Transfer of assets without consideration via deed of settlement is to be treated as gift

Summary – The Chennai ITAT in a recent case of T.T. Siddarth, (the Assessee) held that For purpose of section 49(1)(ii), there is no difference between gift and settlement and, therefore, settlement of asset in favour of assessee has to be considered as gift in terms of section 49(1)(ii)

Facts

- The assessee was gifted a trademark by 'M', by deed of settlement. The capital asset being trademark was settled without any consideration of any money or money's worth and was transferred out of natural love and affection for the assessee.
- During relevant year, the assessee sold said trademark. The assessee claimed deduction under section 54F by relying on provisions of section 49(1)(ii) since the period during which the previous owner held the right over the trademark was also to be considered for deciding whether the asset was of long term, or short term capital asset.
- The Assessing Officer rejected the assessee's claim for deduction under section 54F by treating the period of holding of the assets as short term on the ground that the assessee had not acquired the capital assets either through gift or through a will but by a settlement deed, therefore, Explanation 1(i)(b) to section 2(42A), read with section 49(1)(ii) was not applicable to assessee's case.
- As the assessee had not held the asset for a period of 36 months preceding the date of transfer, it was regarded as short term capital asset and deduction under section 54F was denied.
- The Commissioner (Appeals) also took a view that settlement could not be considered as a gift and thus question of applying provisions of section 49(1) did not arise. Accordingly, he confirmed the assessment order.
- On second appeal:

Held

- The main contention of the assessee is that there is no difference between Gift and Settlement and the Explanation 1(i)(b) to section 2(42A), read with section 49(1)(ii) is applicable. As such while computing the period of holding capital assets, the period of holding that asset by the previous owner was to be considered. According to assessee, once one considers the period of holding of previous owner of the impugned capital asset, then the holding period by the assessee is more than three years which resulted in computation of long term capital gains and consequently, the assessee is entitled for deduction under section 54F.
- It is opined that the artificial distinction made by the lower authorities with reference to the gift and settlement is not appropriate and for the purpose of section 49(1)(ii), there is no difference between the gift and settlement and, thus, the settlement made by 'M' in favour of assessee had to be

considered as gift in terms of section 49(1)(ii) and accordingly, Explanation 1(i)(b) to section 2(42A) had to be applied so as to compute the holding period of the asset after considering the holding period of the said capital asset by previous owner *i.e.* SETTLOR.

- In the present case, the date from which 'SETTLOR' holding the title over the registered trademark is not available on record and thus Tribunal is not in a position to give a finding whether transfer of this trademark by the present assessee would give rise to short/long term capital gains. Hence, this issue is remitted to the file of Assessing Officer to determine the period of holding of this impugned capital asset and decide the issue afresh.
- In the result, the appeal of the assessee is partly allowed for statistical purposes.