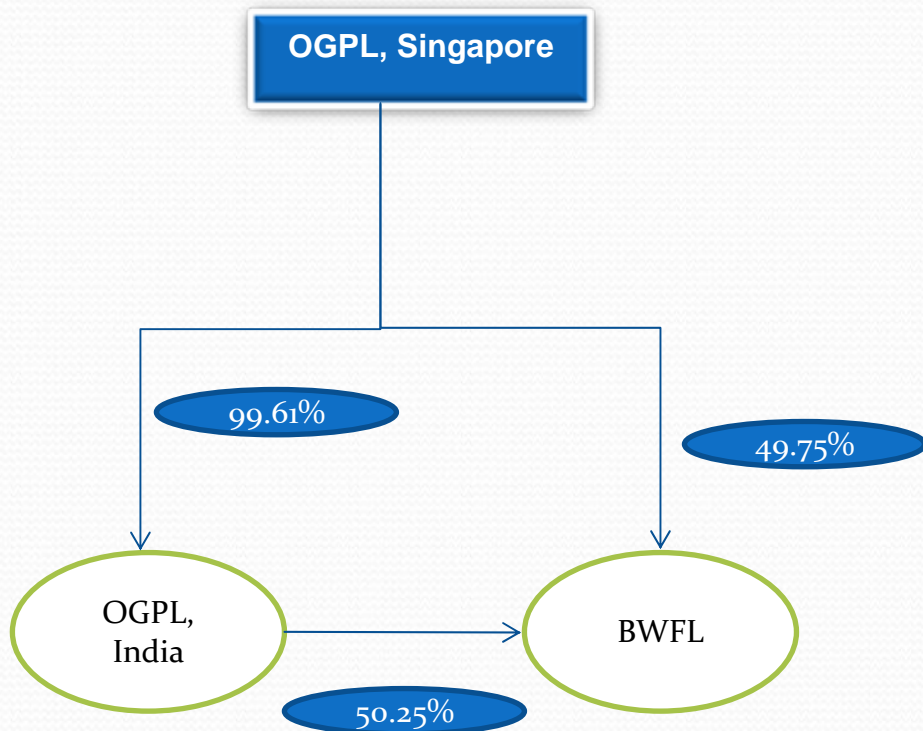


**Analysis of Ruling of AAR in the case of  
Orient Green Power Pte. Ltd**  
*Prepared by CA. Arinjay Kumar Jain*

# Background



## Facts

- Orient Green Power Pte. Ltd (OGPL Singapore) , a Singapore company, held 99.61% shares in OGPL India
- OGPLS also hold 49.7% in BWFL India, balance being held by OGPL India
- OGPLS transferred balance 49.75% in BWFL to OGPL India without any consideration through gift Memorandum., before Section 56(2)(vii)(a) came into existence, which implies that such gift was not taxable in hands of recipient company.

## Issue

- Whether the above transaction was taxable in the hands of OGPL Singapore ?
- Whether exemption u/s 47(iii) would be available by virtue of which gift is not considered as a transfer in the hands of the Transferor ?
- Whether Transfer Pricing would be applicable ?
- Whether pricing under FEMA, can be considered as a Fair price, in case such amount is considered as taxable in India?

## Contentions by Parties-

S. No	Assessee's Contentions
1.	Since, no consideration passed, the transaction could not be taxed u/s 45 of read with Sec 48 - IT Act
2.	Gift is exempt under Capital Gains tax u/s 47 (iii)
3.	Section 92 has no application, when the transaction is not chargeable to tax under the Act,
4.	No obligation to withhold any an tax in terms of section 195 since transaction is not taxable or to file ROI.

S. No	Revenue's Contentions
1.	Genuiness and purpose of transaction questioned – Indicated the Singapore company was a Shell company.
2.	Transaction is not a gift and has been predated to come out of purview of Section 56(2)(vii)(a), in which case, it would have become taxable in the hands of recipient

# Observation of AAR and Ruling

S. No	Particulars
1.	No evidence has been provided on whether the Articles of Association approve such gifting of shares. On the genuineness, the AO would be a better authority to find whether the transaction is genuine
2.	<p>It was observed that Gift referred to in Section 47(i) and (iii), is a gift by an individual or a Joint Hindu Family or a Human Agency, on the ground that Section 47(iii) which reads, 'any transfer of a capital asset under a gift, <b><u>or will or an irrecoverable trust</u></b>' <b>includes will, whose</b> execution involves a human agency.</p> <p>It was observed that gift by a corporation to another corporation is a strange transaction and can only be aiding dubious attempts at avoidance of tax payable under the Act.</p> <p>It was observed that it is possible to say that a gift of shares held in a company by one company to another company would not fall under section 47(iii) of the Act.</p>

## Some observation from Author

**Some of the Key things, which may impact Assessee and worth observing are as under : -**

- Before a Corporate gift can be given, whether or not it is permitted by the Article of Association of the company is the key ;
- The facts would be important , and it would be interesting to see how the case emerges after the AO examines the case.