

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
BEFORE SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 8491/Del/2019
(Assessment Year: 2016-17)

Escorts Benefit & Welfare Trust, 15/5, Mathura Road, Faridabad, PAN: AAATE4511E (Appellant)	Vs.	ITO, Ward-1(3), Faridabad (Respondent)
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Assessee by :	Shri R. M. Mehta, CA Shri Paradeep Kumar, CA
Revenue by:	Shri Jagdish Singh, Sr. DR
Date of Hearing	14/01/2020
Date of pronouncement	27/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Assessee Trust against the order dated 16.10.2019 passed by the learned Commissioner of Income Tax (Appeals) ("the Ld. CIT(A)") for A.Y. 2016-17 raising following grounds of appeal:-

1. *"That the learned CIT (A) erred both on facts and in law in confirming the order of the Assessing Officer in a mechanical manner without dealing with the detailed written submissions filed during the course of the hearing including the judgments relied upon.*
2. *That the learned CIT(Appeals) erred both in law and on facts of the case in upholding the action of the Assessing Officer in treating the Appellant as an invalid trust under the provisions of Indian Trust Act, 1882 and in consequence thereto in bringing to tax dividend income of Rs.4,47,60,037/- as income from other sources and denying the benefit of exemption u/s 10(34) of Income-tax Act, 1961 (being dividend referred to in section 115-O of the Income-tax Act).*
3. *The learned CIT (Appeals) further erred in law in upholding the action of the Assessing Officer in exceeding his*

jurisdiction by not accepting a Scheme of Arrangement and amalgamation duly sanctioned by Hon'ble Punjab & Haryana High Court, pursuant to which the appellant trust got created, and the said scheme having been examined by the assessing authorities of the respective companies involved in amalgamation in their assessments completed u/s 143(3) of the Act.

4. *Without prejudice to Grounds (1) & (2) & (3), the learned CIT(Appeals) ought to have quashed the assessment order passed u/s 143(3) by the Assessing Officer in the status of 'Trust' which is not a 'person' defined in section 2(31) of the Act, as against the status of 'AOP/BOI' declared in the return. The learned CIT (Appeals) further erred in treating this incurable defect as a bonafide mistake covered u/s 292B of the Act.*
5. *That the learned CIT (A) further erred in law in reversing the action of the Assessing Officer in treating the appellant as a 'Representative Assessee' as defined in section 160(1)(iv) without any notice to the assessee and in clear violation of the principles of natural justice.*
6. *That the learned CIT (A) further erred in not disposing of Ground No.9 raised before him in the following terms:-*
"That the assessing officer erred on facts and in law in drawing adverse inference from certain ex-parte material/statements without affording adequate opportunity of confrontation/cross examination, in gross violation of principles of natural justice"
Instead drawing factually incorrect inferences from the statements of the trustees recorded u/s 131 by the Assessing Officer.
7. *That each of the above grounds of appeal is without prejudice to one another.*

2. Briefly stated the facts shows that Escorts Benefit and Welfare Trust ("EBWT") [Assessee, Appellant] is a private trust created vide trust deed dated February 14, 2012 ("Trust Deed"). Escorts Limited ("EL") as the settler settles it and EL is the sole beneficiary. It has initial contribution of Rs.10,000/-. It has Dr. M.G.K. Menon, Dr. S.A. Dave and Dr. P.S. Pritam as the three trustees("Trustees"). Escorts Construction Equipment Limited ("ECEL") was a wholly owned subsidiary of EL. The recitals to the Trust Deed state that, in view of the proposed amalgamation of ECEL with EL, EL transfers its shareholding in ECEL to EBWT, for the benefit of EL and its successors. The object of the EBWT

was to hold the initial contribution and the shares of EL (“EL Shares”) that will be acquired, for the benefit of the beneficiary i.e. EL or its successors. The object of EBWT was of holding of shares of EL and subject to the terms of the Trust Deed, selling the EL Shares and remitting the sale proceeds to EL or its successors. Upon receipt of any dividends on the trust property, the Trustees had the discretion to invest the amount or distribute the same to the beneficiary. Pursuant to a scheme of arrangement and amalgamation under Sections 391 – 394 of the Companies Act, 1956, (“Scheme”), ECEL, Escotracs Finance & Investments Private Limited (“Escotracs”) and Escorts Finance Investments & Leasing Limited (“EFILL”) were merged into EL. The Scheme envisaged the creation of 3 (three) trusts; the details of which are set out below:

Name of the trust	Settler	Beneficiary	Purpose of the trust
Escorts Benefit & Welfare Trust	EL	EL	To hold the equity shares of ECEL held by EL
EFILL Benefit Trust	EFILL	EFILL	To hold the equity shares held by EFILL in EL and Escorts Finance Limited
Escotracs Benefit Trust	Escotracs	Escotracs	To hold the equity shares held by Escotracs in EL and Escorts Finance Limited

EFILL Benefit Trust and Escotracs Benefit Trust were also set up vide trust deeds dated February 14, 2012. It was further provided that upon the Scheme becoming effective, for operational convenience, the beneficial interest in EFILL Benefit Trust and Escotracs Benefit Trust would stand transferred and vested in the trustees of EBWT, and consequently, the EFILL Benefit Trust and the Escotracs Benefit Trust shall be deemed to have been dissolved / revoked. The Scheme was sanctioned by the Hon’ble High Court of Punjab & Haryana vide order dated September 5, 2012 and

became effective upon filing of the same with the Registrar of Companies. Consequently, EBWT was allotted equity shares of EL as consideration of merger of ECEL with EL; and the investments/shares held by EFILL and Escotracs were transferred through their respective Trusts to EBWT, for the sole benefit of EL.

3. In this background, For AY 2016-17 the appellant filed its return in the status of an Association of Persons [AOP] declaring income of Rs. Nil by claiming the dividend of Rs. 4,47,60,037/- as exempt u/s 10(34) of the Income Tax Act, 1961("the Act"). In the assessment proceedings the assessing officer ("the Ld AO") sought information more specifically on the purpose of the formation of various trusts, their dissolution and the legal status and validity of the appellant trust namely EBWT. The Ld AO also issued notices u/s 131 of the Act to the current and former trustees and recorded their statements. Namely, (1) Shri S.A. Dave (trustee up to 27 October 2016), (2) Shri G. B. Mathur (appointed trustee w.e.f. 2 September 2014) and (3) Shri Ajay Sharma (appointed w.e.f. 30 January 2016). Pursuant to the recording of the statements, the Ld AO concluded as under:

"XI. In the statement recorded on oath, none of the trustees knew why the impugned trust was created and what the purpose of the creation of the impugned trust was. The trustees did not recollect the source of income of the impugned trust and as regards, the expenses of the impugned trust, it has been submitted that the expenses should have been only on staff perhaps. Moreover, the other two impugned trustees have submitted during the course of their statement being taken on oath that they have no idea about the creation of the impugned trust, as they were not the trustees at the time of creation of the impugned Trust. From the statement of the trustees, it is clear that the trustee were not in real occupation of impugned trust property and no property was entrusted unto them in reality no

discretion was left to the trustees at all. Even they have not any knowledge of or control over the impugned trust. The Trustees in their statements mentioned that they were not aware of the objects of the impugned trust and the nature of activities being undertaken by the impugned Trust. Impugned Trust was not created with the consent of the trustees and no discretion left to the trustees. The decisions of the impugned trust are guided and controlled by the board and promoters who happens to be settler as well as beneficiary of the trust. Therefore, the company M/s Escorts Limited is the real settlor, real trustee and real sole beneficiary as well.

XII. In view of the discussions in the above paragraphs, it is clear that this impugned trust is not complying with the basic laws of trust. In substance too, this is not separate and legal entity guided by its deed of formation, but controlled and guided by board and promoters of M/s Escorts Ltd. The mere purpose seems to have control over the shares of the company through dubious means and to transfer the money to the company itself through a web of transactions in the name of exempted income.”

4. The LDAO referred to the provisions of Section 3 of the Indian Trust Act, 1882. According to the LD AO, there cannot be a case where the creator of the trust would also be the sole beneficiary. There also cannot be a case where the creator of the trust would also be trustee and the sole beneficiary, because in that case a man cannot enforce a trust against himself. The AO also alleged of “tax evasion” on the appellant by referring to the receipt of shares by the trusts without consideration, non-payment of capital gains on the transfer and the receipt of exempt dividend by the impugned trust without payment of taxes thereof. Thus, On 24th

December 2018, the Id AO issued a final “Show Cause Notice” as under :-

“I. Why the status of M/s Escorts Benefit & Welfare Trust as trust may not be rejected as prima facie this impugned trust is merely structure of colourable device to control the majority shareholding of the Escorts Limited and to hoodwink the department to evade the tax?

II. Why the dividend income may not be taxed as income from other sources u/s. 56 of the Act in the hands of the M/s Escorts Benefit & Welfare Trust as representative assessee under section 161 of the income Tax Act as prima facie this so called dividend is arrangements of sham transactions to evade the taxes with the objective of transfer the money to the company itself through a web of transactions in the name of exempted income.”

5. The appellant on 27th December 2018 replied to the show cause notice submitting that:

“In the course of proceedings, we have repeatedly stated that the Trust came into existence in terms of a Scheme of Arrangement and Amalgamation duly sanctioned by Hon'ble Punjab & Haryana High Court, Chandigarh. This means that the scheme is a Rule of the Hon'ble Court and creates binding obligations on all stakeholders. Paragraphs 4.12 and 4.13 (reproduced below) clearly state the manner in which the respective trusts will acquire the shares & how the other two trusts (Escotrak Trust & EFILL Trust) will devolve on the assessee trust upon amalgamation of the companies

"4.12

In so far as the equity shares of ECEL, held by Escorts either singly or jointly are concerned, the said equity shares of ECEL

shall not get cancelled but shall under pursuant to and by virtue of this Scheme and simultaneous to all other steps/actions pursuant to this Scheme and on the effective date and without any further act or deed or matter or thing, stand transferred to and vested in Escorts Benefit & Welfare Trust, which Trust shall be settled by Escorts upon the approval of the Scheme by its Board of Directors and prior to the filing of the petition for sanction of the Scheme before the Hon'ble High Court. These shares shall be held by the board of trustees of the Escorts Benefit & Welfare Trust, with all additions or accretions thereto in trust for the benefit of Escorts (including its successor or successors subject to the powers, provisions discretions, rights and agreements contained in. the Escorts Benefit & Welfare Trust Deed on such terms and conditions as may be set out in the Escorts Benefit & Welfare trust Deed) and continued to be held by the Escorts Benefit & Welfare Trust on the Record date.

4.13

Notwithstanding anything contained in any other clause of the Scheme, in so far as the equity shares held by EFILL and Escotracs in Escorts and Escorts Finance Limited are concerned, EFILL and Escotracs shall individually, under, pursuant to and by virtue of this Scheme and simultaneous to all other steps/actions pursuant to this Scheme and on the effective date and without any further act or deed or matter of thing, transfer all the shares of Escorts and Escorts Finance Limited held by them on such date to the Board of Trustees of the EFILL Benefit Trust and the Escotracs Benefit Trust respectively to have and to hold EFILL and Escotracs's investment in share of Escorts and Escorts Finance Limited in trust together with all additions or accretions thereto in trust for the benefit of EFILL and Escotracs respectively and its successor or successors subject to the

powers, provisions, decisions rights and agreements contained in the instrument (" the Trust Deed") establishing the aforesaid trusts ("the EFILL Benefit Trust" and "the Escotracs Benefit Trust") on such terms and conditions as may be set out in the Trust Deed. The Trusts shall be settled by EFILL and Escotracs respectively upon the approval of the Scheme by its Board of Directors and prior to the filing of the petition for sanction of the Scheme before the Hon'ble High Court. Further, since upon this Scheme becoming effective, the beneficiary under the EFILL Benefit Trust and the Escotracs Benefit Trust would be Escorts and the objective of the EFILL Benefit Trust and the Escotracs Benefit Trust and the Escorts Benefit & Welfare Trust, would be the same, for operational convenience, upon this Scheme becoming effective, the beneficial interest in the EFILL Benefit Trust and the Escotracs Benefit Trust shall with/without any further act or deed be transferred and vested in the Trustees of the Escorts Benefit & Welfare Trust and consequently, without any further act or deed, the shares/properties held by the Trustees of EFILL Benefit Trust and the Escotracs Benefit Trust shall stand transferred to the Trustees of the Escorts Benefit & Welfare Trust. Consequently, the EFILL Benefit Trust and the Escotracs Benefit Trust shall be deemed to have been dissolved/revoked on the effective Date."

We would like to bring to your kind attention that this type of arrangement was nothing new in amalgamation schemes in India. For example, two listed Maharatna Companies in the Public Sector in which the Govt. of India is the largest shareholder, namely Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited have also created such Trust During Amalgamations which hold own shares of these respective companies for their sole benefit i.e. these companies are the sole beneficiaries in their respective trusts. This

information is duly available in their published accounts, which are in public domain. Therefore, calling such type of arrangement as a colourable device is unwarranted. The Scheme under which the assessee trust came into existence is no different from those of the above companies.

Now coming to your observations on the legality of the trust, you state that a person cannot form a trust and be its sole beneficiary. The Indian Trusts Act nowhere debars the formation of trust with settler as sole-beneficiary. The cases in example mentioned above represent two large public- sector companies of which the Govt of India is the largest & controlling shareholder. There are other similar instances of large private sector companies where the Trusts came to hold their shares with these companies as sole beneficiaries in a scheme' of amalgamation.

The present trustees namely, Mr. Ajay Sharma & Mr. G B Mathur who appeared before you in response to notices u/s 131 have stated that they were not the trustees as on the date of creation of the trust. They also stated that there is no day-to-day transaction in the trust except for one-time receipt of dividend in a year, which is remitted back to the settler. Accordingly, the adverse inferences drawn by you are not justified.

Adverting to the points raised in your show cause notice we have to submit as below: -

I. Why the status of M/s Escorts Benefit & Welfare Trust as trust may not be rejected as prima facie this impugned trust is merely structure of colourable device to control the majority shareholding of the Escorts Limited and to hoodwink the department to evade the tax?

1. The Scheme is duly sanctioned by the hon'ble Punjab & Haryana High Court and is now law unto itself. To question its existence & status today tantamount to contempt of Court'.
2. The Trust is not a party to the Scheme but is only a resultant entity. The parties to the Scheme are the four companies involved in the amalgamation. After the merger came into effect from the appointed date of 1st October 2011, the assessments of all the concerned companies for the AY 2012-13 have been completed in scrutiny u/s 143(3) and the fact of amalgamation has been accepted in all cases. All the relevant documents relating to the merger have been filed during their respective assessment proceedings and necessary explanation provided wherever asked for. The charge of 'hoodwink the department to evade the tax' fails at the very outset once the Scheme of Amalgamation is accepted in the respective assessments of all the parties to the amalgamation. Questioning the legality of the sanctioned Scheme or casting unfounded aspersions on the motives of creating the Trust amounts to overstepping of jurisdiction and authority under law.
3. The Trust is not an entity independent of the Settler but only a representative. The mandate of the trustees is to receive income from the property held in trust by them and pass on the same to the Settler i.e. Escorts Limited. The character of income remains same whether received by the settler itself or by the trust formed to receive such income.
4. The allegations of 'hoodwink the department to evade tax' are mere apprehensions without any basis. The Trust in question receives dividend from Escorts Limited which in any case is exempt u/ s 10(34) in the hands of whosoever receives it. The payer of the dividend i.e. Escorts Limited have deposited Dividend Distribution Tax as per section 115-0 at the prescribed rates on the dividends paid by it including on the

shares held by the Trust. In case of private specific trusts where the share of beneficiary(s) is known, the income is taxable in the hands of the beneficiary or beneficiaries in case there are more than one & the trustees are mere custodians to administer the trust. Therefore, the dividend on which DDT has been paid is anyway exempt whether in the hands of Escorts or the Trust. The allegation of evading the tax does not survive.

5. The status of the Trust cannot be rejected merely on assumptions and surmises. There has to be a specific reason not mere apprehension to reject the legal status of the Trust that is created under a Court sanctioned scheme of amalgamation.

II. Why the dividend income may not be taxed as income from other sources u/s. 56 of the Act in the hands of the M/s Escorts Benefit & Welfare Trust as representative assessee under section 161 of the income Tax Act as prima facie this so called dividend is arrangements of sham transactions to evade the taxes with the objective of transfer the money to the company itself through a web of transactions in the name of exempted income.

1. It is indeed very unfortunate to call the Scheme as arrangement of sham transactions to evade taxes particularly so when the scheme is sanctioned by the Hon'ble Court.

- 2 Your show cause query does not mention a single instance of tax evasion. The dividend is exempted whosoever receives it once DDT is paid by the company as per section 115-0. In this case, Escorts is the payer of the dividend and the recipient through the trust, which effectively neutralizes the payment/receipt, the net gainer being the Exchequer getting taxes by way of DDT. So therefore, there is no question of any objective to transfer money by way of exempted income to the settler company.

6. As the assessing authority of the assessee trust, you are constrained to compute the taxable income under the relevant heads of income as applicable to the beneficiary and compute the tax liability, if any, which would have been chargeable from the beneficiary, which in this case is nil due to exempted dividend income.
 7. There is no question of bringing the receipt of dividend by the Trust in the fold of section 56. The dividend is received by the Trust in the year under assessment as a registered shareholder of the payer company. There is no specific clause or sub-clause in section 56 to bring the same to tax in the hands of the Trust.”
6. Considering the reply of the appellant the AO held as under:-
- i. That the Trust was created in violation of the provisions of the Indian Trusts Act and was therefore not a separate legal entity guided by its deed of formation. However, for purposes of raising the demand and collection of Govt. dues it was to be treated as a representative assessee.
 - ii. That the Hon’ble High Court had approved the scheme of arrangement and amalgamation of the various companies under sections 391 to 394 of the Companies Act, but not of the creation of the trusts, which were governed by the Income Tax Act, and the Trusts Act.
 - iii. To the submission of the appellant that similar trusts had been created by two listed Maharatna companies in the Public Sector i.e. where the creator and the sole beneficiary were identical, the AO observed as follows:

“10.4.2 It is reiterated that the issue here is not creation of trust per-se but how it has been implemented. The facts narrated above simply prove that the impugned trust has not been executed as per law. It is not a case of

property held by trustee for benefit of some person, but it is a case of property held by creator for benefit of himself.

10.4.3 It was also stated that similar trusts have been created by two Maharatna Companies. However, the facts and circumstances or the documents in this regard have not been placed on record. Moreover, in Maharatna companies, Government of India is a major shareholder and the decisions relating thereto are subject matter of scrutiny by CAG and Hon'ble Parliament. The execution and implementation of is thus secured. Whereas in the present case, the assessee has miserably failed to establish the parity with Maharatna Trusts. Further, at the cost of repetition it is stated that the way the present trusts have been implemented give strong rise to suspicion of a colourable device which the above facts proved while the assessee had not been able to dispel it at all.”

7. Referring to the provisions of Section 3 of the Trusts Act the ld AO held that :-

“10.5.2 “It is again reiterated that the basic point is missed by the assessee. The issue is not having sole beneficiary but the issue is having settlor as sole beneficiary.”

10.5.3.1 “This provision requires that the creation of Trust is reposing of confidence or in other words it is an obligation arising out of confidence reposed by the settlor –owner of a property in the person to whom the properties are entrusted for the benefit of another.”

He held that trust has been created in violation of provision of section 3 of the Indian Trust Act and the basic tenets of the trust are missing in this case. In substance, this is not a separate and legal entity guided by its deed of formation, but controlled and guided by the board and

promoters of Escorts Limited. The mere purpose of the seems to have control over shares of the Escorts Limited through dubious means and to transfer the money to the company itself through a web of transactions in names of exempted income. Thus the LD AO held that in the case of the assessee, M/s Escorts Limited is the settlor, it is the trustee and as well as sole beneficiary who is barred by the section 3 of the Indian Trust Act.

8. On the question of tax evasion the AO observed as follows in Para 10.7.5 of the assessment order:-

“10.7.5 The contention of the assessee that the allegation of “hoodwink the department to evade taxes is baseless” is not tenable. As we have seen in the facts of the case that shares worth thousands of crores were received without consideration to the impugned trusts and these trusts, in turn, transferred these shares to some other trust, again without consideration and income tax department has not received capital gain tax or any other taxes in the entire process of transfer. Moreover, the amount from one person to another and again to same person is transferred in the name exempt dividend without the department getting its right dues. This clearly reflects the large scale evasion of taxes.”

9. Thus the ld AO held that dividend income of Rs. 4,47,60,037/- which had been claimed as exempt u/s 10(34) of the act by assessee is income from other sources declining to treat it as dividend His main reason for holding so are :-

- i. Section 2(22) of the Act refers to a distribution to a “Shareholder” and not to a “Member” as defined in Section 2(55) of the Companies Act, 2013.
- ii. From the website of the Ministry of Corporate Affairs (MOA) the name of the appellant trust was not appearing in the list of

shareholders of EL, but it was Shri S.A. Dave who was shown as a shareholder. In other words the impugned trust was neither the real owner and nor the beneficial owner.

iii. The beneficial owner of shares held by the impugned trust was EL but not a registered shareholder as no one can hold its own shares.

iv. That the impugned trust was created by EL as settlor to control the majority shareholding of EL.

10. Thus, Id AO passed an order u/s 143(3) of the act on 31.12.2018 determining taxable income of Rs.4,47,60,037/- as against the return filed showing Nil income. In nutshell, he denied the exemption u/s 10(34) of the act on dividend income.

11. Assessee being aggrieved with the order of assessment preferred an appeal before the Ld. CIT (A) raising following issues :-

- i. That the AO passed the order u/s 143(3) of the Act in the status of Trust as against AOP/BOI shown by the appellant in the return of income. There is no status as 'trust' as per section 2(31) of the Act.
- ii. That the amount of Rs.4,47,60,037/- received by the appellant was in the nature of dividend on which DDT has been paid @ 15% and thus the same was exempt under the provisions of Income Tax Act. Reliance was placed upon the provisions of section 10(34) r.w.s. 115-O of the Act.
- iii. That the shares of M/s EL have been held by the appellant in a Demat account which has been opened in the name of the Trustees (Dr. S.A. Dave and Sh. Pritam Singh) as in case of the private trust, the Demat account has to be opened in the name of the trustees. Further, in the regulatory filing of share holding pattern with the stock exchanges and in the financial statements by M/s EL, name of the trust has been shown as the shareholder through the trustees.
- iv. That the sanction of the Amalgamation and arrangement Scheme by the Hon'ble High court means approval for the Trusts created thereunder.
- v. Those similar practices have been adopted by M/s Indian Oil Corporation, M/s Bharat Petroleum Corporation Ltd. by

creating similar trusts in their respective amalgamation schemes.

- vi. That the appellant trust has been created with M/s EL being its sole beneficiary. Therefore, it should have been treated as a representative assessee of M/s EL u/s 160 of the Act and accordingly tax liability should have been computed in the like manner and to the same extent as it was leviable upon and recoverable from the beneficiary i.e. M/s EL as provided u/s 161 of the Act.
- vii. That the amount received by the appellant was dividend in nature as received by the registered shareholder and therefore, the same could not have been taxed u/s 56 of the Act.”

12. After considering the rival submissions, the Ld. CIT(A) dismissed appeal of the assessee holding that:

- i. That M/s EL by becoming the settlor and the sole beneficiary had reserved all the rights with itself to deal with the property transferred by it to the trust in any manner at any time at its discretion. Thus, the appellant had not complied with the object clause as well as the terms and conditions of the trust deed “in letter and spirit”.
- ii. That the appellant trust had been created in violation of the provisions of Section 3 of the Indian Trusts Act, 1882 whereby the settlor and the sole beneficiary were the same i.e. EL.
- iii. From the examination of the facts and discussion vis-a-vis the statements of the trustees it appeared that they had not exercised any discretion or independence in the management of the trust and their existence was notional and not in the real sense. Further it was EL which was functioning as the real trustee combining in itself the role of the settlor, trustee and the sole beneficiary.
- iv. That the Hon’ble High Court while sanctioning the scheme of Arrangement and Amalgamation had directed EL to

settle a trust in compliance with the provisions of the Trust Act and not otherwise and that the AO had the jurisdiction to examine the issue of taxability arising out of the scheme.

- v. That since the statements recorded of the trustees did not involve any third party, the right of cross-examination did not arise vis-a-vis the statements of Dr. S.A. Dave(erstwhile trustee) and Shri G.B. Mathur(current trustee).
 - vi. Reliance on the creation of similar trust by M/s Indian Oil Corporation Ltd., M/s BPCL and other public sector undertakings are misplaced as the facts are different.
 - vii. Merely because DDT has been paid the amount of dividend will not become exempt in the hands of the receiver where the nature of the transaction has to be examined.
 - viii. That the shares of EL have not been transferred to the appellant in accordance with the scheme sanctioned and since the amount of Rs.4,47,60,037/- has not been received by it as a valid shareholder, it cannot be treated as dividend.
 - ix. As the appellant has been found to be an invalid trust as per the provisions of the Trust Act it could not be held to be a “representative assessee” of EL.
 - x. That the appellant shall be assessed as an “AOP/BOI” as prescribed u/s 2(31) of the Act as against the status of “Trust” accorded inadvertantly in the assessment order, such bonafide mistake being covered u/s 292B of the Act.
13. Being aggrieved with the order of the Ld. CIT(A) the assessee is in appeal before us. The Ld. Authorized Representative submitted that :-

That the interpretation of Section 3 of the Trust Act by the AO and thereafter by the Ld. CIT(A) was erroneous, in as much as they had equated an 'owner' to the author or settlor of the trust whereas the reference was to the 'trustee'. In other words the bar was not on the settlor being the sole beneficiary but on a trustee being in that position since an individual cannot enforce a trust against himself.

To canvass the aforesaid proposition the Ld. Counsel relied on the following judgements:

- i. Rani Chhatra Kumari Devi vs Mohan Bikram Shah & Ors AIR 1931 PC 196
- ii. W.O. Holdsworth & Others vs the State of Uttar Pradesh (1957) AIR 887 (SC)
- iii. Bhabna Nalinkant Nanavati vs CGT (2002) 255 ITR 529 (Guj)
- iv. Narayani Amma Vilasini Amma vs Eyo Poulouse of Vattathara AIR 1982 Ker 198
- v. Md. Hussain vs Bala Laxman AIR 1941 Nag 261
- vi. CIT vs Gangadhar Sikaria Family Trust & another (1982) 11 Taxman 222(Gauhati)

That similar trusts i.e. where the settlor and the sole beneficiary were identical had been created pursuant to schemes of amalgamation carried out by Public Sector Undertakings u/s 391 & 394 of the Companies Act 1956. That the AO agreed with the legality of such schemes as these had been scrutinised by the CAG and Parliament, there being no reason to reject a similar scheme in the case of the impugned trust terming it as a "colourable device".

(B) Allegations of Tax Evasion

The Ld. AR Submitted that:-

- (i) That the observations of the AO in Para 10.7.5 of his order about 'large scale evasion of taxes' in shares worth thousands of crores was misconceived without reference to any facts or the provisions of law alleged to have been contravened.
- (ii) That the share price of Escorts Ltd. averaged around Rs.62.50 per share in the month of September 2012 when the shares were placed in the trust i.e. way below the amount projected as "thousands of crores".
- (iii) The payment of dividend by Escorts Ltd. to the trust did not constitute any tax evasion since the payment and the receipt by Escorts Ltd. as the sole beneficiary nullified each other whereas the DDT deposited by Escorts Ltd. was a gain to the revenue.
- (iv) To the same effect were the submissions with reference to the observations of the AO that the trust was a colourable device.
- (v) That as per the provisions of Section 47(iii) of the Act, the transfer of a capital asset under an irrevocable trust did not constitute a "transfer" and therefore not liable to capital gains.
- (vi) That the AO had recorded as a fact that the name of the trust did not appear in the list of shareholders as per the website of the Ministry of Corporate Affairs(MOA) but referred to Mr. S.A. Dave as the shareholder, without appreciating or even considering the depository system of shares, whereby shares owned by a private trust are held in the name of a trustee only (Refer FAQ 22 issued by NSDL at page 213 of the paper book).

(vii) That in the regulatory filing before the stock exchanges, the shares had been declared as held by the trustee Shri S.A. Dave(refer page 228 of the paper book). To the same effect was the depiction in the Balance Sheet of Escorts Ltd. as at 31.03.2016(Page 229 of the paper book).

(viii) That in the final Show Cause Notice dated 24th December, 2018 the AO sought a response on a question framed as under (page 27 of the Assessment Order)

“Why the status of M/s Escorts Benefit & Welfare Trust may not be rejected as prima facie this impugned trust is merely structure of colourable device to control the majority shareholding of Escorts Ltd. and to hoodwink the department to evade the tax?”

(ix) According to the Ld. Counsel the submission before the Ld. CIT(A) on the aforesaid query finds place at page 6 of the order in the following words:

“Companies often prefer to hold their own shares through trusts after merger(with themselves as beneficiary) instead of cancelling the shares. Before the Companies Act, 2013 came in force, a company in India could own and hold its own shares via the merger/amalgamation route. Various Indian companies including some large PSUs are holding their own shares through trust created as a result of mergers. Such arrangement provided companies with the option of raising funds in the future (by sale of such shares through the trust) without issuing new shares or undergoing public offer or private placement route. Thus, such shares provide a flexible way of raising funds. “That there is no illegality about

this as per the Income Tax Act or any other enactment.

(C)Taxability of Dividend Income

The Id AR submitted that assessee is entitled to exemption u/s 10(34) of the act on dividend income earned because :-

- i. That the dividend was received by the appellant as a shareholder on which DDT had been paid by the company i.e. EL (dividend referred to in section 115-O of the Act) and therefore exempt u/s 10(34) of the Act, irrespective of the treatment accorded in the tax assessment.
- ii. That where certain income is exempt in the hands of a recipient by virtue of a statutory provision, such exemption cannot be withdrawn unless a provision is made in the statute itself.
- iii. That the AO had given a restricted meaning to the term “member” defined in Section 2(55) of the Companies Act, 2013 by referring to the definition of the term “dividend” as per Section 2(22) of the Income Tax Act and opining that the appellant was not a “shareholder” and therefore the amount of Rs.4,47,60,037 was not dividend entitled to the benefit of Section 10(34). According to the Ld. Counsel the term ‘member’ as per Section 2(55)(iii) of the Companies Act, 2013 meant:

“every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.”

and which by interpretation denoted that before becoming a “member” one had to be a “shareholder”.

- iv. That if the interpretation of the AO was to be accepted, then every entity, falling in sub-clause (iii) of Section 2(55) of the Companies Act would become taxable in respect of the dividend received and the provisions of Section 10(34) would become otiose.
- v. In support of the submissions made reliance was placed on the judgment of the jurisdictional High Court in the case of Pr.CIT vs. Haryana State Industrial and Infrastructure Development Corporation Ltd. reported in (2019) 108 Taxmann.com 540(P&H) and the judgment of the Hon'ble Bombay High Court in the case of Pr. CIT v Smt. Kayan Jamshid Pandole reported in (2018) 100 Taxmann.com 284(Bom).

(D) Representative Assessee

On this issue the ld AR submitted that :-

- i. That the AO had himself decided to treat the appellant as a 'representative assessee' within the meaning of Section 160(1)(iv) of the Act for raising the demand and collection of Govt. dues.
- ii. That the aforesaid status of 'representative assessee' was reaffirmed by the AO in his remand report to the Ld. CIT(A) (Page 39 of the order) in the following words:

“Section 160(1)(iv) clearly states that trustee in the receipt of the income on behalf of the beneficiary can be treated as representative assessee. In the present case, the income on behalf of the beneficiary i.e. M/s Escorts Ltd. is received by the assessee. Therefore, it is liable to be assessed as a representative assessee as the

income earned by it for the benefit of Escorts Ltd. Therefore, in any view of the matter, the taxability of the impugned amounts lies in the hands of the impugned trust.”

- iii. That after treating the appellant as a representative assessee, the AO did not follow mandate of section 161(1) of the Act by subjecting the dividend to tax u/s 56 of the Act, denying the benefit of exemption in the hands of beneficiary.
- iv. That u/s 161(1) of the Act, tax could be levied upon and recovered from a ‘representative assessee’ in “like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him” and such representative assessee could not therefore be independently assessed on an income which was not assessable in the hands of the beneficiary.
- v. That the dividend of Rs.44760037 was not taxable in the hands of Escorts on two grounds, firstly that no real income had accrued to the beneficiary i.e. EL being the company itself paying the dividend and secondly the said dividend being one referred to in Section 115-O was otherwise exempt u/s 10(34) of the Act.
- vi. That the provisions of Section 160(1)(iv) of the Act mandated the trustee/trustees of a trust declared by a duly executed instrument to be treated as a “representative assessee” with no other condition.
- vii. The learned counsel relied on the following judgments:
 - (1) Commissioner of Income Tax Vs. Trustees of H.E.H. Nizam’s Family (Remainder Wealth Trust) (108 ITR 555 (Supreme Court)

(2) Mrs. Amy F. Cama v. Commissioner of Income-tax [1999] 237 ITR 82 (BOM.)

(3) Balgopal Trust vs. ACIT, Mumbai (ITA no.5661/Mum/2016)

(4) Income-tax Officer vs. Deepak Family Trust No. 1[1989] 28 ITD 249 (AHD.) ITAT Ahmedabad

- viii. That the Ld. CIT(A) had erroneously reversed the stand of the AO without any ground having been raised before him in the appeal, the limited grievance being that the income should have been assessed in the hands of the appellant u/s 161(1) of the Act.

(E) Statements of Trustees

The learned counsel at the outset contended that the statements of an ex-trustee namely Shri S.A. Dave a super senior citizen and two current trustees i.e. Shri G.B. Mathur and Shri Ajay Sharma had been recorded in an inordinate hurry without allowing Shri Dave to refer to his papers as requested and picking up words and sentences from his statement to draw an adverse inference against Shri Mathur resulting in the initiation of proceedings for prosecution u/s 277 of the Act against him, without confronting him with the statement of Shri Dave, in violation of the principles of natural justice. According to the Ld. Counsel, the statements were not holistically interpreted, the sole motive being to find minor technical distinctions in the

statements to hold that the Trust was a colourable device and that EL combined in itself the role of the settlor, the trustee as the sole beneficiary. The further arguments are summarized as under:

- i. That the statements of an ex-trustee and two current trustees had been recorded u/s 131 of the Act(pages 8 to 12 of the assessment order) in their capacity as “trustees” and not as “witnesses” vis-à-vis information which was already on record in the form of a court order sanctioning a Scheme of Amalgamation u/s 391 & 394 of the Companies Act.
- ii. That adverse conclusions drawn did not emanate from the questions/answers and were imaginary as would be apparent from the following chart of rebuttal submitted before the Ld. CIT(A):

AO	Assessee
In the statement recorded on oath, none of the trustees knew why the Impugned trust was created and what the purpose of the creation of the impugned trust was. The trustees did not recollect the source of income of the impugned trust and as regards, the expenses of the impugned	The questions were mainly in the context of the creation of EFILL Benefit Trust and Escotrac Benefit Trust and their merger with appellant trust. No specific question on creation of Appellant Trust.

trust, it has been submitted that the expenses should have been only on staff perhaps. Moreover, the other two trustees have submitted during the course of their statement being taken on oath that they have no idea about the creation of the impugned trust, as they were not the trustees at the time of creation of the Trust. From the statement of the trustees, it is clear that the trustee was not in real occupation of impugned trust property and no property was entrusted unto them in reality no discretion was left to the trustees at all. Even they have not any	Mr. S.A. Dave (not associated with the trust since 2016) and aged more than 80 years could not recall the details & wanted to refer to papers before answering. Mr.Ajay Sharma referred to the financial statements filed during assessment. Mr.G.B. Mathur specifically & correctly replied to the question. No such specific question was asked. The questions were mainly in the context of creation of EFILL Benefit Trust and Escotrak Benefit
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knowledge of or control over the impugned trust. The Trustees in their statements mentioned that they were not aware of the objects of the impugned trust and the nature of activities being undertaken by the impugned Trust.	Trust, which were subsequently consolidated with the appellant trust after amalgamation. The statement of none of the trustee reflects this. There is no specific question/answer, which matches with this observation.
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	None of the question/answer reflects this view. No such question/answer reflects this.
Impugned Trust was not created with the consent of the trustees and no discretion left to the trustees.	The trust is duly registered, and the trustees are holding assets and property of the trust in their name(s). This cannot be possible without implicit consent of the trustee(s). Moreover, no such question/answer is reflected in any of the statements.
The decisions of the impugned trust are guided and controlled by the	None of the question/answer reflects this view,

board and promoters who happens to be settler as well as beneficiary of the impugned trust.	which is entirely imaginary and presumptive.
One of the trustees, Sh. G.B. Mathur deliberately misled the department by giving the false statement. Prosecution proceedings have been initiated against Sh. GB Mathur, Trustee for giving the false statement under oath during the course of recording of his statement u/s. 131 of the I.T. Act,1961.	This is entirely incorrect. The false statement is attributed to an alleged contradiction between the statements of Mr. Dave & Mr. Mathur. Pertinent to mention that Mr. Mathur's statement was recorded much after the statement of Mr. Dave was available with the Assessing Officer. Principles of natural justice demand that Mr. Mathur should have been confronted with the reply of his co-trustee if there was any contradiction or

	else he should have been given an opportunity to cross-examine the other trustee. None of this has been done and conclusion of misleading the department has been drawn arbitrarily without any opportunity and initiated proceedings against Mr. G B Mathur u/s 277.
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- iii. That the tax authorities had picked up individual questions/answers in the statements to draw adverse conclusions, whereas it is settled law that a document had to be read and interpreted as a whole. Reverting to the individual statements it was highlighted:

(a) Shri S.A. Dave

He was a trustee till 27th October 2016, more than 80 years old and his statement was recorded at Mumbai on 19.12.2018, where he did not have the benefit of any documents regarding the trust for reference. This emanates from the answer to Question No.13. Considering his age and the time, which had elapsed since the creation of the trust i.e. 6 years it was quite natural not to recall events particularly when he was no longer associated with the entity. That

as an independent director of Escorts Ltd. he was not expected to be involved in the process of finalizing the scheme of Amalgamation and the Trust created therefrom but approving the same collectively with the other Directors on the Board. That on being asked about the decision maker behind the creation of the trusts and the merger of two trusts with the third i.e. the appellant, Shri Dave answered as follows:

“Ans.8: Mr. Rajan Nanda is a Chairman and ultimately, he would know. Mr. G.B Mathur was company secretary who would be putting up these processes. The process working detail I do not recall.”

The answer nowhere describes who the decision maker was but merely refers to Mr. Rajan Nanda & Mr. G.B. Mathur as the then chairman & company secretary respectively and nothing more.

(b) Shri G.B. Mathur

He was appointed as a trustee of EBWT on 2nd September 2014, prior to which he was the company secretary of Escorts Ltd. for several years. Although he was not associated with the amalgamating companies in any manner, he was authorized by their respective Boards of Directors to carry out all necessary actions along with others in connection with the scheme of amalgamation. His signatures on the Trust Deeds of the respective trusts were as a witness and not as a party. The questions to Mr. G.B. Mathur were generally related to the trusts other than the appellant trust,

and which were created by the amalgamating companies with whom Mr. Mathur had no relationship. He rightly answered that everything pertaining to the said trusts had been completed before he became a trustee. That when the statement of Mr. Mathur was recorded on 21.12.2018, the statement of Shri Dave was available having been recorded on 19.12.2018. Mr. Mathur was not confronted with the statement of Shri Dave or allowed opportunity of cross-examination but faulted in the following terms with reference to the statement of Shri Dave(reply to Q.No.8)

“One of the trustees Shri G.B. Mathur deliberately misled the department by giving the false statement. Prosecution proceedings have been initiated against Shri G.B. Mathur, trustee.....”

That since the statement of Shri Dave itself was recorded contrary to accepted legal norms as already submitted anything stated by him could not in law form the basis for initiation of an action as extreme as prosecution against Shri Mathur.

- iv. According to the Ld. Counsel without prejudice to any other arguments, the statement of Shri Dave having been used against Shri Mathur without confronting him with the same and further denying him the opportunity to cross-examine Shri Dave, was required to be ignored.
- v. The Ld. Counsel for the appellant also referred to the order of the Ld. CIT(A) on the conclusions drawn by him in respect of the statements spanning paras

10.2.4 to 10.2.8 of his order, drawing specific attention to paras 10.2.7 and 10.2.8 which were in the following terms:

“10.2.7 From the examination of facts and discussion as made above, it is noted that Sh. G.B. Mathur and Sh. Ajay Sharma have been appointed as trustees of the appellant merely because they were under the employment of M/s EL and thus were under the direct control of M/s EL. They were not having any prior experience before becoming trustees of the appellant. Further Sh. S.A. Dave was also appointed as trustee as he was on the Board of Directors of M/s Escorts Ltd. On the examination of facts, it has been found that the trustees were functioning for the appellant trust only on notional basis. They have not exercised any discretion or independence in the management of the affairs of the trust/trust fund during the year under consideration. The trustees in this case have not been found functioning for the management of the affairs of the appellant trust independently and exercising their discretion in the real sense as per the provisions of the trust deed. To put in other words the existence of trustees during the year was just notional and not in real sense. They were not having any knowledge of or control over the appellant trust/trust property. They have been in real sense under the control and guidance of M/s EL for the management of affairs of the trust.

10.2.8 Dr.S.A. Dave in his statement in response to Question No.13 has referred to the expenses incurred by the appellant in relation to staff. However, ongoing through the income and expenditure statement of the appellant it is noted that the appellant has claimed expenses of Rs.28,750/- for audit fees and Rs.1,470/- for bank charges. Besides this no other expenses has been incurred. It shows that the appellant has not maintained any staff for the execution of its activities whereas Dr. S.A. Dave has referred some expenses in relation to staff. Therefore, it shows that Dr. Dave was not actually aware about the actual state of affairs of the appellant. It is also unrealistic to assume that the appellant could have carried out its activities without deploying any staff at its disposal or without incurring any expense on necessities such as consumption of paper, stationary item etc. It is relevant to mention here that in the return of income the appellant has mentioned its address as 15/5, Mathura Road, Faridabad. It is the corporate address of M/s Escorts Ltd. also. From the balance sheet of the appellant it is noted that it is not having any fixed asset like computer/accessories etc. at its disposal which are bare minimal for its functioning. These facts, in totality indirectly point out that the appellant has used property/facilities of M/s EL and thus were under control of M/s EL. In this given facts it can be seen that the appellant did not show any independent existence.”

- vi. According to the Ld. Counsel the revenue being unable to find any illegality in the terms of the trust deed and the appointment of the trustees picked up issues as minor and irrelevant as the address, the incurring of nominal expenditure, the non-existence of a computer and expecting strangers with prior experience to be appointed as trustees without indicating the statutory provision or the rule which mandated so and debarred persons known to the settlor with impeccable qualifications to be appointed as trustees. The conclusion therefore that the trustees have not operated independently and that EL has combined in itself the role of the settlor, the Trustee and the sole beneficiary is baseless and not well founded.
14. The Ld. Departmental representative strongly supported the order passed by AO and the Ld. CIT (A).
15. We have carefully considered rival contentions and perused the orders of the lower authorities. Apparently the grievances of the appellant are
- (i) validity of the trust vide Section 3 of the Indian Trust Act, 1882,
 - (ii) the decision of the tax authorities to treat EL as the settlor,
 - (iii) the trustee and the beneficiary of the trust coupled with the allegations of tax evasion,
 - (iv) rejection of the claim for being treated as a 'representative assessee',
 - (v) subjecting to tax the dividend income and
 - (vi) Violation of the principles of natural justice.
16. Section 160 defines representative assessee as under :-

B.—Representative assessees - General provisions

Representative assessee.

160. (1) For the purposes of this Act, "representative assessee" means—

(i) in respect of the income of a non-resident specified in ¹[***] sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;

(ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;

(iii) in respect of income which the Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

² [(v) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

Explanation 1.—A trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] shall be deemed, for the purposes of clause (iv), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the ³[Assessing] Officer,—

(i) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and

(ii) in any other case, within three months from the date of declaration of the trust.

Explanation 2.—For the purposes of clause (v), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under Explanation 1 to be a trust declared by a duly executed instrument in writing.]

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

17. Section 161(1) of the Act deals with the liability of a representative assessee as under :-

Liability of representative assessee.

161. (1) 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, subject to the other provisions contained in this Chapter, 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.

¹[(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 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 :

Provided that the provisions of this sub-section 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.

²[***]

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

18. Firstly, we come to the issue who is the settlor of the trust , who is the trustee and who is the beneficiary. Importantly the 1d AO has examined the trustee and he found that trustees do not have much idea about the functioning of the trust. They do not have real property in the hands of those trustees. It is interesting to note that in Para no 6 at page no 59 of

63 of the assessment order, the Id AO himself has stated that Shri S A Dave , who is the trustee of this trust was the highest shareholder of the company M/s Escorts Limited having 37300031 shares along with Shri Pritam singh Jointly. Therefore, it is apparent that trust is highest holder of shares of Escorts Limited in the name of trustees. Thus there was no real property in the name of the assessee trust is devoid of any merit. The shares are always registered in the name of the trustees and not in the name of trust. There I always a declaration u/s 187Cof the companies act if it held in the name of the beneficiaries. Therefore, naturally the share cannot be in the name of the trust. Even otherwise, they are shows in the financial of the assessee and dividend income received therefore is shown as income. No doubt assessee being professional directors of the group or are independent persons may not be knowing each and everything about the trust, but they are trustees, they have the responsibility assigned to them in the Indian trust act as well as other regulatory laws including Income tax. However, that does not mean that they should know each thing, howsoever small it may be. That is neither the responsibility cast up on them by general nor any specific law. Undoubtedly, the trust is belonging to Escorts Ltd , it is the settlor and it is the beneficiary. However, that does not mean that it is the trustee also. The Id AO has not brought on record any evidence to show that Escorts Limited is the trustee of the assessee. Therefore, the allegation of Id AO that Escorts Limited is also the trustee is devoid of any merit and based on mere conjectures and surmises. Further the sole beneficiary is Escorts Limited and Settlor r of the trustis Escorts Limited is the major reason why the Id AO is refusing to recognize the above trust. Honorable Gujarat High court has answered it in BHAVNA NALINKANT NANAVATI vs. COMMISSIONER OF GIFT TAX (2002) 70 CCH 0059 Guj HC (2002) 174 CTR 0152, (2002) 255 ITR 0529 where the settlor was also the sole beneficiary was held to be a valid trust. Revenue did not show us any bar in the trust act where the settlor cannot be beneficiary of that trust. I Assessee alsosubmitted identical structures in case of Mahartana Companies, which were not found be

violating Trust Act. Therefore, we do not find any infirmity in the Escorts Limited being the settlor and sole beneficiary of the trust.

19. Now coming to the assessment of the trustee in Representative capacity in terms of provision of section 160 and 161 of The Income tax Act. Honourable Supreme court in Commissioner of Wealth Tax Vs. Trustees of H.E.H. Nizam's Family (Remainder Wealth Trust) 108 ITR 555 has held that the trustee is assessable 'in the like manner and to the same extent' as the beneficiary. The consequences are three-fold. In the first place, it follows inevitably from this proposition that there would have to be as many assessments on the trustee as there are beneficiaries with determinate and known shares, though, for the sake of convenience, there may be only one assessment order specifying separately the tax due in respect of the wealth of each beneficiary. Secondly, the assessment of the trustee would have to be made in the same status as that of the beneficiary whose interest is sought to be taxed in the hands of the trustee. Hon Supreme court further referred N.V. Shanmugham and Co. v. CIT [1971] 81 ITR 310 (SC) to hold that the amount of tax payable by the trustee would be the same as that payable by each beneficiary in respect of his beneficial interest, if he were assessed directly. Further Hon Supreme court in Arundhati Balkrishna v. CIT [1989] 177 ITR 275, at pages 278-79 held that

"Turning to the additional question referred to the High Court for the assessment year 1964-65, it seems to us clear that what is assessable in the hands of the assessee must be the income of the trust received by it on behalf of the assessee. It is apparent from section 161(1) of the Income-tax Act, 1961, that a representative assessee, that is to say a trustee, as regards the income in respect of which he is a representative assessee, is 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 he is liable to assessment in his own name in respect of that income ; but any such assessment is deemed to be made upon him in his representative capacity only, and the tax is 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. And section 166 of the Act clarifies that the provisions

relating to the liability of a representative assessee will not prevent either the direct assessment of the person on whose behalf or for whose benefit income is receivable, or the recovery from such person of the tax payable in respect of such income. The Income-tax Officer has the option to proceed either against the trustee or against the beneficiary, but in either case, the income to be assessed must be in the same sum. What the trustee receives as the income pertaining to the beneficiary is received by him under an obligation to pass on that income to the beneficiary."

20. Further Hon Supreme court in case of CIT vs. Smt. Kamalini Khatau[1994] 209 ITR 101 (SC) held that when an assessment is made in the hands of the trustee it can be made only in terms of the provisions of Sections 160 to 166 of the Act, which did not intend to levy tax except in relation to the person receiving it beneficially. In the impugned case brief facts to be recapitulated are that the appellant trust was constituted under a registered trust deed executed on 14th February 2012 with the primary object of holding the trust fund including the EL trust shares for the exclusive benefit of the beneficiary i.e. EL and performing all acts incidental thereto. For the said purpose, three trustees were appointed namely Dr. M.G. K Menon, Dr. S.A. Dave and Dr. P.S. Pritam. The trust, pursuant to the sanction of a Scheme of Arrangement and Amalgamation by the Hon'ble Punjab and Haryana High Court on September 5, 2012 whereby three companies merged with Escorts Limited. In fact three trusts were created including the appellant and since the object of all three trusts was the same i.e. to hold shares on behalf of a common beneficiary i.e. EL, two of the trusts namely M/s Escotrac Benefit Trust and M/s EFILL Trust stood dissolved as a result of the order of the court on the ground of "operational convenience". Thus, the Id AO accepted the status of a "representative assessee" for raising the demand and collecting Govt. dues, which is the purpose behind the provisions referred to Sections 160(1)(iv) and 161(1). Then again the AO reaffirmed the same in a remand report before the Id CIT (A) that "Section 160(1)(iv) clearly states that trustee in receipt of the income on behalf of the beneficiary can be treated as representative assessee. In the present case, the income on behalf of the beneficiary i.e. M/s Escorts Ltd. is received by the

assessee. Therefore it is liable to be assessed as a representative assessee as the income earned by it for the benefit of Escorts Ltd. On appeal, the Id CIT (A) reversed the position. Thus, it is apparent that Id. CIT(A) has misconstrued the issue. All that the appellant had contended was that the AO having accepted the status of a representative assessee, should have carried the matter to its logical conclusion by exempting the dividend income u/s 10(34) of the Act, in conformity with the provisions of Section 161(1) of the Act and which was the contention before us as well.

21. Coming to the issue of dividend which is interconnected, the same has been subjected to dividend distribution tax, being a dividend referred to in Section 115-O of the Act. Considering the taxability of the said dividend in the case of EL the beneficiary, the same would not be taxable since the dividend was exempt u/s 10(34) of the Act. There is no reason for the Id AO to treat it as any other receipt other than dividend and then to tax it as income from other sources. Admittedly, in this case the dividend is subject to dividend distribution tax. According to section 10 (34) of the act same is exempt as under :

(34) any income by way of dividends referred to in section 115-O :

²⁵[**Provided** that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA;

22. The claim of the Id AO is that this is the income distributed by Escorts Limited as dividend on its shares held by the assessee trust , which has been paid to the assessee trust for the benefit of Escorts Limited. Therefore, the Id AO held it to be a tax evasion devise. We note that Id AO has forgotten the facts that in fact Escorts Limited pays dividend distribution tax on such dividend received by the assessee for the benefit of Escorts Limited. According to us, it cannot be tax evasion devise for the reason that firstly Escorts Limited earns the profit and pays the tax in its hands . From that, it derives distributable surplus and then pays dividend distribution tax thereon, then only it reached the hands of the appellant for onward transfer to Escorts Limited. In this transaction

Escorts Pays higher taxes. However, it cannot be tax evasion devise. It may be a way of holding the controlling interest by the Escorts Limited to thwart any takeover bid etc., but certainly there is no tax benefit but it has a tax cost. Even otherwise, the trustees are to be assessed as representative assessee in like manner as beneficiaries. The above income shall be tax exempt in the hands of beneficiary also. Thus, appellant cannot be subjected to tax on the same dividend income, which as per law would be exempt in the hands of the beneficiary. This is clearly at variance with the clear and plain language of Section 161(1) of the Act, which specifies the liability of a 'representative assessee' as being co-terminus with that of the beneficiary nothing less and nothing more.

23. Further the Id AO has interpreted the term 'Member' vide Section 2(55) of the Companies Act, 2013 in a restricted manner although it is a term wider than the term 'shareholder' as defined in Section 2(22) of the Income Tax Act. The AO and the CIT(A) have failed to gauge that a 'Member' has necessarily to be a 'shareholder' if one were to read clause (iii) of Section 2(55) of the Companies Act, 2013 defining the term "member" as under:

"every person holding shares of the company and whose name is entered as a beneficial owner in the records of the depository".

24. Further as per the depository system of holding shares, the shares owned by a private trust are held in a demat account in the names of the trustee/trustees which in the present case was Shri S.A. Dave and the same depiction appeared in the audited accounts for the relevant period. (Page 213, 228 & 229 of the Paper Book). In other words the requirements of a shareholder receiving the dividend also stood satisfied in the case of the appellant and benefit of the exemption u/s 10(34) would be available as it would be in the hands of the beneficiary i.e. EL.
25. The appellant's alternative submission that irrespective of the treatment in the assessment, the benefit of the exemption u/s 10(34) of the Act cannot be denied and that the colour of the receipt would not change in the absence of any statutory provision has substantial merit. Revenue

could not show us any provision in the act, which can change the characterization of dividend receipt as income from other sources. Such rights are probably available the Id AO, if at all, u/s 98 of the act only in case of impermissible avoidance arrangement. Such is not the case in the impugned appeal. Thus, In our opinion the AO was not justified in changing the nature of the receipt, which continued to remain a dividend irrespective of whatever view was expressed in the assessment. Hence, we hold that the appellant was required to be assessed in the status of a 'representative assessee' and consequently to the same tax treatment as would have been accorded to the beneficiary vis exemption u/s 10(34) in respect of the dividend of Rs.4,47,60,037/-. The addition on the said account is accordingly deleted.

26. As a consequence of the directions aforesaid, the latter part of Ground No.2 whereby the taxability of the dividend is challenged is allowed with the further observation that the challenge to the validity of the trust u/s 3 of the Indian Trusts Act, 1882 having become academic, since, the assessment has been reduced to Nil, is not being dealt with and questions raised by both the parties are left open to be adjudicated upon in any other appropriate year. Ground No. 5 in the appeal is allowed.
27. We now take up for consideration Ground No.3 in the appeal whereby the appellant contends that the AO cannot go behind the scheme of arrangement and amalgamation duly sanctioned by the High Court, more so when the tax authorities assessing the amalgamating companies have completed their assessment u/s 143(3) of the Act without demur. We find that clause 4.1 of the scheme states as under:

“Further, this clause of the Scheme has been drawn up to comply with the conditions relating to “Amalgamation” as specified under Section 2(1B) of the Income-tax Act, 1961. If any term(s) or provision(s) of the Scheme is/are inconsistent with the provisions of Section 2(1B) of the Income-tax Act, 1961, the provisions of Section 2(1B) of the Income-tax Act, 1961 shall prevail and the Scheme shall stand modified to the

extent necessary to comply with Section 2(1B) of the Income-tax Act, 1961. Such modifications will, however, not affect the other clauses of the Scheme.”

28. Nothing has been brought on record by the revenue to show any such inconsistency, although there is a general discussion but not specific in the order of the AO on the provisions of Section 2(1B) of the Act. There is also no challenge to the factual submission on behalf of the appellant as to the tax assessments of the entities involved in the amalgamation. We are however, of the view that in a given case the tax authorities are entitled to examine the Scheme for probable tax implications, which apparently have not been pinpointed in the present case, as the subsequent discussion on the remaining grounds would show. The income of the assessee is required to be assessed by the Assessing officer as defined u/s 2(7A) of The Income Tax Act according to the provisions and procedures enshrined there in. The schemes of merger, amalgamation and corporate restructuring may grant certain relief or concession to the parties, but it cannot be said that even if they are in violation of the tax laws it should be accepted by revenue as it is. Thus merely because schemes of corporate restructuring sanctioned by the high court or any other authority does not prevent assessing office in assessing the Income of the assessee. Off course, necessary relief granted may be allowed by him. In conclusion, Ground No.3 is disposed-off in terms indicated.
29. Taking up Ground No. 6 which encompasses two issues (1) conclusions drawn from the statements of the trustees recorded u/s 131 of the Act and (2) allegation of tax evasion thus creation of the trust being a “colorable device”. We must observe at the outset that both the AO and the Ld. CIT(A) have stressed more on the statements of the trustees to draw adverse inferences, basing these on surmises and conjectures rather than reality. The ld AO has held that trustees do not know the object and purposes of the trust or other minute facts about the operation of the trust. This issue has already been discussed us , therefore does not

deserves repletion. The Id AO has picked up 'words and phrases' from the statements rather than considering them as a whole. The Id AO totally ignored that the trustee have attended the meetings, holding the property and have fulfilled their duties as the trustees. Coming to the statements, recorded Shri S.A. Dave was an ex-trustee aged above 80 years, having no relationship with EL or the appellant trust for a last 3 years. He was not allowed access to his papers as requested by him to answer the questions and it was but natural that some of the answers were likely to be incoherent because of age and reduction in the ability to remember dates and events. However, that does not go against the assessee trust or the trustees. The Id AO has also not put any evidences on record that even remotely suggest that assessee trust is run by the Settlor and beneficiary as trustee. As regards the statement of Mr. G. B. Mathur he was appointed as a trustee w.e.f. 2nd September 2014 and he deposed in that capacity and not as a witness. He rightly answered that everything pertaining to the trusts had been completed before he became a trustee. The questions to him as in the case of Shri Dave & Shri Ajay Sharma generally related to the trusts other than the appellant trust, the former being created by amalgamating companies with which Mr. Mathur had no relationship. It is also observed and specifically adverted to by the Ld. Counsel that when the statement of Mr. Mathur was recorded on 21.12.2018, the statement of Shri Dave was already available having been recorded on 19.12.2018. The said statement was not confronted to Mr. Mathur but who thereafter was faulted for misleading the department with a false statement vis-à-vis certain averments made by Shri Dave resulting in consequences as extreme as prosecution. Considering the facts before us and the legal position connected thereto, the statement of Shri Dave as far as it implicates Mr. Mathur is required to be ignored. Adverting to the view expressed by the AO and the Ld. CIT(A) that the trustees have acted on a "notional basis" and that the real trustee is EL along with being the settlor and the sole beneficiary, at the outset, we hold that the appellant trust was formed with the sole object of holding the shares of EL on behalf of the sole beneficiary i.e. EL. The single pay

out on account of dividend was directly credited to the bank account of the trust and by the same mode paid over to the sole beneficiary. In other words other than bank charges and audit fee, there was no likelihood of any other expenditure being incurred such as the one contemplated by the Ld. CIT(A) in Para 10.2.8 of his order. The same logic would apply to the non-existence of any other asset and in our opinion the allegation that the facilities of M/s EL have been utilized, is an assumption, there being no legal basis for an adverse view on the common address of the appellant trust and M/s EL.

30. Further In Para 10.1 of his order the Ld. CIT(A) makes certain observations to draw a conclusion that the appellant trust is not irrevocable and for the said purpose refers to Para 4.6 of the trust deed which states as follows:

“4.6.2

The Trustees will be bound to follow the terms and conditions and such other stipulations as may be intimated to them by way of written instructions for selling, pledging, mortgaging, encumbering or creating lien of any kind on the EL shares.”

31. We cannot accept argument of the revenue that the aforesaid clause is repugnant to the creation of an ‘irrevocable trust’ and that the sole beneficiary is barred from giving any instructions, when the trust itself is created for its benefit. A reference is made to the trust deed in the case of Indian Oil Corporation which contains the following clause (b): (Page 186 of the Paper Book)

(b) “The Trustees shall, within the term or the varied term, of and when instructed by the settlor in writing..... sell, transfer or dispose-off the Trust Fund upon receipt of written instructions from the settlor in this regard.”

Clause (c) also refers to certain acts to be, performed by the trustees with the prior consent of the settlor.

32. Admittedly even as per the revenue the creation of an identical trust with similar clauses has been accepted and in our view there is no reason to draw adverse inferences in the case of the assessee about the appellant trust not being an irrevocable trust or the trustees, acting on a notional

basis or EL acting in the capacity of a trustee also. In view of the discussion, aforesaid Ground No. 6 in the appeal is allowed.

33. No arguments were advanced on behalf of the appellant on Grounds 1 and 4 in the appeal and these are therefore treated as dismissed.
34. The above order is passed beyond period of 90 days from the date of hearing because of extraordinary circumstances relying on the decision of coordinate bench in DCIT Vs JSW Ltd in ITA No. 6264/Mum/2018 dated 14.05.2020.
35. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27/05/2020.

Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 27/05/2020
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	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
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	