

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

Before

**SRI MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 268/Kol/2020
Assessment Year: 2016-17**

JCIT(OSD), Circle-32, Kolkata.....Appellant

Vs.

**Sri Aditya Kumar Singhania.....Respondent
[PAN: ALQPS 3950 A]**

Appearances by:

Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.

Sh. Manish Tiwari, FCA, appeared on behalf of the Assessee.

Date of concluding the hearing : April 28th, 2022

Date of pronouncing the order : June 16th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") of Id. Commissioner of Income-tax (Appeals)-09, Kolkata [in short Id. "CIT(A)"] dated 20.09.2019 arising out of the assessment order framed u/s 143(3) of the Act dated 28.12.2018.

2. Registry has informed that the appeal is time barred by 59 days. Condonation application has been filed by the Revenue. Perusal of the same shows that the delay was on account of

COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period in filing appeal under this period. Since the period of limitation in the course of the Revenue falls during this period, the same deserves to be extended and we, therefore, condone the delay of 59 days and admit the appeal for adjudication.

3. The Revenue is in appeal before the Tribunal raising the following grounds:

“1) The ld. CIT(A) erred on fact and in law deleting addition of salary Rs. 1,98,32,856/- as it was treated by him as share profit which is exempted u/s 10(2A) of IT Act, 1961 and on the contrary the amount is treated by the AO as salary income instead of share profit from the LLP.

2) The ld. CIT(A) erred in law as well as facts by not considering the ratio of the decision of Hon'ble Supreme Court in case of McDowell & CO. Ltd. vs. CIT [1985] 154 ITR 148 as the AO mentioned in his/her Asstt. Ord.

3) The ld. CIT(A) erred in law as well as facts by not considering the ratio of the decision of Hon'ble Supreme Court in case of Union of India & Ors. Vs. Playworld Electronics (P) Ltd. & Anr. (1990) 184 ITR 308 as the AO mentioned in his/her Asstt. Ord.

4) The ld. CIT(A) erred in law as well as facts by not considering the ratio of the decision of Hon'ble Supreme Court in case of Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd. [1986] 157 ITR 77 as the AO mentioned in his/her Asstt. Ord.

5) The ld. CIT(A) erred in law as well as facts by not considering the ratio of the decision of Hon'ble Supreme Court in case of CIT vs. Durga Prasad More (1971) 82 ITR 540 as the AO mentioned in his/her Asstt. Ord.

6) *The ld. CIT(A) erred in law as well as facts by not considering the ratio of the decision of Hon'ble ITAT Mumbai Bench in case of Mid East Port Folio Management Ltd. vs. CIT (2003) 81 TTJ (Mum)(SB) 37.*"

4. Brief facts of the case as culled out from the record are that the assessee is an individual and source of income is from salary and share of profit from Limited Liability Partnership (in short the "LLP"). Return for Assessment Year 2016-17 (in short "AY") filed on 03.08.2016 declaring income of Rs.52,92,490/-. In this return the assessee claimed exemption u/s 10(2A) of the Act for the share of profit of Rs.2,04,30,723/- from Adiman Finance Consultants Ltd. LLP. Case selected for scrutiny through CASS followed by serving of notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings ld. AO apart from examining details mainly focused on the transactions of the assessee with the Adiman Finance Consultants Ltd. LLP. Ld. AO observed that the assessee's share in the profit & loss of the LLP was 95% and balance 5% was with Enam Shares & Securities Pvt. Ltd. Fixed capital was also invested in the same ratio. However, in the variable contribution the assessee contributed only Rs.25,30,723/- and Enam Shares & Securities Pvt. Ltd. invested Rs.9,00,00,775/- and if the total of fixed and capital contribution is considered the assessee's contribution was only 2.78% and that of Enam Shares & Securities Pvt. Ltd. at 97.22%. But since the profit sharing was 95:5, the assessee received the same at Rs.2,04,30,723/-. Ld. AO based on his observations came to a conclusion that the assessee was only eligible to receive 2.78% of the total profit i.e. Rs.5,97,867/- and the balance income of Rs.1,98,32,856/- was disallowed and the assessee was thus

denied the benefit of exemption u/s 10(2A) of the Act. Income assessed at Rs.2,51,27,510/-.

5. Aggrieved, the assessee preferred appeal before the ld. CIT(A) and succeeded as ld. CIT(A) was of the view that the assessee received the share of profit as per the terms of LLP agreement. There was no legal bar for higher variable contribution and also there is no legal bar either on sharing the profits or losses in the proportion which was different from the proportion in which capital was contributed by the partners.

6. Aggrieved, the Revenue is in appeal before this Tribunal. Ld. D/R vehemently argued supporting the order of ld. AO as well as the decisions referred in the grounds of appeal and mainly doubted the arrangement made by the assessee with the other company by way of which the assessee contributed merely 2.78% of the capital but the assessee was able to get 95% of the share of profit and ld. D/R alleged it to be a mere arrangement of funds in the guise of tax evasion.

7. Per contra, ld. Counsel for the assessee heavily supported the detailed finding of the ld. CIT(A), submissions made before the ld. CIT(A) and also referred to the paper book containing 50 pages and stated that the assessee is an expert in the field of investments and has joined hands with Enam Shares & Securities Pvt. Ltd. and the arrangement was made in such a way that funds will be invested by the other partner Enam Shares & Securities Pvt. Ltd. and the assessee will apply his experience and expertise in utilizing the funds for optimum returns. The LLP is duly assessed to tax and in assessment proceedings for past years no additions have been

made in the case of LLP and the book results have been accepted. The assessee has received the share of profit as per the terms of the LLP agreement and, therefore, the same has rightly been held to be exempted u/s 10(2A) of the Act.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions of both the sides. Revenue's grievance is that Id. CIT(A) erred in allowing the claim of exemption u/s 10(2A) of the Act at Rs. 1,98,32,856/- made by the assessee for the 95% share of profit from Adiman Finance Consultants Ltd. LLP. We notice that Id. CIT(A) has examined the issue in detail for holding that the assessee has rightly claimed the exemption u/s 10(2A) of the Act. The finding of the Id. CIT(A) reads as follows:

"I have gone through the assessment order, grounds of appeal and submissions made on behalf of the appellant.

4.1 The material issue involved in Ground Nos. 1 to 7 is whether the AO was justified in denying the exemption for Rs. 1,98,32,856/- claimed u/s 10(2A) of the Act being share of profit received from Adiman Finance Consultants LLP of which the appellant was a partner. In the impugned order the AO noted that the appellant was a partner of Adiman Finance Consultants LLP having 95% share in its profits. From the audited accounts of the LLP the AO noted that the only activity of the LLP was investment in shares and securities. During the relevant year the LLP had earned income only by way of long term capital gain, short term capital gain and dividend. The AO noted that even though the LLP was registered with ROC, with number of business objectives, the said LLP conducted only the activity of investment in shares and not any business. According to the AO, the activities conducted by the LLP not being in the nature of business, activities of the LLP were against the LLP law. The AO further observed that the LLP had only 2 partners namely, M/s Enam shares and Securities Pvt. Ltd. and the appellant who contributed Rs. 2,500 and Rs. 47,500/- respectively towards fixed capital of the LLP. Additionally as at the end of the relevant FV 2015-16, these partners

had contributed Rs. 9,00,00,775/- and Rs. 25,30,723/- respectively as their variable contribution. With reference to these facts the AO observed that although the appellant was entitled to receive 95% of the profits and the other partner was entitled to receive remaining 5%, yet, the appellant had contributed only 2.78% of the total capital of the LLP and remaining 97.22% was contributed by the other partner. The AO also noted that as per the deed of partnership the appellant was entitled to share only the profits of the LLP and he had no obligation to bear any losses of the LLP. The AO further noted that even prior to coming into being of Adiman Finance Consultants LLP, the appellant was working as financial analyst with M/s Enam Holdings Pvt. Ltd. drawing substantial salary. He was associated with the employer company since June 2009. The AO also noted that Enam Shares and Securities Pvt. Ltd. was the broking arm of Enam Group and the said associate of the Employer, substantially contributed to the variable capital of the LLP. He also noted that the recitals in the LLP agreement stated that if the appellant ceases to be associated with Enam Group, then he would cease to be the partner of the LLP. On these facts, the AO concluded that there was an intra group arrangement by which employer of the appellant, instead of paying salary, which would have been taxable, agreed to provide tax free income in the form of share of profit in the partnership firm. In AO's opinion therefore the arrangement of creating LLP was nothing but an ostensible legal shield to transfer the benefits to the employee of Enam Group, in a manner which would not create any tax liability in the hands of the appellant employee. For these reasons, the AO ultimately held that the assessee's entitlement to the share of profit of the LLP should have been ascertained at the rate of 2.78% of the total profits of the LLP for the FY 2015/16. For the AY 2016-17, the total profit of Adiman Finance Consultants LLP was Rs. 2,15,06,024/-. The AO computed the appellant's entitlement for Share in the profit of LLP @2.78% at Rs. 5,97,417/- and exemption u/s 10(2A) was granted for the said sum. The remaining sum of Rs. 1,98,32,856/- was taxed under the head salary on the ground that it was a benefit granted by his employer.

4.2 Per contra, in his submissions, the Ld. AR for the appellant has countered each of the AO's finding. In the present case, the appellant is an individual who is management graduate from IIM Calcutta and was working as equity and financial analyst with Enam Holdings Ltd. since 2009 and earning substantial salary from his employer. It is not in dispute that the appellant was neither a Director nor substantial shareholder of Enam Holdings Pvt. Ltd. nor was he related to any of

the promoters of Enam Holdings Pvt. Ltd. or any of its associates. As such, the appellant was not in any position to influence the decision making of his employer or promoters or its group concerns to devise any arrangement which would provide undue tax advantage unilaterally only to the appellant. In the impugned order, the AO alleged that the entire scheme of forming an LLP between the appellant and Enam Shares & Securities Pvt. Ltd. was a device adopted to provide legal shield to the appellant for receiving tax free income in the form of share of profit from the firm. I however find that no tangible material was brought on record by the AO before recording such finding. As noted, the appellant is a qualified financial analyst holding degree from one of the best known business school in India. The appellant was employed with Enam Holdings Pvt. Ltd. since 2009 drawing substantial salary. Had it not been the case that the appellant was technically and educationally well qualified, a premier company like Enam Holdings Pvt. Ltd. would not have employed the appellant in senior managerial position paying handsome salary. Having regard to the knowledge and the experience which the appellant enjoyed in the field of equity research and financial analysis, Enam Shares and Securities Pvt. Ltd. had opted to enter into partnership with the appellant so that the investible funds of the parties could be gainfully invested and business of financial consultancy could also be carried on through the said LLP.

4.3 Although, in the impugned order the AO doubted the genuineness of the LLP, he did not bring on record any tangible material to disprove its genuine existence. On the contrary I find that in the concluding part of the impugned order, the AO himself allowed the benefit of exemption u/s 10(2A) of the Act in respect of share of profit amounting to Rs. 5,97,417/- which represented assessee's share in LLP profits in proportion to his contribution to the variable capital. Once the AO accepted the genuineness of the LLP, for the purposes of granting exemption to the extent of Rs. 5,97,417/-, then it was not open for him to question the genuineness of the LLP itself and allege that it was a device adopted by the employer to create a legal shield to enable the appellant to earn tax free income. From the documents submitted I further find that in the income tax assessment proceedings of Adiman Finance Consultants LLP its own Assessing Officer never questioned the genuineness of the said LLP. For the AY 2014-15, being the year of incorporation, the assessment of the LLP was completed in the status of "firm" u/s 143(3) by the ITO, Wd 17(1)(4), Mumbai, assessing total income of Rs. 36,63,570/-. In the said order, the AO recorded her finding that the LLP was formed to carry on consultancy business.

Even for the AY 2016-17, Adiman Finance Consultants LLP had filed its return on 29.07.2016 claiming carry forward of loss of Rs. 29,03,023/- and the said return was processed u/s 143(1) on 28/10/2016 accepting the income returned. I therefore find that in the income tax assessments of the LLP, its assessing officer never questioned its genuine existence nor any finding was recorded to the effect that the LLP was established as a device for providing legal shield to one of its partner to avail benefit of tax free income.

4.4 In the impugned order, the AO put much emphasis on the fact that under the partnership agreement, the appellant was entitled to receive 95% of the profits but he had no obligation to bear losses of the LLP. In the AO's opinion, such an understanding clearly showed that the entire arrangement was devised with a view to provide only benefit by his employer. From the transactional documents I however find that the finding of the AO was factually incorrect. It is true that Clause 14 of the initial LLP agreement dated 01.03.2012, stipulated that the losses of LLP would be borne wholly by Enam Shares & Securities Pvt. Ltd. This deed of partnership was in force during AY - 2014-15 and yet in the assessment order u/s 143(3) passed in the case of LLP, its AO did not find it to be significant for drawing adverse inference. I further note that in the immediately succeeding year, the LLP agreement was amended by the parties by executing supplementary agreement dated 01.11.2013. In the supplementary agreement, the parties agreed that with effect from 01.04.2014 the profits/losses of the LLP would be shared between the appellant and Enam Shares & Securities Pvt. Ltd. in the ratio of 95% and 5% respectively. The provisions of the supplementary LLP agreement were in force during the financial year 2015-16 relevant to AY 2016-17. I therefore find merit in the AR's submission that during the year under consideration, the appellant was liable to share 95% of the losses as well as share 95% of the profits of the LLP. Having regard to these facts therefore, I do not find merit in the AO's conclusion that the formation of LLP was adopted as a device to provide legal shield to the appellant solely for earning tax free income in the form of share of profit. From the accounts as well as the income tax return of the LLP, I find that during the relevant year, the LLP had earned long term capital gains as well as incurred short term capital loss. From the copy of the audited accounts of the LLP, it was noted that the net profit of the LLP which was distributed amongst the partners was arrived at after setting off the losses against the profits earned from sale of investments. These facts therefore proved that in fact the appellant not only shared the profits but also shared the losses of the LLP

incurred on sale of shares. On these facts therefore I therefore have no hesitation in holding that AO's finding that the assessee was entitled to share only the profits of the firm was factually wrong.

4.5 As noted earlier, the AO ultimately held that the assessee should have received his share of profit in the LLP in proportion in which he had contributed to the capital. For this reason, even though in the books of the LLP appellant's share of profit was credited by the sum of Rs. 2,04,30,273/- the AO ascertained the appellant's share @ 2.78% of the LLP's profit and granted exemption for Rs. 5,97,417/- only. The amount in excess totalling Rs.1,98,32,856/- was assessed under the head salary by invoking provisions of Section 17(2)(iii) of the Act. In this regard, I find merit in the submissions of the AR that the AO was not competent to re-characterize the nature of transaction to suit his conclusion. It was not open for the AO to accept the nature of transaction in part and disregard the remaining part particularly when the transaction between the parties was single and indivisible. The appellant and M/s Enam Shares & Securities Pvt. Ltd. were two independent parties who were competent to contract with each other. They were not related in any manner. Although the appellant was employee of Enam Holdings Pvt. Ltd., the said employer was a separate and independent corporate entity. The appellant was neither a director nor promoter of Enam Holdings Pvt. Ltd. or Enam Shares & Securities Pvt. Ltd. nor was he related to any of the promoters of these companies. There was no legal bar on the appellant to enter into a partnership with any entity associated with its employer on the count of being an employee. Nothing was brought on record by the AO which would suggest let alone prove that the appellant was holding a position within employer group which would influence their decision making to provide unilaterally some tax free benefit. The AO has admitted that the appellant was only an employee of Enam Holdings Pvt. Ltd. since June 2009 and even during the relevant year was drawing salary from the said employer. Nothing has been brought on record by the AO which would suggest that the relationship of employer and employee existed between the appellant and Enam Shares and Securities Pvt. Ltd. The AO has claimed that the appellant was permitted to become partner of LLP solely because his employer desired to grant him additional benefit in the form of share in the profits. I however find the logic adopted by the AO as far-fetched. Admittedly, the appellant was not promoter or director or relative of the promoter of his employer company. If the intention of the employer was to provide additional remuneration or emolument to its employee, then the employer would have paid the same in a manner which he

would have ensured that in computation of its taxable income the employer would get deduction for the expenditure incurred. No prudent employer would have agreed to an arrangement where under after paying or granting substantial monetary benefit to an employee benefit, the employer did not get deduction therefore in computing his own taxable income. I therefore do not agree with the AO's conclusion that the arrangement was put in place by the employer for providing legal shield to the appellant. Such finding is against the business prudence and ordinary human conduct of any businessman of repute.

4.6 As noted earlier, in the impugned order the AO ultimately did not reject the genuineness of the LLP and allowed exemption u/s 10(2A) of the Act for Rs.5,97,417/-being 2.78% of the LLP profits. In AO's opinion, the appellant should have received his share in the profits of the firm in proportion to which the capital was contributed by him. I however do not find any merit in such finding. Neither the provisions of the Income Tax Act nor the provisions of the Limited Liability Partnership Act, 2008 anywhere mandate that the partners should receive their share in the profits or losses in the proportion in which the funds are contributed by the partners. On the contrary, it is an universally accepted position that in the case of partnership firm or LLP, it is open for the partners to share the profits and losses in the manner mutually agreed and there is no legal compulsion that profit ratio should be in proportion to the capital contributed by the partners. It is also a pertinent fact that a business is not carried on only with the help of the capital contribution by the partners. Profitability of partnership business substantially depends on the business acumen and efforts contributed by the individual partners. From the partnership deed of Adiman Finance Consultants LLP, it was evident that the appellant was the designated partner of that LLP. Clause 6 of the LLP agreement provided that the appellant individually shall form the investment committee who will take all the investment decisions on behalf of the LLP. The responsibility of taking investments decisions on behalf of the LLP was given to the appellant keeping in view his qualification, expertise and knowledge in the field of equity and financial research. It is also observed that almost entire income Of the LLP for the relevant year was derived from the investment activities of the LLP for which the relevant decisions were taken solely by the appellant. On these facts therefore, it was apparent that it was only because of the active participation and guidance of the appellant in making right investment decisions, the LLP was able to earn substantial income. From its investments. It is universally known that for any business to achieve success, it is

necessary to have optimum human resource. Mere capital by itself cannot create value or bring financial results. Unless the capital is wisely employed by the person incharge of the business mere capital introduction do not produce any significant profits. For these reasons therefore, it was wholly inappropriate for the AO to hold that the assessee's entitlement to share profits of LLP should have been in the proportion of his capital contribution. As noted the AO per se did not doubt the genuineness of the LLP which is evidenced by the deed of partnership executed between the appellant and Enam Share & Securities Pvt. Ltd. The terms of the LLP agreement were acted upon by the parties. Both the parties who were competent to contract had mutually agreed to share the profits as well as losses in the ratios specified in the LLP agreements. There was no legal bar either in the Income Tax Act or in the LLP Act on sharing the profits or losses in the proportion which was different from the proportion in which capital was contributed by the partners. I therefore find merit in the AR's submissions that the AO was unjustified in granting the exemption u/s 10(2A) only for Rs. 5,97,417/- in place of Rs 2,04,30,273/-which was allocated to the appellant's account in the books of Adiman Finance Consultants LLP. I therefore direct the AO to treat the entire sum of Rs. 2,04,30,273/-as appellant's income by way of share in the profits of Adiman Finance Consultants LLP and grant exemption u/s 10(2A) in respect of the entire such sum of Rs. 2,04,30,273/-. The AO shall accordingly delete the addition of Rs. 1,98,32,856/-made under the head 'salary'. Ground Nos. 1 to 7 are allowed.”

9. From perusal of the above finding of the ld. CIT(A) which has touched upon all the facts of the case and also on perusal of the paper book, we find that the assessee holds a post-graduate degree from Indian Institute of Management, Kolkata and is an expert in the field of investments in shares & securities and has an experience of 20 years working in global and Indian financial institutions. Since the assessee was having an expertise in this field the other person i.e. Enam Shares & Securities Pvt. Ltd. approached and together formed an LLP namely Adiman Finance Consultants Ltd. LLP vide agreement dated 01.03.2012. In terms of LLP agreement dated 01.03.2012 fixed capital was Rs.50,000/-

which was contributed in the ratio of 95:5 by the assessee and Enam Shares & Securities Pvt. Ltd. In the very same agreement it was, further, agreed that any additional capital if any required shall be contributed by Enam Shares & Securities Pvt. Ltd. only. Thereafter variable contribution i.e. contribution other than the fixed capital was made and the maximum of such investment was made by Enam Shares & Securities Pvt. Ltd. So much so that the total of capital and variable contribution as on 31.03.2016 which was at Rs.9,25,81,498/-, assessee's contribution was only 2.78% i.e. 25,78,223/- and that of Enam Shares & Securities Pvt. Ltd. at 97.22% i.e. Rs.9,00,03,275/-.

9.1. We, further find that the LLP is regularly assessed to tax and return for AY 2016-17 was e-filed on 29.07.2016. The copy of assessment order u/s 143(3) of the Act for AY 2014-15 framed on 02.02.2016 also forms part of the record and no adverse view has been taken by the ld. AO with regard to the capital contribution and profit-sharing ratio of the assessee and Enam Shares & Securities Pvt. Ltd. It is not in dispute that the Adiman Finance Consultants Ltd. LLP disclosed its profit after tax at Rs.2,04,30,723/-. The same is duly forming part of audited financial statements of the Adiman Finance Consultants Ltd. LLP. The assessee has only received the share of profit from LLP at the agreed rate of 95% of the profits. Since the identity of the LLP is not in dispute, its constitution, agreement, sharing ratio, capital contribution ratio and the audited financial statements are not in dispute before us, we find no justification in the finding of the ld. AO disallowing the proportionate claim of exempt income of

Rs.1,98,32,856/-. Decisions referred and relied on by ld. D/R merely deals with preponderance of human probabilities which in our view are not applicable to the current state of facts which speaks loud and clear that the assessee being an expert in the field of management and investments joined hands with the company having funds and together after forming the LLP, they are carrying on business activity regularly since AY 2012-13. The present appeal is in AY 2016-17 of which books of accounts are maintained and duly audited and the assessee has received its legitimate share of profit as per the terms of LLP agreement. We, therefore, find no inconsistency in the finding of the ld. CIT(A) and the same needs no interference.

10. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 16th June, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 16.06.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. JCIT(OSD), Circle-32, Kolkata.**
- 2. Sri Aditya Kumar Singhania, Subham, Room No.-708, 1, Sarojini Sarani, Kolkata-700 017.**
3. CIT(A)-09, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata