

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

**I.T.A. No. 670 and 669/Mum/2025
ASSESSMENT YEAR: 2010-11 and 2012-13
(Physical Hearing)**

South Asian Regional Apex Fund Plot No. C-22, G Block the IL and FS Financial Centre, Bandra-Kurla Complex, Bandra (East) Mumbai PAN: [AAATS1324F]	Vs.	Income Tax Officer – 19(3)(4), Mumbai Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Appellant by	Shri Mahadev Lohia - CA
Respondent by	Shri. Arun Kanti Datta, CIT D.R.

Date of Hearing	17.12.2025
Date of Pronouncement	16.01.2026

ORDER

Per: SHRI JAGADISH, A.M.:

These two appeals have been preferred by the assessee against the identical orders of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "Ld. CIT(A)"] dated 05.11.2024 arising from the assessment orders passed by the Income Tax Officer – 19(3)(4), Mumbai [hereinafter referred to as "the Assessing Officer / AO"] under section 143(3) of the Income-tax Act, 1961 ("the Act") for A.Y. 2010-11 and A.Y. 2012-13.

2. Since common issues arise in both the appeals, they are disposed of by this consolidated order. For the sake of convenience, A.Y. 2010-11 is taken as the lead year and the decision shall apply mutatis mutandis to A.Y. 2012-13 as well.

3. The grounds raised in A.Y. 2010-11 are as under:

1. *On the facts and circumstances of the case, and in law, the Learned CIT(A) has erred in confirming the assessment as concluded by the Learned AO.*
2. *The Learned AO and Learned CIT(A) erred in treating the status of the Appellant as an Association of Persons (AOP).*
3. *The Learned AO and Learned CIT(A) erred in treating the status as AOP without appreciating past position.*
4. *The Learned CIT(A) erred in ignoring that interest income of INR 4,142 and short-term capital gains of INR 1,01,36,885 were already taxed in the hands of beneficiaries, resulting in double taxation, as beneficiaries' shares were determinate.*
5. *The Learned CIT(A) erred in treating interest income of INR 4,142 and short-term capital gains of INR 1,01,36,885 as business income in the hands of the Appellant.*
6. *The Learned CIT(A) erred in denying section 161(1) of the Act; without prejudice, the Learned AO erred in contradicting by applying section 161(1A).*
7. *Without prejudice, the Learned CIT(A) erred in not treating long-term capital gains as business income and providing set off of INR 14,19,38,369 against the alleged business income.*
8. *The Learned CIT(A) erred in levying interest u/s 234B of the Act.*

4. The assessee is a contributory trust registered as a Venture Capital Fund with SEBI. The assessee trust has been settled by Lazard Credit Capital Ltd. as settlor under a Trust Deed dated 22.06.1995 and Sara Fund Trustee Company Pvt. Ltd. is the trustee. The objects of the trust include pooling of resources for providing venture capital assistance to industrial and commercial undertakings and supporting establishment of state level venture capital funds. For A.Y. 2010-11, the assessee filed its return of income on 22.07.2010 declaring NIL total income, claiming that it is a private trust and that income earned by the trust was allocated among beneficiaries in specified/determinate ratios. During assessment proceedings, the AO held the interest income of Rs. 4,142 and short-term capital gains of Rs. 1,01,36,885

as business income in the hands of the assessee, and assessed as an AOP, invoking provisions of section 161(1A) of the Act. The AO thereby assessed total income at Rs. 1,01,41,027. On appeal, the Ld. CIT(A) upheld the assessment mainly on the reasoning that settlor, trustee and beneficiaries are not three separate and distinct entities and also noticing that the assessee had filed its return under "AOP/BOI".

5. The Ld. Authorised Representative (Ld. AR) submitted that the assessee trust was created under the Trust Deed dated 22.06.1995 between Lazard Credit Capital Limited as settlor and Sara Fund Trustee Company Ltd. as trustee, and the beneficiaries are different parties as per list placed in the paper-book. It was argued that the observation of the Ld. CIT(A) that the settlor, trustee and beneficiaries are not distinct is incorrect on facts and record. The Ld AR has contended that it cannot be assessed as an AOP for the following reasons:

- The trust has been constituted by the settlor and trustee under the trust deed; beneficiaries have not joined together to form an AOP.
- There is no inter-se agreement among beneficiaries to carry on business jointly.
- Beneficiaries are only recipients of income arising from the trust's investments.
- The assessee had e-filed the return under "AOP/BOI" as the applicable ITR for the year did not contain a suitable "Trust" status option other than AOP.

6. The Ld. AR placed reliance on the decision of Hon'ble ITAT, Bangalore in DCIT v. India Advantage Fund-VII [2014] 50 taxmann.com 350 to submit that venture capital funds set up as trusts cannot be treated as AOP merely because investors have contributed funds. Further, it was contended that contributions by beneficiaries constitute a revocable transfer under section 61 read with section 63 of

the Act and therefore income earned from investments of such contributions is assessable in the hands of beneficiaries. The Ld. AR submitted that:

- the trust is created for a period of 15 years, extendable by resolution of all beneficiaries;
- the shares of beneficiaries are determinate and ascertainable, being linked to units subscribed and held;
- the income in question has already been offered and assessed in the hands of beneficiaries, and therefore taxing the same again in the hands of the trust would result in double taxation.

Reliance was also placed on the decision in ITO v. India Innovation Fund (ITA No. 1675/Mum/2018).

7. The Ld. Departmental Representative (Ld. DR) supported the orders of the lower authorities. It was submitted that the fund, though claimed as a private trust, is in substance an AOP formed by multiple investors pooling resources with a common objective of profit. It was argued that the arrangement was used to claim pass-through status and thereby avoid tax on venture capital profits. The Ld. DR contended that section 161(1) applies only where trustees act purely in fiduciary capacity, and in the present case beneficiaries collectively created and funded income generating activities. The Ld. DR also submitted that the AO rightly treated the gains as business income and rejected exemption claims.

8. We have heard rival submissions and perused the material available on record. The short controversy arising for our consideration is, whether the assessee trust is liable to be assessed in the status of Association of Persons (AOP) and whether the income declared by the trust and allocated to beneficiaries can again be brought to tax in the hands of the trust, particularly when the assessee has claimed that the income has already been considered in the hands of beneficiaries as per

their respective shares. At the outset, it is observed that the assessee is a contributory trust registered as a Venture Capital Fund with SEBI, established under trust deed dated 22.06.1995. The assessee has consistently maintained that the trust is constituted by the settlor and trustee and that beneficiaries have not come together by any inter se agreement to form an AOP. We find merit in the submission of the assessee that merely because multiple investors/beneficiaries have contributed to a common pool, it cannot automatically lead to an inference that they have combined in the manner of an AOP, unless there is a finding that the persons have voluntarily joined together for a common purpose of producing income with some element of joint management or common action.

9. Further, the assessee has also submitted that the return of income was filed under the status "AOP/BOI" due to limitations in the return filing utility applicable for that assessment year, and such disclosure by itself cannot be the sole basis to conclude that the assessee is an AOP, especially when the nature of constitution and governing document is a trust deed.

10. We also note that the assessee in its computation of income has furnished the list of beneficiaries and has specifically submitted that the share of 10 beneficiaries is determinate, and the income has been allocated to beneficiaries in specified ratio. The assessee has also claimed that the short-term capital gains and interest income have already been considered in the hands of beneficiaries, and therefore, taxing the same again in the hands of the assessee would result in double taxation of the same income.

11. On this aspect, it is relevant to refer to the legal position governing taxation of trust income. Under the scheme of the Act, in case of trust having determinate

shares of beneficiaries, the trustee is assessable in representative capacity under section 161(1), subject to the conditions therein. Once the income is assessed in the hands of the beneficiaries or in representative capacity, the same income cannot again be taxed once more in another hands, because the Act does not envisage multiple taxation of the same income merely because there exists a trust structure.

12. The issue as to whether a Venture Capital Fund constituted as a trust can be assessed as an AOP and whether beneficiaries' income can be taxed at trust level has been examined by Hon'ble Karnataka High Court in the case of India Advantage Fund. The Hon'ble High Court has, in substance, upheld the proposition that where the beneficiaries' interests are determinate and the trust structure is established under a valid trust deed, the mere pooling of funds by contributors does not automatically convert the trust into an AOP. The Hon'ble Karnataka High Court has recognized that in case of such venture capital funds constituted as trust, the beneficiaries are essentially investors having defined interests, and the trustee holds property for and on behalf of beneficiaries under the trust deed. Therefore, when beneficiaries' shares are identifiable/determinate, the taxation mechanism under the Act operates in a representative manner and not as an AOP carrying on independent business in its own right.

13. We further find that Mumbai Bench of the Tribunal in ITO vs. India Innovation Fund (ITA No. 1675/Mum/2018) has examined an identical controversy relating to taxation of venture capital funds constituted as trusts and has held that where the beneficiaries' shares are determinate and income is allocated, the income is liable to be taxed in the hands of beneficiaries, and the trust is only a pass-through vehicle operating in representative capacity.

14. Respectfully following the ratio emerging from the aforesaid decision, we hold that in the present case also, the assessee trust cannot be treated as an AOP merely on the basis of contribution received from multiple beneficiaries, particularly when there is no material brought by the Revenue to show that the beneficiaries have joined together by any agreement to carry on business jointly as an AOP.

15. Accordingly, we set aside the findings of the Ld. CIT(A) on this issue and direct the Assessing Officer to delete the addition of interest income of Rs. 4,142/- and short-term capital gains of Rs. 1,01,36,885/-, as brought to tax in the hands of the assessee.

16. As the identical issues are involved in A.Y 2012-13, decision shall apply mutatis mutandis to A.Y. 2012-13 as well.

17. In result, appeals of assessee for A.Y 2010-11 and 2012-13 are allowed.

Order pronounced on 16th day of January, 2026 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Mumbai, Dated: 16/01/2026.

Ashwani Rao
Sr. Private Secretary

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. The CIT
4. The CIT (Appeals)
5. The DR, I.T.A.T.

ITA No.670 & 669/M/2025
South Asian Regional Apex Fund

By order

(AssistantRegistrar)
ITAT, Mumbai