

DELHI HIGH COURT RULES ON TAXATION OF CATEGORY III AIFS FORMED AS TRUST

The Hon'ble Delhi High Court, in the matter of *Equity Intelligence AIF Trust v. Central Board of Direct Taxes*, has read down the clarification issued under CBDT Circular No. 13/2014 dated 28 July 2014. The circular had stipulated that Category III Alternative Investment Funds (AIFs) must disclose the names of beneficiaries and their respective shares in the original trust deed to avoid taxation at the Maximum Marginal Rate (MMR) under Section 164 of the Income-tax Act, 1961 ("**the Act**").

Brief Background:

- *Equity Intelligence AIF Trust* ("**the Petitioner**") is a SEBI-registered Category III AIF that launched an open-ended scheme titled "EQ India Fund," issuing units to investors.
- Since Assessment Year (AY) 2018–19, the Petitioner has filed separate income tax returns in the status of a trust and was previously assessed as a "determinate trust" by the Assessing Officer.
- The Petitioner sought an advance ruling from the Authority for Advance Rulings (AAR), which was subsequently transferred to the Board for Advance Rulings (BAR).
- On 27 June 2024, the BAR held that the Petitioner was an "indeterminate trust" and liable to tax at MMR, relying solely on CBDT Circular No. 13/2014 ("**the Circular**") read with Explanation 1 to Section 164 of the Act.
- The Petitioner challenged the BAR's order and the validity of the circular through a writ petition before the Delhi High Court.

Petitioner's Arguments:

- The Petitioner contended that under the SEBI (AIF) Regulations, 2012, an AIF cannot accept investments prior to obtaining registration from SEBI.
- Registration requires submission of the Trust Deed, which must be executed and registered under the Registration Act, 1908.
- Consequently, the original Trust Deed cannot include the names of investors at the time of execution, making compliance with the circular legally impossible.

Respondent's Arguments:

- The Revenue argued that for a trust to be treated as determinate, the trust deed must explicitly name the beneficiaries and specify their respective shares.

High Court's ruling

- The Court held that AIFs are subject to strict regulatory oversight under SEBI Regulations and cannot accept investments prior to registration under Regulation 4(c).
- It found that CBDT Circular No. 13/2014 conflicts with SEBI norms and imposes an impossible compliance requirement.
- The Court concluded that the circular must be read down to harmonize with judicial precedents and the regulatory framework.

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