

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &F
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1417/Mum/2023
(A.Y. 2019-20)**

ITO-26(2)(1), Room No. 127, 1 st Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Mumbai - 400 051	Vs.	M/s Sharada Enterprises, 84-A, Mittal Court, 224, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAMTS9429H		
Appellant	..	Respondent

**C.O No.66/Mum/2023
(A.Y. 2019-20)**

M/s Sharada Enterprises, 84-A, Mittal Court, 224, Nariman Point, Mumbai - 400021	Vs.	ITO-26(2)(1), Room No. 127, 1 st Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Mumbai - 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: : AAMTS9429H		
Appellant	..	Respondent

Appellant by :	Nimesh Vora,
Respondent by :	Ashok Kumar Ambastha

Date of Hearing	01.12.2023
Date of Pronouncement	21.12.2023

आदेश / ORDER

Per Amarjit Singh (AM):

The appeal filed by the revenue is directed against the order passed by the Id. CIT(A) NFAC, Delhi dated 16.03.2023. Since the appeal filed by the revenue and cross objection filed by the assessee are based on identical facts on similar issue, therefore, for the sake of convenience both these appeals are adjudicated together.

ITA No.1417/Mum/2023

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing the exemption u/s 10(2A) claimed by the assessee without appreciating the fact that assessee being a trust is neither an individual, nor a 'body corporate' to be regarded as partner of the LLP Devanshi Commercials LLP, hence in view of section 2(23)(1)(b) of the Income Tax Act read with section 5 of the LLP Act 2008, the assessee is not eligible to be regarded as a partner of an LLP.*
2. *Whether on the facts and circumstances of the case and in law, exemption u/s 10(2A) of the Act as share of profit from LLP be allowed to a person if it is not eligible and cannot be regarded as partner of said LLP in true spirit of law as per provision of Income Tax Act, 1961 read with LLP Act, 2008*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing the exemption u/s 10(2A) claimed by the assessee without appreciating the fact that assessee has made misleading claim in this regard in the return which falls within the purview of adjustment as envisaged in section 143(1)(a) of the Act.*
4. *The appellant craves leave to amend or alter or add a new ground which may be necessary.”*

2. Fact in brief is that assessee is a discretionary trust and filed return of income on 30.08.2019 declaring total income at Rs.nil and showing exempt income of Rs.487,02,04,352/-. The assessee was a partner in M/s Devarshi Commercial LLP (the firm) through its trustee, namely M/s Pinakin Commercials Pvt. Ltd. The return of income filed by the assessee was processed by the CPC on 28.05.2020 u/s 143(1) of the Act and made adjustment u/s 143(1) to the amount of Rs.487,02,04,352/- on account of error described as sum of item no. 5(a)5(b)5(c) of schedule BP was more than sum of items disclosed in

scheduled EI. Before making the aforesaid adjustment the CPC Bangalore has made communication to the assessee vide notice dated 14.02.2020 pointing out that return filed contained error, therefore, proposed the adjustment as under:

Part - A Adjustments u/s 143(1)(a)					
(ii) Incorrect Claim u/s 143(1)(a)(ii)					
Sl.No	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Variance on account of Proposed adjustment
1	SCHEDULE BP	In Schedule BP, Row no A5 Income/receipt credited to profit and loss account (included in 1) which is Exempt SUM of (5(a),5(b) and total of 5(c)) value is more than the SUM of row no. 1+2+3+4+5+6 in Exempt income Schedule	4870204352	0	4870204352

3. In response the assessee vide online communication dated 12.03.2020 submitted that the amount of exempt income in schedule BP exactly matches with the amount in schedule of exempt income in the return of income and hence there was no variance and disagreed for making any such proposed adjustment only on the reason that in the schedule BP in the return of income sum as per column no. (5a, 5b, 5c) with total of sum of column 5(a) 5(b) 5(c) was more than the sum of row no. 1+2+3+4+5+6 in Exempt Income Schedule. However, the CPC without disproving the response of the assessee had made the adjustment as mentioned above to the total income as per the provisions of Sec. 143(1)(a) of the Act as under:

(ii) Incorrect Claim u/s 143(1)(a)(ii)					
Sl.No	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Variance
1	SCHEDULE BP	In Schedule BP, Row no A5 Income/receipt credited to profit and loss account (included in 1) which is Exempt SUM of (5(a),5(b) and total of 5(c)) value is more than the SUM of row no. 1+2+3+4+5+6 in Exempt income Schedule	4870204352	0	4870204352

4. Against the order of CPC the assessee filed appeal before the Id. CIT(A) NFAC. The Id. CIT(A) has allowed the appeal of the assessee holding that there is no difference in the schedule BP (computation of income from business or profession) and exempt income as mentioned by the CPC. The relevant part of the decision of Id. CIT(A) is reproduced as under:

“Ground No: 2 & 3

7.1. These grounds of appeal are related to share of profit from firm which is exempt income u/s 10(2A) of the IT Act amounting to Rs. 487,02,04,350/-

7.2 The appellant a discretionary trust. The appellant filed its return of income for AY 2019-20 on 30-08-2019 declaring total income as NIL after claiming share of profit as exempt income u/s 10(2A) of Rs.487,02,04,352/- Later, the CPC processed the return and intimation u/s 143(1) dated 28.05.2020 sent to the appellant, wherein the exempt u/s 10(2A) was denied. In respect of the amount of share profit Subsequently, the appellant filed rectification request to the AO to rectify the mistake in the intimation. The AO passed the rectification order u/s 154 dated 10-07-2020 without the rectifying mistakes. the relevant part of the intimation order is reproduced as under:

<i>(ii) Incorrect claim u/s 143(1)(a)(ii)</i>					
<i>Sr. No.</i>	<i>Schedule Error</i>	<i>Error Description</i>	<i>Amount in Income tax return</i>	<i>Amount as compared</i>	<i>Variance</i>
<i>1.</i>	<i>Schedule BP</i>	<i>In Schedule BP, row no A5 income/receipt credited to profit and loss account (including 1) which is exempt SUM of [5(a) , 5(b) and total of 5(c)] value is more than the SUM of row no. 1+2+3+4+5+6 in Exempt Income Schedule</i>	<i>4870204352</i>	<i>0</i>	<i>4870204352</i>

7.3. Section 143 (1) (a) of the Act reads thus :-

143 (1) Where a return has been made under section 139, or in response to a notice under of section 142, such return shall be processed in the following manner, sub-section (1) namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely:-

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return,

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub section (1) of section 139, (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-Dorsection 80-IE if the return is furnished beyond the due date specified under sub-section (1) of section 139 or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made

7.4. The scope of an 'intimation' under Section 143 (1) (a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus, to say that the scope of incorrect claim should be circumscribed and restricted by the Explanation which employs the term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of Section 143(1)(a) of the Act

7.5. The CPC has mentioned in its intimation order that the sum of row 5(a), 5(b) & 5(c) of schedule BP is more than the sum of row 1+2+3+4+5+6 of schedule EI. The income tax return for the AY 2019-20 perused and observed that in the row 5 of Sch. BP Le, Income Credited to Profit and Loss account (included in 1) which is exempt reported an amount of Rs.487.02 crore as Share of Profit from LLP and reported the same amount of Rs.487.02 crore in total of exempt income under the Schedule EI. It is clear that the amount of exempt income in schedule-BP exactly match with amount in schedule-EI.

7.6. The Annexures enclosed to the intimation order u/s 143(1) were also thoroughly perused. From the Annexure- Profit Loss account, it is observed that the CPC has not found any variance with the appellant's P&L account. Whatever the appellant reported in his ITR accepted by the CPC. Variance in the amounts mentioned in the intimation is mainly due to S.No. 1 of Annexure Business and Profession i.e, Profit before tax as per Profit and loss account. The appellant reported Nil whereas CPC computed the same at Rs. 487.02 Crore. But in P&L annexure, the CPC itself computed the profit before taxes at NIL.

7.7 In support of these grounds, the appellant has made following submission through his reply dated 06-03-2023.

We refer to your notice bearing No ITBA/NFACF/17/2022 23/1050015353(1) dated 22/02/2023 addressed to our aforesaid client in connection with appeal proceedings for AY 2019-20. In this respect, under the instructions of our client, we submit herewith the following details/explanation as desired by you.

1. Various explanation clarification sought vide your notice dated 27/01/2023 and 14/02/2023 have been submitted vide our letter dated 21/02/2023 We summarize our submission as under

a. The Appellant earned share of profit from LLP which is claimed as exempt u/s 10(2A) of the Act. Refer following items in income-tax return filed:

- i. Item No 14(x) of Part A-P&L Account
- ii. Item No. 5.c.1 of Schedule BP Computation of income from Business & Profession
- iii. Item No. 1 of Schedule IF Information regarding partnership firms in which you are partner.
- iv. Item No. 4.1 of Schedule EI-Details of Exempt Income (Income not to be included in Total Income or not chargeable to tax)

b. The Appellant incurred event expenses on behalf of beneficiaries, which are not claimed by the Appellant as tax deductible. Refer following items in Income-tax return filed:

- i. Item 47(1) of Part AP & L Account disclosing expenses are incurred.
- ii. Item No. 24 (e) being "Any other income not included in profit and loss account/any other expense not allowable (including income from salary, commission, bonus and interest from firms in which assessee is a partner) evidencing the said expenses are not claimed while computing total income.

c. Taxable income was computed at Nil Refer following items in Income-tax return filed:

- i. Item No. D of Schedule BP Computation of income from Business & Profession being "Income chargeable under the head 'Profits and gains from business or profession' (A38-B43+C49)" determined at Nil
- ii. Item No. 13 of Schedule Part B-TI Computation of Total Income-Where total income is computed at Nil.

2. With the above summarized facts, we further submit as under

3. M/s Sharada Enterprises (Appellant) filed its return of income for AY 2019-20 on 30/08/2019 declaring total income at NIL and claiming income exempt income u/s 10(2A) of Rs/487,02,04,352

4. During the year reference, the was a partner in Devarshi Commercials LLP assessed under Permanent Account No AAHFD1854E As a partner, the Appellant received share of profit of Rs 4,87,02,04,352 from Devarshi

Commercials LLP. The said share of profit is exempt from tax u/s 10(2A) of the Income-tax Act, 1961.

5. The Appellant is a discretionary trust, and the event expenses are incurred on behalf of beneficiaries, which are not claimed by the Appellant as tax deductible. This is evident from item no. (24) of Schedule BP "Any other income not included in profit and loss account/any other expense not allowable (including income from salary, commission, bonus and interest from firms in which assessee is a partner)" Screen shot of the relevant part of Return of Income filed for AY 2019-20 is as under for your ready reference.

2	Any other items of addition under Section 28 to		23	0
3	44DB			
2	Any other income not included in profit and loss		24	4870204352
4	account/any other expense not allowable			
.	(including income from salary commission, bonus			
.	and interest from firms in which assessee is a			
	partner)			
	(a)	Salary	24(a)	0
	(b)	Bonus	24(b)	0
	(b)	Commission	24(c)	0
	(d)	Interest	24(d)	0

6. As regards our contention that such adjustments are not permissible while processing Return of Income, u/s 143(1)(a), we rely on our submission filed on 22/11/2021 and 06/01/2023

7. In view of the above, the Appellant submits that it has rightly filed its return of income declaring total income at Nil and claimed exemption of Rs.4,87,02,04,352 u/s 10(24) of the Act and accordingly, the AO may be directed to accept the income returned by the Appellant without any adjustment

We hope the above will meet with your requirement to dispose of the appeal. However, should you require any further information/explanation, we shall be pleased to furnish the same upon hearing from you

7.8. The intimation order is perused, and submission of the appellant is considered. The appellant was a partner in Devanshi Commercials LLP. As a partner, the appellant received share of profit of Rs.487.02 crore from the Devanshi Commercials LLP and same was exempt from u/s 10(2A) of the Act. The relevant provision of the Act is reproduced below.

Section 10(2A) of the IT Act

"In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included (2A) in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm

Explanation-For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall notwithstanding anything contained in any other law, be an amount which bears to the

total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits"

7.9. From the above provision, it has been specified that the share of a partner in the total income of a firm is exempt. The main objective of granting the exemption, under section 10(2A) to the share of profit received by the partner, is the avoidance of double taxation.

7.10 The appellant received share of profit from the firm which is exempt income. While computing the taxable income of the appellant for the year under consideration, the appellant has reduced exempt income of Rs.487.02 crore from the profit before taxes arrived in profit loss account. Later, the appellant added expenses which are not allowable. Then, the Income chargeable under the head PGBP arrived as NIL. In this regard, there is no variance of amounts in schedule BP and EI.

7.11. Since there is no difference in the schedules BP and EI as mentioned by the CPC, the ground of the appeal is allowed."

5. During the course of appellate proceedings before us the ld. D.R submitted that the ld. CIT(A) while deciding the issue stated that assessee received share of profit from M/s Devarshi Commercial LLP and such receipt is exempt income in the hands of the assessee within the meaning of section 10(2A) of the I.T.Act. The ld. D.R also contended that the ld. CIT(A) has considered the applicability of Sec. 10(2A) of the Act in favour of the assessee profit received from M/s Devarshi Commercials LLP, therefore order of the ld. CIT(A) got merged with the order of AO. The ld. D.R also submitted that as per provisions of Sec. 5 of LLP Act, only the person either individual or body corporate is eligible to be a member of the LLP and the assessee is not eligible to be member of M/s Devarshi Commercials LLP and submitted that exemption claimed by the assessee shall be reversed.

6. On the other hand, the ld. Counsel vehemently contended that assessee was a partner in M/s Devarshi Commercials LLP through its trustee namely M/s Pinakin Commercials Pvt. Ltd. He further submitted that the firm was separately assessed for the income earned by it and had duly paid taxes thereon. The ld. Counsel submitted that

the issue in the case of the assessee is pertained to the adjustment made u/s 143(1) of the Act due to error reflected in item no. 5 of schedule BP as the sum of total of item no. 5(A),5(b),5(c) of schedule BP was more than the sum of items disclosed in schedule EI. The ld. Counsel submitted that the amount of exempt income as per schedule BP and that as per Schedule EI was exactly the same. The ld. Counsel submitted that this mismatch happened because while computing business income a mistake was crept in adopting profit before tax as Rs. 487,02,04,352/- instead of NIL in the e-filed return of income. He also explained that this error was occurred in Annexure-Business and Profession, wherein profit before tax as per profit and loss account was stated to be linked with item no. 45, 53 61(ii), 63(ii), 64(iii), and 65(iv) part A – profit and loss account (para A – P & L). The ld. Counsel also submitted that although the CPC has granted exemption u/s 10(2A) in the intimation, however, the income from profit and gain from business or provision was computed at Rs. 487,02,04,352/- by taking profit before tax at Rs. 487,02,04,352/- instead of nil because of technical fault. The ld. Counsel explained that although the exemption u/s 10(2A) was granted in the intimation however, the income from profit and gains from business or profession was computed at Rs.487,02,04,352/- by taking profit before tax at Rs.487,02,04,352/- instead of NIL. It is also submitted that variance in the amounts mentioned in the intimation is mainly due to Sr. No.1 of Annexure – Business and Profession i.e profit before tax as per profit and loss account. The assessee reported the same as nil whereas CPC computed the same at Rs.487.02 crores. The ld. Counsel also submitted that before the ld. CIT(A) the assessee has just explained the actual material fact that assessee was having exempt income because of exemption u/s 10(2A) of the Act. The assessee has also placed reliance on the various judicial pronouncements:

- i. Keshav & Company Vs. ITO (2016) 161 ITD 798 (Mum) (ITAT)

- ii. Mahindra & Mahindra Ltd. Vs. DCIT (2010) 30 SOT 374 (Mum) (SB)
- iii. ACIT Vs. Prakash L. Shah (2008) 118 TTJ 577 (Mumbai)(SB)”

7. The Id. Counsel further submitted that revenue’s ground of appeal challenging eligibility of assessee in claiming exemption u/s 10(2A) untenable as the same do not arise out of the intimation u/s 143(1) of the order of Id. CIT(A). The Id. Counsel further made the following submissions:

- a. *The Learned DR has misconceived that the exemption u/s 10(2A) was denied in the Intimation u/s. 143(1). The Assessee has explained in detail in its Synopsis, at Para 6 to 8, that exemption u/s. 10(2A) was granted in the Intimation. However, the income from Profit and gains from business or profession was computed at Rs.487,02,04,352 by taking profit before tax at Rs. 4,87,02,04,352 instead of NIL.*
- b. *Learned DR has merely reproduced part of the submissions made before Learned CIT(A) dated 06.03.2023. The Assessee had also filed submissions on 22 11.2021, explaining the computational error crept in the Intimation u/s. 143(1) Considering the same, the Learned CIT(A) has allowed Assessee's appeal. This is explained in our Synopsis, at Para 9 and 10. Copy of the written submissions dated 22.11.2021 filed with CIT(A) with acknowledgement is attached at Pg. no 05-14. It may also be noted that since there was inadvertent error in the original grounds of appeal before the CIT(A), the assessee had also filed additional grounds of appeal explain the correct position of adjustment made and for which assessee was in appeal before the CIT(A). Copy of said additional grounds of appeal are already filed with the synopsis filed by the assessee on 30.08.2023.*
- c. *Learned DR has misconceived finding of Learned CIT(A) that he held the share of profit from LLP was exempt. Whereas, Learned CIT(A) had allowed the Assessee's appeal by appreciating computational error in the Intimation u/s. 143(1) of the Act. However, while holding so, he also recorded the fact that the income was claimed as exempt in nature being share of profit from the Firm and same is also allowed in the Intimation u/s. 143(1) of the Act. Hence, application of 'Doctrine of Merger' does not arise.*
- d. *Without prejudice, even if 'Doctrine of Merger applies, since the CPC itself granted exemption u/s 143(1), which is alleged to also allowed by the Learned CIT(A), there is no variance between the two, and hence, the position of grant of exemption did not change Accordingly, the Department cannot be aggrieved by the said finding as it results in the same position, i.e grant of exemption u/s. 10(2A).*
- e. *Learned DR has wrongly alleged and that too for the first time in the written submissions that LLP agreement was not filed before the Learned CIT(A). The same was filed vide submission dated 06 12 2022 [copy of*

the same is attached herewith at pg no 15-17] Hence, the agreement is not an additional evidence as alleged by the DR for the first time.

- f. As regard the contention that the Assessee was not a lawful partner in the LLP, it is submitted that the Income-tax Department cannot question as to whether the Assessee Trust can be a partner in the LLP This is a matter of examination by Ministry of Corporate Affairs which governs LLPs, which has accepted the Assessee as Partner of the Firm*
- g. Learned DR has merely stated that the decisions relied by the Assessee (summarized at Para 14(iv) of our Synopsis), are distinguishable without bringing out points of distinction. In those decisions, the revenue/DR had raised new contentions before the ITAT, which were contrary to the action of AO, such contentions were dismissed. These are squarely application to the present appeal as the revenue is praying to disallow exemption u/s 10(2A) which was granted by the Department itself in the intimation u/s 143(1).”*

8. Heard both the sides and perused the material on record. The assessee has filed return of income for A.Y. 2019-20 declaring total income at NIL and claiming exempt income u/s 10(2A) of Rs.487,02,04,352/-. The CPC Bangalore has processed the return of income filed by the assessee u/s 143(1) of the Act on 28.05.2020 assessing total income at Rs.487,02,04,350/- because error description as discussed supra in this order. The assessee filed return of income for assessment year 2019-20 electronically on 30.08.2019 comprising 75 pages. We have perused the return of income filed and noticed that at page 12 of the return of income under the head profit and loss for the financial year 2018-19 the assessee had reported share of profit from LLP amounting of Rs.487,02,04,352/-. At page 15 of the return of income the assessee reported that net profit has become zero because of incurring of expenditure against the exempt income.

9. In the e-filed return of income at part A at page 12 of the return of income under the head profit and loss account for financial year 2018-19 under the column 14 (XI) against any other income (specify nature and amount) the assessee reported share of profit from LLP at Rs. 487,02,04,352/- thereafter in the column in ascending order at 47

under the head other expenses (specify nature and amount) the assessee has reported that whole such profit received from the partnership firm was spent for event expenses and general expenses. Since, nothing was left with the assessee, therefore, as required in the prescribed column in the format of the return of income the assessee has reported zero net profit before taxes at column no. 54 under the head net profit before taxes.

10. The aforesaid information was required to be provided in the part A for computing profit and loss account as prescribed in the format of the return of income. It is demonstrated from the last column of the P/L account as per the format given that assessee has shown zero income after spending whole exempt income earned in the form of share of profit on which the firm had duly paid the taxes.

11. Thereafter in the schedule to the profit and loss account in the profit and loss A/c in the printed format of the return of income it is required to provide break up in schedule BP under the head computation of income from business and profession. Since, the assessee has spent whole income received from the firm as share of profit in the form of expenditure and nothing was left with the assessee firm, it had shown zero profit in the schedule under the head profit before tax as per profit and loss account.

12. In the claim no. 5 of the schedule BP it is required to provide detail of income credited to P & L account (included in column no. 1) which is exempt. The assessee reported total exempt income as specified in sub-column (5a+5b+5c) of Rs. 487,02,04,352/- as share of profit from LLP which was exempt. The total exempt income has been reported under column 5 (a+b+c) subhead for the above amount of Rs. 487,02,04,352/- . However, the balance amount in the column no. 6(1-2a-2b-3a-3b-3c-3d-4a-4b-4c-5d) arrived in negative amount of Rs.- 487,02,04,352/-

because of showing zero profit at part A of schedule BP under the head profit before tax as per profit and loss a/c before showing exempt income in Column 5 of the Schedule BP. Since, the assessee had reported zero income in the column No. 1 under the head profit and loss account and reported exempt income of Rs. 487,02,04,352/- under the column no.5, therefore, in the summary analysis of column no. 6 it had reported negative - Rs. 487,02,04,352/-.

13. Since, it was the schedule BP to the profit and loss account, the assessee had taken zero profit in column no. 1 to the computation of income as profit before tax as per profit and loss account as shown at column no. 54 of the profit and loss account as prescribed in the return of income. However, the CPC has erred in overlooking this undisputed fact that assessee had incurred expenses out of the whole exempt income which resulted in arriving at negative balance because of utilising the whole exempt income towards expenses as per column no. 47 in the profit and loss account. The CPC has reported the same as error claim vide communication dated 14.02.2020 as reproduced supra in this order. However, without disproving the correct facts reported by the assessee, the CPC has made the adjustment without giving any specific reasons against the submission of the assessee.

14. We consider that assessee had reported total exempt income under the schedule (EI) to the amount of Rs.487.02 crores similar to the amount given in the schedule BP at column 5 (5a + 5b + 5c). In column no. 6 there is negative – Rs. 487,02,04,352/- crores reported because in column no. 1 to the BP schedule the assessee reported zero profit before tax because the full amount of exempt income has been utilised by the assessee in the form of expenditure as discussed above in this order. The assessee has also explained the material facts before the Id. CIT(A) how the exempt income of Rs. 487,02,04,352/- disclosed in

schedule BP and schedule EI were exactly the same and there was no difference in both the figures.

15. The ld. D.R vide submission dated 28.08.2023 submitted that the assessee was not eligible partner in LLP. The ld. D.R was also of the view that the order of ld. CIT(A) was merged with the order of the assessing officer. On perusal of the material on record we don't find any merit in this submission of the ld. D.R because the ld. CIT(A) has deleted the assessment made u/s 143(1) of the Act after taking into consideration the undisputed fact that there was no difference in the schedule BP and exempt income as per schedule EI as clearly reflected in the return of income as discussed supra in this order. The ld. CIT(A) has categorically explained the position as discussed in this order that there was no difference in the schedule BP and EI for the reasons as discussed above and in the findings of the ld. CIT(A). Therefore, case of the assessee simply pertained to the adjustment made u/s 143(1) while computerised processing of return of income by the CPC because of technical error occurred on account of reporting of further utilization of exempt income by the assessee which resulted in reporting zero profit before tax as against profit before tax of Rs. 487,02,04,352/-. We further find there was no scrutiny assessment made in the case of the assessee to substantiate that disallowance was made for any other reason. Therefore, we don't find any merit in the appeal of the revenue the same stand dismissed.

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16. The Cross Objection filed by the assessee is directed against raising new grounds that assessee is not eligible as partner of LLP and also pointed out that said issue does not arise out of the impugned order u/s 143(1). Since we have adjudicated the similar issue in favour of the

assessee by dismissing the appeal of the revenue, therefore, the cross objection filed by the assessee stand allowed.

17. In the result, the appeal filed by the revenue stand dismissed and cross objection filed by the assessee is allowed.

Order pronounced in the open court on 21.12.2023

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.12.2023

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.