IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER

ITA NO.5396/MUM/2015 (A.Y: 2011-12)

ACIT 19(2) Room No.207 Matru Mandir, Mumbai – 400 007	*v.*	M/s. Jeannie Jamshed Madan 72, Goolestan, 34, Bhulabhai Desai Road, Mumbai – 400 026 **PAN NO: ABGPM 7171 B**
(Appellant)		**(Respondent)**

Assessee by : Shri Firoze B. Andhyarujina
Shri Maneek Andhyarujina
Department by : Ms. Arju Garodia

Date of Hearing : 20.09.2017
Date of pronouncement : 10.11.2017

O R D E R

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Ld.CIT(A)-30, Mumbai dated 31.08.2015 for the Assessment Year 2011-12 in deleting the addition of ₹.7 Crores made by the Assessing Officer as unexplained investment u/s.69 of the Act.

2. Briefly stated the facts are that, the assessee filed her return of income for the Assessment Year 2011-12 on 19.03.2013 declaring

income of ₹.42,38,628/-. The assessment was taken up for scrutiny and in the course of Assessment Proceedings based on the AIR information received by the Assessing Officer that assessee had purchased two immovable properties for ₹.2,50,02,054/- and ₹.6,95,00,000/- on 07.04.2010 and 12.07.2010 respectively, the assessee was asked to explain the source of the amounts for purchase of the said properties. In response the assessee explained vide letters dated 23.12.2013 and 15.01.2014 that the source of funds for purchase of properties was mainly from the bequeathal of property by her Maternal Grandfather namely late Shri M.S. Kotwal and the assessee also received certain amounts from her mother Mrs Perviz J. Madan and the total amount received between 21.05.2008 to 15.03.2009 was at ₹.7,91,65,329/- out of which an amount of ₹.2,05,00,000/- and ₹.4,95,00,000/- were invested in purchases of two properties.

3. Subsequently, show cause notice dated 07.02.2014 was issued by the Assessing Officer stating that assessee received money in her bank account from different accounts and no explanation was provided regarding the source of such receipts, purpose for which such amounts were transferred to assessee account and whether due tax had been paid on said amounts. Therefore, Assessing Officer required the assessee to show cause as to why the investments made on purchases of immovable

properties during the relevant Assessment Year 2011-12 should not be deemed as income of the assessee and since assessee could not offer any explanation about the nature and source of investments, why it should not be treated as unexplained investment u/s. 69 of the Act. Assessee furnished her reply by letter dated 24.02.2014 explaining that assessee is a beneficiary in the profits of the partnership firm M/s. Mira Salt Works a firm in which her grandfather was a partner and after the demise of her grandfather as per the Will the Executors of the Estate of her grandfather late Shri M.S.Kotwal acted as partner in the capacity of Executors in the partnership. It was explained that in the year 2008 new partners were introduced and the new partners agreed to introduce capital in the firm amounting of ₹.105 crores and accordingly introduced capital into the firm. It was explained that since the assessee requested the Executors of Estate of late Shri M.S. Kotwal opted to withdrew the amount lying to the credit of the capital account and give it to the beneficiary as per the Will of late Shri M.S. Kotwal. It was explained that assessee got her share of ₹.8.75 crores as a beneficiary out of which assessee received ₹.7,91,65,329/- in installments between 21.05.2008 to 15.03.2009 which amount is in turn invested for purchases of residential properties.

4. Subsequently the Assessing Officer issued one more show cause notice dated 10.03.2014 stating that the firm M/s. Mira Salt Works not

engaged in any business and it was holding the ancestral property in respect of profit sharing ratio of partners/beneficiary and in the case of the assessee it is not distribution of any income from property held by the firm but it is a case where the property of the firm has been effectively transferred in favour of the new partners. The Assessing Officer further observing that the sole basis of valuation of firms Goodwill at ₹.105 crores can be attributed nothing else than to the revaluation of Fixed Assets (i.e. land) as the firm did not have any business and by the said valuable property of the firm have effectively been transferred to the new partners and therefore required to show cause as to why the share of goodwill credited to assessee of ₹.8.75 crore in Financial Year 2007-08 and Financial Year 2008-09 should not be considered as unexplained income u/s. 68 of the Act. Alternatively, the Assessing Officer proposed to treat the investment in two residential properties as unexplained investment u/s. 69 of the Act because the source of such funds are not subjected to tax. Assessee filed detailed explanation submitting that the provisions of section 68 and 69 of the Act, have no application to the transaction in question. The conditions laid down in the provisions of section 68 and 69 are not fulfilled so as to apply the said sections to the transactions. However, the Assessing Officer without appreciating the submissions of the assessee held that the partnership of M/s. Mira Salt Works holding

ancestral property did not distribute the property to the beneficial owners including the assessee but effectively sold/transferred the property to new partners without payment of capital gains, stamp duty, registration fee, etc. He observed that the land was sold to D.B Reality Ltd. and no Capital Gain Tax was paid by the firm/beneficiaries and the assessee is one of the beneficial owner to the tune of ₹.8.75 Crores out of such consideration and the legitimate taxes are not paid and since the amount has been credited in the books of assessee by way of receipts in installments, he rejected the explanation of the assessee as not satisfactory and the conditions for applicability of sections 68 of the Act are satisfied. Alternatively Assessing Officer considered ₹.7 Crores i.e. ₹.4.95 Crores and ₹.2.05 Crores which was invested in the purchase of two residential flats out of the impugned receipts as unexplained investment u/s. 69 of the Act.

5. The assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(A) considering the submissions, facts of the case concluded that none of the conditions of section 68 are satisfied in the present case and therefore invoking the provisions of section 68 are not warranted at all. He also observed that the Assessing Officer required the assessee to show cause as to why share of goodwill credited to the assessee's account in the FY 2007-08 and FY 2008-09 should not be considered as

unexplained income u/s 68 of the Act for the Assessment Year 2011-12 under consideration. Therefore Ld.CIT(A) observed that the Assessing Officer noticed that the said amounts were credited in Financial Year 2007-08 and Financial Year 2008-09 and therefore it cannot be taxed in the Assessment Year 2011-12. Further Ld.CIT(A) held that even if the stand of the Assessing Officer that goodwill estimation by the firm M/s. Mira Salt Works is incorrect and it should be treated as sale proceeds of land is accepted, there would not be no change in position as far as the assessee is concerned because the partnership may have income from several heads of income but the distribution of share of profits from partnership is taxable as business income in so far as the assessee concerned. He further observed that the share received from Executors of late Shri M.S. Kotwal from M/s. Mira Salt Works whether out of capital gains or goodwill falls under business income and is exempted u/s. 10(2A) of the I.T. Act, therefore Ld.CIT(A) held that the reason given by the Assessing Officer that the funds were received by the assessee out of untaxed money does not survive.

6. In so far as the alternative stand of the Assessing Officer that the investment of ₹.7 Crores made in the residential flats as unexplained investment invoking provisions of section 69 of the Act is concerned the Ld.CIT(A) held that the assessee explained that the investment was made

out of the money received from the firm M/s. Mira Salt Works and the sources of such investments were explained satisfactorily to the Assessing Officer. The Ld.CIT(A) further observed that since there is no addition made by the Assessing Officer u/s. 69 of the Act in the final computation of the total income, he held that no adjudication is required on this issue. Against this order the Revenue is in appeal before us.

7. Ld.DR strongly supported the orders of the Assessing Officer in invoking provisions of section 68 and 69 of the Act and bringing to tax the amount of ₹.8.75 crores as income of the assessee u/s. 68 of the Act.

8. Learned Senior Advocate Shri Firoze B. Andhyarujina appearing on behalf of the assessee, submitted that the assessee is a beneficiary of the Estate of late Shri M.S. Kotwal, through the deceased's Will. The Executors of the Estate of late Shri M.S. Kotwal acted as partner (in capacity of Executors) in the partnership Firm – M/s Mira Salt Works, a firm registered with the Registrar of Firms. M/s. Mira Salt Works initially had three brothers as equal partners of the firm. (1) Mr. M.S. Kotwal (2) Mr. B.S. Kotwal and (3) Mr. D.S. Kotwal. After the death of Mr. D.S.Kotwal, his two sons – Mr Keki Kotwal and Mr Noshir Kotwal were introduced as partners bequeathing equally their deceased father's 1/3 share in the Firm. Mr. M.S. Kotwal died on June 14, 1983 and as per his

Will dated 08th May 1979 he had appointed his two daughters and their husbands as the Executors of his Will. The beneficiaries of his Will are his grand daughters. As per late Shri M.S. Kotwal's Will, his 1/3 share in the Firm would be bequeathed by his grand-daughters (Beneficiaries) and such share would be given to the beneficiaries by the Executors of late Mr. M.S. Kotwal (comprising of 2 daughters and their husband) appointed as per the Will. Based on the Will of late Mr. M.S. Kotwal, the profit sharing ratios of the partners of the Firm were changed and the new profit sharing ratios are as under:

S.No.	Name of the Partner	Profit sharing ratio
1.	Executors of the Will of late Mr Manech.Shapurji.Kotwal	1/3 or 33.33%
2.	Mr. B.S. Kotwal	1/3 or 33.33%
3	Mr. Keki Kotwal	1/6 or 16.66%
4	Mr Noshir Kotwal	1/6 or 16.66%
		100%

In the year 2006, the third partner of the Firm, Mr. B.S. Kotwal died and his 1/3 share in the Firm was bequeathed by the existing partners and his other relatives.

9. In the year 2008, considering the value of the Firm, new partners were introduced in the Firm and such new incoming partners agreed to introduce capital in the Firm amounting to ₹.105 crores. The capital introduced by the new incoming partners was based on the mutual

negotiations between the Firm and the incoming partners. The said proportionate value of each partner's capital account was duly credited which amount to ₹.35 crores being capital account of Executors of Estate of late M.S. Kotwal. The share of the assessee as per the Will in the said capital account of Executor of Mr. M.S. Kotwal was ¼ of ₹.35 crores i.e. 1/12 of ₹.105 Crores which works out to ₹.8.75 Crores. After the introduction of new partners and on the request of the beneficiaries, the Executors of Estate of late Mr. M.S. Kotwal opted to withdraw the amount lying to the credit of the capital account and give it to the beneficiaries as per the Will of late Mr. M.S. Kotwal. One of the beneficiary being the Assessee, she also received her share. This money received by the assessee (as a beneficiary) was invested, during the year under consideration, for the purchase of immovable property by the assessee. Such amount was deposited in the Capital Gains Tax Account and is utilized for purchase of immovable property in the year under consideration. The investments made by the assessee in two residential properties were vide agreements dated March 30, 2010 of ₹.6,95,00,000/- and ₹.2,50,02,054/- and the two residential houses were acquired from the following sources.

S.N	Address of the property	Value of Investment	Source
1	B-162, Kalpataru Horizon, CHS Ltd. S.K. Ahire Marg Worli, Mumbai – 400 025	₹.6,95,00,000	₹.4,95,00,000 from amount received from M/s Mira Salt Works and ₹.200,00,000 from Mother Mrs. Perviz Madan, Pan No. ABCPM 1302 N
2.	1501, Samarpan Royale, Borivali(East) Mumbai	₹.2,50,02,054	₹.2,05,00,000 from amount received from M/s Mira Salt Works and ₹.45,02,054/- from Mother, Mrs Perviz Madan having Pan ABCPM 1302 N

10. Learned Senior Advocate submitted that the assessee submitted the following documents to prove the source of amount received and also the source of investments made during the year under consideration: -

(a) Copy of the Will of late Mr M.S. Kotwal.
(b) Partnership deed dated November 1983 where Executors became partner in Firm.
(c) Balance sheet and capital account of partner (Executor) as on March 31, 2008 and December 31, 2008.
(d) Bank account statements of the Executors of the Estate of late Mr. M.S. Kotwal.
(e) Bank account statements of the firm – M/s Mira Salt Works.
(f) Copy of the Capital Gains Tax Account.
(g) Sample copy of the return of income of the Firm for the year 1991.
(h) Sale deeds for the investments made in two residential houses.

11. Further, the Assessing Officer has also summoned the Firm M/s.Mira Salt Works and have requested the firm to submit information including the balance sheets etc., of the Firm. We were informed that

such summons were duly complied with and all the relevant information requested by the Assessing Officer was furnished to the Assessing Officer. Based on the above facts and documentary evidences, it was submitted to the Assessing Officer that the amount received by the assessee is in pursuance of the Will of her grandfather and arising out of the bequeath of property (share in firm M/s Mira Salt Works) and hence not an unexplained cash credit and the investments made in flats being out of such explained funds cannot be treated as unexplained investment. The Assessing Officer has however made addition of ₹.8.75 crores treating such amount as unexplained cash credit and the Assessing Officer has also held that the investments made to the extent of ₹.7 crores is unexplained investment.

12. Learned Senior Advocate further submits that the Assessing Officer made addition u/s. 68 and from the definition of the said section the conditions for making addition are: -

> *(a) There is any sum in the credit of Books of Accounts maintaining for any previous year.*
>
> *(b) There is no explanation about the source and nature of the source there of.*
>
> *(c) Explanation is not satisfactory to the Assessing Officer the amount shall be treated as income of the assessee.*

Learned Senior Advocate submits that none of the above conditions of section 68 are fulfilled so as to enable the Assessing Officer to invoke the provisions of section 68 of the Act as the assessee has fully explained that the sum received is from the firm in which she was a beneficiary/partner as one of the beneficiary under her maternal grandfather Will since 1983.

13. He submits that all the details related to the transaction were also filed during the Assessment Proceedings and these were not disputed by the Assessing Officer. He submitted that in the present case since the assessee has received the amounts from known sources which are fully explained by way of confirmation and all other relevant documents and the same has not been disputed by the Assessing Officer there cannot be any addition u/s. 68 of the Act. Referring to the Ld.CIT(A) order he submits that the fact that these transactions held during the financial years 2007-08 and 2008-09 also suggest that the addition cannot be made in the Assessment Year under consideration. Therefore, the learned senior counsel submits that as the source of investments stands fully explained the addition made u/s. 69 of the Act cannot stand.

14. We have heard the rival submissions, perused the orders of the authorities below. The fact that the assessee is one of the beneficiaries

in the Estate of late Shri M.S. Kotwal who is partner in the partnership firm of M/s. Mira Salt Works is not in dispute. The reason for bringing to tax the amount received by the assessee is, according to the Assessing Officer there was a revaluation of the assets in the partnership firm, the new partners introduced capital in the partnership firm, the assessee was paid from the capital introduced by the new partners and this transaction is nothing but transfer of property by the firm and there was no capital gains tax paid by the firm nor the assessee who has received the beneficial share from the partnership firm. Thus the Assessing Officer invoked the provisions of section 68/69 of the Act and held that the amount received by the assessee is from the firm which has not paid any taxes on the transaction of introduction of capital by new partners and transferred property there off relating to the firm and since the assessee did not pay the taxes it is the income and it should be treated as the income of the assessee and should be taxed u/s. 68 of the Act. Alternatively, Assessing Officer concluded that the investments made by the assessee should be treated as unexplained investment u/s. 69 of the Act. This in our view is not permissible under law. If the Assessing Officer was of the view that there is distribution/transfer of assets by the Firm appropriate action should be taken in the hands of the Firm. The assessee has fully explained the sources of the amounts received by her which were

invested by her in purchase of properties and therefore none of the conditions laid down in the provisions of section 68/69 are attracted so as to invoke the said sections.

15. The Ld.CIT(A) taking note of the fact that the assessee received amount from the partnership firm as a beneficial owner to the Estate of her grandfather who was a partner of the partnership firm and also taking note of the fact that even the amount received by the assessee from the Firm is exempted u/s. 10(2A) as business income and further taking note of the fact that assessee has not received these amounts during the current Assessment Year, he rightly held that the provisions of section 68 and 69 have no application to the facts of the case. We also find force in the contentions of the Ld.CIT(A) if at all if any proceedings are to be instituted under the Act it is in the case of the partnership firms but not in the case of the assessee. In coming to such above conclusion the Ld.CIT(A) elaborately dealt with the issue as under:

> *"6.3. I have carefully considered the assessment order, submissions and other material on record. It is quite clear fact that the assessee has received the said amount out of the capital account balance lying to her credit in the books of the firm where she is a beneficial partner. It is also a fact that the said amount was credited to her credit in financial year 2007-08 and 2008-09 as goodwill created in the firm. The appellant has filed balance sheet of the firm as on 31.12.2008 in support of her claim. There is no denial of the fact that she is one of the legal heir of (late) Shri M. L. Kotwal whose Estate was one of the partners and his account was credited to the tune of his share in the goodwill of*

the firm in 2007-08 and she has received money there from as her share in the estate of (late) Shri M. S. Kotwal. In other words, the amount is question cannot said as unexplained.

6.4. It appears to me that the Assessing Officer decided the issue on the basis of shock to his conscientious and perceived principles of fairness etc. But, in the process, provisions of Section 68 of the I.T. Act were given go by. The firm M/s Mira Salt Works, Executor and Appellant are three different assessee and their cases have to be examined on the basis of applicable provisions and not to juxtapose facts and law. The scheme devised by M/s Mira Salt Works to avoid paying capital gains is quite patent and the Assessing Officer assessing M/s Mira Salt Works can pierce the veil.

6.5. In the case of Nayantara G. Agrawal Vs. CIT (1994) 207 ITR 639 (Bom.), the assessee entered into partnership with a company. The assessee brought her land valued at Rs. 10 lakhs as her share of capital contribution in partnership. The company did not bring in any capital. No business of sale and purchase of land were conducted by the firm. Assessee retired from the firm within three months of its formation. Firm was dissolved. Land was retained by the company and assessee received Rs. 10 lakh worth of shares. Hon'ble Bombay High Court after considering both CIT Vs. B.M. Rharwar, 72 ITR 603(SC) and McDowell & Co. Ltd. [1985] 154 ITR 148 held that formation of partnership and dissolution of the firm were nothing but a device to avoid capital gains leviable u/s 45 and the Tribunal was right in holding that there was a transfer of capital asset from the assessee to the limited company. It was observed by Bombay High Court that,

> *"It maybe appropriate to mention that the facts set out above clearly go to show that the various transactions including the creation of the partnership, transfer of land to the firm by way of capital contribution of the assessee and dissolution of the partnership were, in fact, only devices to evade capital gains tax that would arise as a result of transfer of the land in question by the assessee to the limited company. A careful perusal of the above transactions culminating in the transfer of land from the assessee to the company clearly goes to show that the real nature of the transaction is transfer of land. The principles of construction of such*

transactions are well-settled and it is too late in the day to say that the court should go strictly by the language of the documents prepared by the parties or the facts put forward by the parties and refuse to remove the veil to find out the real nature of the transaction.

Reference may be made in this connection to the decision of the Supreme Court in McDowell and Co. Ltd. v. CTO [1985] 154 ITR 148 wherein the Supreme Court disapproved the observation of Shah J. in CIT v. B. M. Kharwar [1969] 72 ITR 603 (SC) to the effect that "the legal effect of transaction cannot be displaced by probing into the substance of the transaction" when it observed .....The proper way to construe a taxing statute, while considering device to avoid tax, as observed by the Supreme Court in McDowell and Co.'s case [1985] 154 ITR 148, at page 160, is not to ask whether the provision should be construed literally or liberally, nor ether the transaction is not unreal and not prohibited by the statute but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. It is up to the court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and to consider whether the taxation created by the devices could be related to the existing legislation with the aid of emerging techniques of interpretation to expose the devices for what they really are and to refuse to give judicial benediction. The courts in such a case should not lay undue emphasis on the language of each individual document as that is not determinative of the controversy. What is really necessary to be considered in such cases is the true nature and effect of the transaction. If on such a consideration, the court arrives at a finding that the true nature is "transfer of land" and the various steps originating from the affidavit and formation of partnership and culminating into dissolution of the same, in the process leaving the land with the company, are nothing but a device to avoid capital gains tax leviable under section 45 of the Act on transfer of the land to the company, such a device cannot get the seal of approval of this court."

6.6. Similarly, Special Bench in the case of ITO v. Ramkrishna Bajaj [1992] 198 ITR 1 (Bom.)(AT)(SB) and in Rahul Kumar Bajaj v. First ITO [1998] 64 ITD 73 (Nag.) have held that if the transfer of a personal asset by the assessee to a partnership in which he is or becomes a partner is merely a device or refuse for converting the asset into money which would substantially remain available for his benefit without liability to Income-tax on a capital gain, it will be open to the Income-tax authorities to go behind the transaction and examine whether the transaction of creating the partnership is a genuine or a sham transaction and, even where the partnership is genuine, the transaction of transferring the personal asset to the partnership firm represents a real attempt to contribute to the share capital of the partnership firm for the purpose of carrying on the partnership business or is nothing but a device or refuse to convert the personal asset into money substantially for the benefit of the assessee while evading tax on a capital gain.

6.7. However, avoidance of capital gains tax by M/s Mira Salt Works has no bearing to the case of appellant as she is just a beneficiary of the estate and she has received funds from Executors which is capital receipt in nature, not a taxable receipt. Section 68 of the I T Act requires appellant to establish genuineness, identity and creditworthiness of the payer. First two requirements are patently fulfilled. As far as the source is concerned, funds have been admittedly received from Executor who in turn has withdrawn their capital from M/s Mira Salt Works. The source of fund for M/S Mira Salt Works is capital introduced by new partners. The Assessing Officer, as detailed in Para 4.5 of assessment order, has called for and examined documents, deeds, books etc in details and there is nothing on record that sources of fund are unexplained. Thus, even source of the source is established and in this situation, no addition Section 68 of the I.T. Act is permissible in the hands of appellant. If someone buys car in cash out of his undisclosed income, tax cannot be charged from car dealer on the ground of receipt being out of untaxed money. If at all any action regarding capital gains is warranted, appropriate case is of M/s Mira Salt Works.

6.8. The Supreme Court in the case of R. Lingmallu Raghukumar reported in 247 ITR 0801 (SC) has observed that "The Nigh Court has held that there was no transfer of any assets as contemplated by the expression "transfer' as defined in s.

2(47) of the IT Act. The High Court had placed reliance on the judgment of the Gujarat High Court in CIT vs. Mohanbhai Pamabhai (1973) 91 ITR 393 (GuJ); TC 20R 866 wherein it has been held that where a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts in the manner prescribed by the relevant provisions of the partnership law there is no element of transfer of interest in the partnership assets by the retired partner to the continuing partners. The said judgment of the Gujarat High Court has been affirmed by this Court in Addl. CIT vs. Mohanbhai Pamabhai (1987) 165 ITR 166 TC 20R.865. In view of the said judgment we find no merit in this appeal and the same is, therefore, dismissed. No order as to costs.

6.9. Supreme Court in the case of ITO V/s Mohanbhai Pamabhai reported in 165 ITR 0166 has also observed that Amount received by partner on his retirement in respect of his share in partnership including goodwill does not involve transfer giving rise to capital gains. The apex court followed its own decision in the case of Sunil Siddharthbhai reported in 156 ITR 509 (SC) and its confirmed Gujrat High court order of Mohanbhai Pamabhai reported in 91 ITR 393.

6.10 It is observed by Mumbai High Court in the case of Prakash Joshi V/s ITO reported in 324 ITR 0154 (Born) that

> *"……During the subsistence of a partnership, a partner does not possess an interest in specie in any particular asset of the partnership. During the subsistence of a partnership, a partner has a right to obtain a shore in profits. On a dissolution of a partnership or upon retirement, a partner is entitled to a valuation of his share in the net assets of the partnership which remain after meeting the debts and liabilities. An amount paid to a partner upon retirement, after taking accounts and upon deduction of liabilities does not involve an element of transfer within the meaning of section 2(47). Ex facie sub-section (4) of section 45 deals with a situation where there is a transfer of a capital asset by way of a distribution of capital assets on the dissolution of a firm or otherwise. Evidently, on the admitted position there is no transfer of a capital asset by way of a distribution of*

the capital assets, on a dissolution of the firm or otherwise in the facts of this case. What is to be noted is that even in a situation where sub-section (4) of section 45 applies, profits or gains arising from the transfer are chargeable to tax as income of the firm. When an intimation has been issued under section 143(1), the AO is competent to initiate reassessment proceedings provided that the requirements of section 147 are fulfilled. In such a case as well, the touchstone to be applied is as to whether there was reason to believe that income had escaped assessment. Ex facie, section 28(iv) does not apply to benefits which are paid in cash or money. Similarly, clause (v) of section 28 refers to any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm. A payment made to a partner in realisation of his share in the net value of the assets upon his retirement from a firm, does not fall under clause (v) of section 28." In other words, it is clear that any amount received by a partner by way of goodwill or otherwise is not taxable in the hands of the partner.

6.11 It is also interesting to note that Bombay High Court in the case of Riyaz A Shaikh (ITA No. 1969 of 2011) delivered on 26.02.2013 stated that "……Moreover, the decision of this court in the case of Prashant S. Joshi (supra) placed reliance upon the decision of the Supreme Court in the case of CIT V/s R. Lingamallu Rajkumar reported in (2001) 247 ITR 801 wherein it has been held that amounts received on retirement by a partner is not subject to capital gains tax. In the above circumstances, we see no reason to entertain the propose question of law."

6.12. The above decisions seals the matter of taxability of amount received from the partnership firm in the hands of the partner entirely in favour of the partner and I am of the view that the said amount received from the opening balance of the partnership firm in the hands of the beneficiaries in the estate of the partner is not taxable.

6.13. In the present case, in my opinion, none of the conditions are satisfied so as to invoke the provisions of section 68. The amount of Rs.8.75 crores was received from a partnership firm namely M/s Mira Salt works, wherein the

appellant is a beneficiary partner as legal heir of (late) Shri M. L. Kotwal since 1983. The said firm is assessed to tax. In other words, the source of the money into the hands of the appellant is fully explained and the said fact is not at all disputed by the Assessing Officer at all. The assessing officer had also summoned M/s Mira Salt Works u/s 131 which was fully complied with and all the necessary and required information asked was duly provided by the said firm, M/s Mira Salt works. The said facts suggest that the appellant received money from the known source, (The partnership in which she was one of the beneficiary) which was fully explained by way of confirmation from the firm and that too was doubly confirmed by the summons u/s 131 to the firm and its response to it. So, it is convenient to say that none of the conditions of section 68 are satisfied in the present case and therefore invoking of section 68 is not warranted at all in the present case.

6.14. Further, on Page 8 of the Assessment Order, the Assessing Officer has asked the appellant to show cause as to why the share of goodwill credited to the appellant account the benefit of Rs. 8,75,00,000/- (i.e. 1/4th of Rs 35 crores) in F.Y. 2007-08 and F.Y. 2008-09 should not be considered as her unexplained income u/s 68 of the Act for A.Y. 2011-12. Therefore, the Assessing Officer noticed that the said sums were credited in F.Y.2007-08 and F.Y.2008-09 and therefore it cannot be taxed in the Assessment Year 2011-12.

6.15. Even if the stand of the Assessing Officer is that goodwill estimation by M/s Mira Salt Works is incorrect and it should be treated as sale proceeds of land is accepted, there would be no change as far as appellant is concerned. A partnership firm may have income from several head of income but share of partners is taxable as business income. Reference in this regard may be made to Mohanlal Hiralal vs CIT. 22 ITR 448 (ITAT, Nagpur Bench), CIT Vs Naresh Chandra Bhargava, 97 ITR 572 (Allahbad High Court), CIT Vs G.D. Kothari, 110 ITR 691 (Calcutta High Court), and 32 ITR 924 (Bombay). The share received by Executor from M/s Mira Salt Works, whether out of capital gains or goodwill falls under 'business income' and is exempt u/s 10(2A). Looking from this point of view the reason given by Assessing Officer is that funds were received by appellant out of untaxed money does not survive.

6.16. In view of the above findings and the several Supreme Court and jurisdictional High Court judicial pronouncements clearly established that provision of Section 68 of the I T Act is not applicable in the present case and there cannot be any addition under Section 68 of the I T Act, 1961. In view of my categorical finding, the alternative stand of the Assessing Officer vide Para 4.8 of Assessment Order does not survive. I tend to agree with the appellant's grounds of argument and hence the second ground of appeal is allowed and the Assessing Officer is directed to delete the addition amount to Rs.8.75 Crores.

16. In view of our above discussion we hold that the Assessing Officer is not justified in making addition u/s. 68 of the Act in respect of the amounts received by her from the Firm as a beneficiary. We further find that the assessee explained the source of investments made in the residential flats and therefore the investments made in such residential flats cannot be treated as unexplained investment u/s. 69 of the Act. In view of what is stated above we uphold the order of the Ld.CIT(A) in deleting the addition made u/s. 68 of the Act.

17. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on the 10th November, 2017.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 10/11/2017
VSSGB, SPS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asst. Registrar)
ITAT, Mum