

## Funds were to be taxed in hands of investors if revocable contributions were made to trust

**Summary – The Mumbai ITAT in a recent case of DHFL Venture Capital Fund., (the Assessee) held that where assessee trust was a venture capital fund whose beneficiaries were contributors to fund and contributors were entitled to revoke their contribution at any time during term of a scheme and ask for distribution from trust, contribution to trust would constitute revocable transfer; accrual to fund was taxable in hands of fund, and not in hands of contributors**

### Facts

- The assessee was a venture capital fund registered with SEBI. It was private trust and the income earned by it was allocated among the beneficiaries in specified ratio. The assessee claimed that income was exempt under section 10(23FB).
- The Assessing Officer found that assessee had invested more than 25 per cent of corpus in one venture capital fund in violation of regulation 12 of SEBI Regulations, 1996. He, thus, gave a show-cause notice that why the amount should not be disallowed.
- The assessee-trust took the contention before the Assessing Officer that trust deed constituting it fulfilled the definition of revocable transfer under section 63. If the trust was revocable then the tax liability was in hands of contributory and the department had already taxed the contributory, therefore, no income could be taxed in the hands of the assessee.
- The Assessing Officer having rejected assessee's explanation, held that assessee was not liable for exemption under section 10(23FB).
- The Commissioner (Appeals) noted that appellant trust received fund *vide* revocable transfer, the income could not be taxed twice *i.e.*, by rejecting the claim of applicability of section 61 in the hands of the appellant trust and again in the hands of the beneficiaries. Accordingly, when the beneficiaries had offered the income to tax, same could not again be taxed in hands of assessee-trust.
- On revenue's appeal, the assessee claimed that the contributions made by investors in terms of trust deed and contribution agreements were regarded as revocable transfer. Therefore, as per sections 61 to 63 the assessee-trust was a revocable trust.

### Held

- From the agreements on record, it is found that assessee trust is formed by the settler 'D' and the beneficiaries are the contributories who agree to make a contribution to the fund. The trust deed specifically empowers the unit holders of any scheme to revoke their contributions to such scheme. The trust deed says that in the contribution agreement of the respective scheme, the contributors shall be entitled to revoke the contributions to as scheme, at any time during the term of that scheme. In accordance with the terms and conditions set out in the scheme documents, for any reason, including but not limited to the circumstances resulting from any adverse tax consequences

or any direction of any statutory authority, provided that no such revocation shall take effect unless the consent of contributors holding units of that scheme representing not less than 75 per cent of the total contributions to that scheme, has been obtained, in this behalf pursuant to the other scheme document of that scheme read with this trust deed.

- From the clauses of the trust deed and distribution of distributable proceeds as stated in the above agreement, it is clear that contributors/investors shall be entitled to revoke their contribution to the scheme at any time during the term of the scheme and also entitled to determine distribution in accordance with the clause of the contribution agreement. Though the trustees hold the assets for the benefit of the beneficiaries, the contributions to trust constituted a revocable transfer of assets as per the sections 61 and 63.
- As already held that assessee trust is revocable trust, the contribution made by investor in terms of trust deed and contribution agreement is regarded as revocable transfer under the provisions of the Act. Therefore, the fund is not liable to be taxed in its hands but it is liable to be taxed in hands of contributors.
- The assessee-trust is a private revocable trust and trust is contributed trust set up under the trust deed as contributory revocable trust. Though the trustees hold the assets for the benefits of beneficiaries, the contribution to a trust should constitute a revocable transfer of assets by the contributors to the trustee. The contributory trust by investing in units of trust each unit holder as a settlor of the amount invested and concomitantly becomes a beneficiary of the trust entitled to the distribution from the trust.
- Sections 61 to 63 clarify that when a transferor can unilaterally resume the power of over assets, the income is to be taxed in its hands only as if the transfer never happened. The clause 15.1 of the trust deed clearly mandates the contribution made by contributor can be revoked any time during the term of scheme.
- In view of above, the Commissioner (Appeals) is justified in holding that assessee trust is private specific trust and no interference is required. The assessee has not claimed the deduction under section 10(23F) of the Act
- In the result, the appeal of the revenue is dismissed.