BUSINESS INCOME (WHETHER SHARE IS DETERMINED OR NOT)

Where any income in respect of which the person being trustees of trust is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :

Maximum marginal rate (MMR) rate shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

164(2) LIABILITY IN CASE OF CHARITABLE OR RELIGIOUS TRUST

In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in 2(24)(iia) or which is of the nature referred to in 11(4A) tax shall be charged on so much of the relevant income as is not exempt under section 11 or 12, as if the relevant income not so exempt were the income of an association of persons I.e. individual rates of taxes.

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in 13(1)(c) (benefit to specified persons) / (d) (Violation in modes of making the investment) tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

TDS FOR TRUST

Section 194A requires tax to be deducted on payment of interest other than interest on securities. An individual is not liable to deduct tax under section 194A, while an association of persons is so liable. Where a family trust paid interest to the beneficiaries, the Assessing Officer took the view that the assessee trust as an association of persons is bound to deduct tax at source, while it was the assessee's contention that the shares of the beneficiaries being determined, each such share was assessable in the hands of the individual, so that the provisions of section 194A would not be attracted. In the instant case, the beneficiaries were individuals. Hence, the status of the trustees would be that of individuals. Section 194A of the Income-tax Act, 1961, would not apply to them and there was no question of deduction of tax from the interest amount credited to the account of payees or of paying the tax after deduction. M.L. Family Trust Vs. State of Gujarat (Guj)

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