

Lexygen India Digest

September 2025

The September 2025 issue of Lexygen India Digest reports decisions by the Delhi High Court clarifying that an alternative investment fund established as a trust cannot be categorised as an ‘indeterminate’ trust merely because the trust deed does not disclose the identities of its investors. The case updates section also reports a decision of the Rajasthan High Court ruling that the interest on a loan from a foreign lender, in compliance with the external commercial borrowing regulations, is deemed to be eligible for exemption from tax under the Double Taxation Avoidance Agreement between India and Mauritius. The market updates section of this issue reports some significant private equity deals in the finance, healthcare, technology, fashion, cosmetics, automobile, gaming, manufacturing, and software sectors; fundraising by Indian private equity and venture capital funds; mergers and acquisitions in the real estate, retail, and packaging sectors; and certain other important deals.

REGULATORY UPDATES

A. CASE UPDATES

Delhi High Court: AIFs cannot be deemed to be ‘indeterminate’ trusts and taxed at maximum marginal rate under Section 164 of the Income Tax Act, 1961.

In a significant decision in *Equity Intelligence AIF Trust vs. Central Board of Direct Taxes and Another*, the Delhi High Court (“**Delhi HC**”) has held that alternative investment funds (“**AIFs**”) registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“**AIF Regulations**”) are to be considered as ‘determinate’ trusts, notwithstanding that the trust deed does not identify the beneficiaries.

To briefly summarise the facts of the case, the Equity Intelligence AIF Trust (“**EQ**”), engaged in the business of rendering Portfolio Management Services, had launched a single open-ended scheme, namely EQ India Fund (“**Fund**”) under the AIF Regulations. In compliance with the AIF Regulations, the Fund was established by executing a trust deed and obtained registration with the Securities and Exchange Board of India (“**SEBI**”), and only thereafter accepted contributions from investors. As a result, the identity of investors of the Fund and their respective interests in the

Fund were not ascertainable at the time of execution of trust deed. In the assessment year 2018-2019, EQ filed an application with the Authority for Advance Ruling seeking advance ruling on the taxability of the Fund, which was subsequently transferred to the Board for Advance Rulings (“**BAR**”). The BAR held that as the names of the investors (being the beneficiaries of the trust) are not set out in the original trust deed, the Fund would be taxed in accordance with under section 164(1) of the IT Act. Section 164(1) of IT Act provides that where the names and individual shares of the beneficiaries of a trust are not explicitly mentioned in the instrument of trust, the trust would be deemed to be an ‘indeterminate’ trust, and its income taxed at the maximum marginal rate (“**MMR**”). The Central Board of Direct Taxes (“**CBDT**”) had, *via* Circular No. 13/2014 dated July 28, 2014 (“**Circular**”), extended the application of section 164(1) to AIFs.

On appeal by EQ, the Delhi HC decided on the following issue:

- *Whether the Circular is valid, when read with the express prohibition under the AIF Regulations on accepting investments from beneficiaries prior to*

registration with the SEBI? The Delhi HC noted that the AIF Regulations expressly prohibits an AIF established as a trust from accepting contributions from investors until original trust deed is registered under the Registration Act, 1908 and registration for the AIF is obtained from the SEBI. The Delhi HC observed that as such, it would be impossible for the beneficiaries of the trust to be known at the time of executing the trust deed. The Delhi HC noted that on the contrary, the Circular mandates all AIFs set up as non-charitable trusts to specify the names of the investors and their beneficial interests in the original trust deed in order to qualify as a ‘determinate’ trust and avoid being taxed at the MMR in accordance with section 164(1). The Delhi HC observed that such contradiction makes it impossible for AIFs like the Fund to comply with both the Circular and the AIF Regulations. The Delhi HC therefore invoked the doctrine of impossibility and held that an AIF cannot be categorised as an ‘indeterminate’ trust and be subjected to taxation at the MMR merely because the trust deed does not disclose the identities