

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**1. ITA No. 5715/Mum/2025
(Assessment Year: 2016-17)**

**2. ITA No. 5676/Mum/2025
(Assessment Year: 2017-18)**

&

**3. ITA No. 5677/Mum/2025
(Assessment Year: 2018-19)**

LICHFL Fund 211-212, The Capital, Bandra Kurla Complex, Bandra East, Mumbai- 400 051	Vs.	ITO Ward 23(2)(1), Piramal Chambers, Mumbai-400 012
PAN/GIR No. AAATL8730G		
(Applicant)		(Respondent)

Assessee by	Shri Dhanesh Bafna, Shri Hardik Nirmal & Ms. Hinal Shah, Ld. ARs
Revenue by	Shri Surendra Mohan, Ld. DR

Date of Hearing	14.01.2026
Date of Pronouncement	30.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

These appeals are directed against the separate orders passed by the Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], arising out of the separate assessment orders passed by the Income Tax Officer under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] for Assessment Year 2016-17, 2017-18 and 2018-19.

Facts of the Case

2. The assessee is a trust registered with the Securities and Exchange Board of India (SEBI) as a Venture Capital Fund (VCF) under the SEBI (Venture Capital Funds) Regulations, 1996. For the years under consideration, the assessee filed its returns of income declaring nominal taxable income after claiming exemption in respect of income earned from investments made in portfolio companies treated as Venture Capital Undertakings (VCUs) under section 10(23FB) of the Income-tax Act, 1961. The assessee also claimed exemption in respect of dividend income received from units of mutual funds under section 10(35) of the Act.

3. The cases were selected for scrutiny and notices under section 143(2) and section 142(1) of the Act were issued. During the course of assessment proceedings, the assessee furnished details of investments made in portfolio companies, nature of income earned therefrom and the basis for claiming exemption under section 10(23FB) and section 10(35) of the Act. It was explained that the interest income was earned on Optionally Fully Convertible Debentures and other instruments issued by portfolio

companies and that the dividend income was received from liquid schemes of mutual funds.

4. The Assessing Officer, however, did not accept the assessee's claim of exemption in respect of interest income earned from certain portfolio companies, holding that the investee entities did not qualify as eligible Venture Capital Undertakings in terms of SEBI Regulations and that the income was in the nature of fixed return akin to interest. The Assessing Officer further held that the assessee, being a VCF governed by a special provision under section 10(23FB), was not entitled to claim exemption under section 10(35) in respect of dividend income from mutual funds. Accordingly, additions were made by disallowing the exemptions claimed and the assessed income was determined at higher figures for the respective assessment years. Assessment year wise details are tabulated as under:

Particulars	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2018-19
Date of filing of return of income	03.10.2018	27.10.2017	29.10.2018
Returned Income	Rs. 18,15,200/-	Rs. 26,79,960/-	Rs. 23,14,900/-
Addition under "Income from other sources" (by disallowing exemption u/s 10(23FB))	Rs. 1,77,38,985/-	Rs. 5,30,71,555/-	Rs. 5,74,69,950/-
Disallowance of Exemption u/s 10(35)	Rs. 90,20,212/-	Rs. 1,04,37,426/-	Rs. 10,64,740/-

Assessed Income	Rs.	Rs.	Rs.
	2,85,74,390/-	6,61,88,940/-	6,08,49,590/-
Date of order of the Assessing Officer	31.12.2018	31.12.2019	05.04.2021
Date of order of CIT(A)	24.07.2025	15.07.2025	24.07.2025

5. Aggrieved, the assessee carried the matter in appeal before the CIT (A), who upheld the disallowance u/s 10(23FB) of the Act and deleted the additions u/s 10(35) of the Act. Against the orders of the CIT(A), the assessee is in further appeal before us raising following grounds of appeal:

For A.Y. 2016-17 in ITA No. 5715/MUM/2025

Disallowance of exemption of Rs. Rs. 1,77,38,985/- under section 10(23FB) on the ground that the fund used by the Venture Capital Undertaking (VCU) was used for the purpose other than the purpose of providing services, production or manufacture of article or things for which the company was incorporated.

The appellant craves leave to add, amend, alter and/or delete the above grounds of Appeal at the time of hearing.

6. Since the grounds of appeal raised by the assessee for A.Ys. 2016-17, 2017-18 and 2018-19 are identical in substance, except for variation in the quantum of exemption disallowed, they are being reproduced only for one year for the sake of convenience. The year-wise disallowance is as under:

- A.Y. 2016-17 – Rs. 1,77,38,985/-
- A.Y. 2017-18 – Rs. 5,30,71,555/-
- A.Y. 2018-19 – Rs. 5,74,69,950/-

7. Taking A.Y. 2016–17 as the lead year, the learned Authorised Representative (AR) submitted that the issue involved in all the three assessment years is identical and arises out of the same set of facts and, therefore, the submissions for A.Y. 2016–17 apply mutatis mutandis to the remaining years.

8. The learned AR submitted that the exemption under section 10(23FB) was disallowed by the Assessing Officer mainly on the ground that the investee company, namely Mahip Hospital Private Limited, was not carrying on any eligible business activity and that the funds invested by the assessee were allegedly used for purposes other than providing services, production or manufacture of articles or things for which the company was incorporated. It was held by the Assessing Officer that the said company functioned merely as a pass-through entity and, therefore, did not qualify as a Venture Capital Undertaking within the meaning of section 10(23FB) read with the SEBI Regulations. On this reasoning, the interest income earned by the assessee from such investment was treated as taxable and the exemption claimed under section 10(23FB) was denied.

9. The AR submitted that the assessee is a SEBI-registered Venture Capital Fund and had claimed exemption under section 10(23FB) in respect of interest income earned from investment made in Mahip Hospital Private Limited, which was incorporated as a Special Purpose Vehicle for acquisition and operation of hospital and healthcare assets. It was submitted that the Assessing Officer disallowed the exemption mainly on the ground

that Mahip Hospital Private Limited had not carried out any eligible business activity and that the funds were allegedly used for purposes other than those for which the company was incorporated, and further treated the said company as a mere pass-through entity.

10. The AR contended that such reasoning of the Assessing Officer is erroneous in law and on facts. It was submitted that once the assessee is duly registered with SEBI as a Venture Capital Fund, exemption under section 10(23FB) follows and the Assessing Officer cannot sit in judgment over SEBI's approval or re-examine the eligibility of the Venture Capital Undertaking. It was further submitted that section 10(23FB) exempts "any income" of a Venture Capital Fund registered with SEBI and does not prescribe that the investee company must have commenced commercial operations in the same year. The exemption is linked to the investment and statutory compliance and not to the stage of business activity of the investee entity. The AR further submitted that denial of exemption on the ground that no business activity was carried on defeats the legislative intent of promoting venture capital investments, since such undertakings necessarily take time to implement projects and commence operations. It was contended that the authorities below have imported conditions into the statute which are not contemplated under section 10(23FB) and have ignored the settled principle that substance of the transaction and statutory compliance should prevail over form.

11. The learned AR further invited attention to the statutory definition of “venture capital undertaking” relied upon by the Assessing Officer and submitted that the said definition has undergone a material change with effect from 01.04.2013. It was pointed out that Explanation 1, clause (c) to section 10(23FB), as substituted by the Finance Act, 2012 with effect from 01.04.2013, defines “venture capital undertaking” as a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996, made under the Securities and Exchange Board of India Act, 1992. The AR submitted that, after the aforesaid amendment, the definition of “venture capital undertaking” for the purposes of section 10(23FB) is no longer governed by the earlier restrictive list of specified businesses under the Income-tax Act but is required to be examined strictly with reference to the SEBI (Venture Capital Funds) Regulations, 1996. It was contended that the Assessing Officer erred in relying upon the pre-amended definition and in testing the eligibility of the investee company on the basis of the nature of business carried on, instead of examining whether the investee entity satisfies the definition of “venture capital undertaking” under the SEBI Regulations. It was further submitted that the investee company in the present case squarely falls within the definition of “venture capital undertaking” as prescribed under the SEBI (Venture Capital Funds) Regulations, 1996, inasmuch as it is a domestic company whose shares are not listed on any recognised stock exchange and which is engaged in an eligible line of business as per the regulatory

framework. The AR contended that once the assessee is a SEBI-registered Venture Capital Fund and the investment is made in an entity qualifying as a venture capital undertaking under the SEBI Regulations, the statutory requirement of section 10(23FB) stands fulfilled.

12. The learned AR further invited attention to the “negative list” prescribed under the Third Schedule to the SEBI (Venture Capital Funds) Regulations, 1996, and submitted that the activities in which the assessee had made investments do not fall within any of the prohibited categories specified therein. It was pointed out that the negative list only excludes, inter alia, non-banking financial services, gold financing and activities not permitted under the industrial policy of the Government of India, and does not prohibit investments in real estate development or healthcare and hospital infrastructure.

13. The AR also referred to the periodic filings made with SEBI, copies of which were placed on record, to demonstrate the nature and sector-wise deployment of funds by the assessee. From the said filings, it was shown that the assessee had made investments primarily in the real estate and healthcare sectors, which are permissible sectors under the SEBI (Venture Capital Funds) Regulations, 1996 and are not covered by the negative list. It was submitted that these filings had been duly accepted by SEBI and no adverse view had been taken by the regulator in respect of the assessee’s investments. It was contended that, once the regulatory authority under the SEBI Act has accepted the

assessee's investments as compliant with the Venture Capital Fund Regulations, the Assessing Officer could not disregard the same and hold that the investee companies were ineligible Venture Capital Undertakings by applying conditions dehors the regulatory framework. The AR, therefore, submitted that the denial of exemption under section 10(23FB) on the ground that the investments were not in eligible Venture Capital Undertakings is contrary to the SEBI Regulations and unsupported by the material placed on record.

14. The learned Departmental Representative (DR), on the other hand, relied upon the orders of the Assessing Officer and the CIT(A). The DR submitted that the definition of "venture capital undertaking" as contained in clause (n)(ii) of the SEBI (Venture Capital Funds) Regulations, 1996 is not free from ambiguity, inasmuch as it provides that such undertaking should be engaged in providing services, production or manufacture of articles or things and at the same time "does not include such activities or sectors which are specified in the negative list by the Board." It was contended that, in view of the said wording, the investee company must satisfy both conditions simultaneously, namely, that it is engaged in eligible business activity and that it does not fall within the negative list. According to the DR, the Assessing Officer has rightly examined the actual activities carried on by the investee company and has correctly concluded that it did not qualify as an eligible venture capital undertaking. The DR, therefore, submitted that the exemption under section

10(23FB) was rightly denied and the orders of the lower authorities deserve to be upheld.

15. For A.Y. 2017–18, the learned Departmental Representative further drew attention to the specific findings recorded by the Commissioner of Income-tax (Appeals). The DR submitted that the CIT(A) has categorically noted that the assessee failed to place on record any cogent and contemporaneous evidence before the Assessing Officer to establish that Mahip Hospital Pvt. Ltd. was actively engaged in healthcare or hospital operations during the relevant year. It was pointed out that, as observed by the CIT(A), the assessee did not furnish financial statements, board resolutions, or any filings before the National Company Law Tribunal evidencing implementation of the alleged demerger scheme or actual conduct of business by the said entity. Relying on these findings, the DR contended that the conclusion of the Assessing Officer that Mahip Hospital Pvt. Ltd. functioned merely as a pass-through entity stands fortified and, therefore, the disallowance of exemption under section 10(23FB) for A.Y. 2017–18 has been rightly upheld by the CIT(A).

16. The learned AR, in rejoinder, submitted that the finding recorded by the Commissioner of Income-tax (Appeals) to the effect that the assessee had not furnished the requisite evidences is factually incorrect. It was contended that all relevant details, including documents relating to the investment structure, nature of the investee company, its intended business activity along with NCLT order and Quarterly returns filed with SEBI, were duly

placed on record before the Assessing Officer as well as before the CIT(A). The AR submitted that the conclusion drawn by the CIT(A) proceeds on an erroneous appreciation of the material already filed and, therefore, cannot be sustained.

17. We have considered the rival submissions. It is an admitted position that the controversy in all the three years arises from the assessee's common claim of exemption under section 10(23FB) on income stated to have been earned from investments made as a SEBI-registered Venture Capital Fund. Since the factual matrix and the core controversy are stated to be identical, we proceed by treating A.Y. 2016-17 as the lead year and the findings herein shall apply *mutatis mutandis* to the remaining assessment years.

18. Section 10(23FB) is a special provision intended to accord pass-through exemption to a Venture Capital Company or Venture Capital Fund registered with SEBI, in respect of income arising from investment in a Venture Capital Undertaking, subject to fulfilment of the prescribed conditions. The object is to facilitate venture capital funding by avoiding tax friction at the fund level, while the tax incidence, if any, is ordinarily intended to arise at the level of investors or at the appropriate stage as contemplated by the scheme of the law. However, the exemption is not an unfettered blanket immunity for all receipts. The statute, on its plain language, links exemption to income of a SEBI-registered VCF/VCC **from investment in a Venture Capital Undertaking**, and therefore, the **character and**

eligibility of the investee as a “venture capital undertaking” remains a jurisdictional fact which must be satisfied.

19. The assessee has specifically contended that Explanation 1 clause (c), as substituted w.e.f. 01.04.2013, aligns the meaning of “venture capital undertaking” to the SEBI (Venture Capital Funds) Regulations, 1996 framed under the SEBI Act, 1992. On this aspect, we agree with the proposition that, post-substitution, the enquiry as to whether an investee qualifies as a “venture capital undertaking” is required to be tested with reference to the SEBI regulatory framework. Accordingly, to the extent the lower authorities may have proceeded on a pre-amended understanding or an incorrect statutory benchmark, the same would require correction.

20. The assessee’s principal plank is that once it is SEBI-registered, the Assessing Officer cannot sit in appeal over SEBI’s approval or re-examine eligibility of the venture capital undertaking. We find merit in the submission **to this limited extent**: the Assessing Officer cannot rewrite the regulatory framework or impose conditions that are not contemplated either by section 10(23FB) or by the SEBI Regulations referred to therein. At the same time, the Assessing Officer is not denuded of authority to verify whether the statutory preconditions for claiming exemption are, in fact, met on the record, namely, whether the assessee is a SEBI-registered VCF/VCC for the relevant year; whether the income in question is derived from investment in an entity which answers the regulatory definition of

a venture capital undertaking; and whether the investment structure and deployment, in substance, conforms to the regulatory contours and does not, in effect, take the transaction outside the intended ambit of “investment in a venture capital undertaking”.

21. Therefore, SEBI registration is a necessary foundational requirement, but it does not dispense with the assessee’s obligation to demonstrate, on facts and evidence, that the income claimed as exempt is of the kind contemplated by section 10(23FB).

22. The assessee’s narrative is that Mahip Hospital Private Limited was incorporated as a Special Purpose Vehicle for acquisition and operation of hospital and healthcare assets, and that a larger scheme involving amalgamation/demerger was contemplated, with eventual housing of hospital undertakings in SPVs. The Assessing Officer, on the other hand, has recorded that during the relevant year the investee did not carry out eligible business activity and that funds received from the assessee were deployed into OCDs of another entity, thereby treating the investee as a conduit or pass-through, and characterising the arrangement as akin to borrowing and lending, which according to the Assessing Officer violates the VCU definition under the SEBI framework.

23. The assessee also placed on record a schematic representation of the proposed amalgamation and demerger

structure to explain the commercial and investment rationale of the transaction. It was demonstrated that the scheme envisaged amalgamation of the existing operating entities into a single entity, followed by demerger of the hospital undertakings into separate Special Purpose Vehicles, namely Mahip Hospital Pvt. Ltd., Mahip Healthcare & Lifesciences Pvt. Ltd. and Marcus Healthcare Pvt. Ltd., each corresponding to a distinct hospital unit. The said structure was relied upon to show that the investment was not in the nature of a mere financial accommodation but formed part of a planned business model for acquisition, segregation and operation of hospital and healthcare assets through dedicated SPVs.

24. In this context, the material placed on record, including the scheme of amalgamation and demerger produced by the assessee, assumes significance. The structure demonstrates that the investee company was conceived as part of an integrated healthcare acquisition model, whereby hospital undertakings were first consolidated and thereafter demerged into separate Special Purpose Vehicles corresponding to individual hospital units. This supports the assessee's explanation that the investment was aligned with acquisition and operation of healthcare assets and was not in the nature of a temporary parking or pass-through of funds.

25. On this core controversy, it is important to note that **venture capital structures frequently employ SPVs and phased implementation**, and the mere fact that operations are

in a gestation stage cannot, by itself, be a decisive ground to deny exemption, provided the investee demonstrably remains within the contours of the regulatory definition and the deployment is consistent with the stated venture investment objective. Conversely, where the factual record demonstrates that the investee was **not a functional undertaking in any meaningful sense**, and the funds were **routed onward in a manner resembling a financial accommodation**, the Assessing Officer's concern on substance is not without relevance.

26. The assessee has placed emphasis on (i) the Third Schedule "negative list" under the SEBI (VCF) Regulations, 1996, and (ii) quarterly/periodic filings made with SEBI to demonstrate sector-wise deployment, stating that the fund's investments were in real estate and healthcare and not in prohibited activities like non-banking financial services, gold financing, etc.

27. These documents are relevant to show the fund's regulatory reporting and broad sector orientation. However, **sectoral reporting at the fund level is not, by itself, determinative** of whether the specific investee, in the relevant year, satisfied the regulatory definition of a "venture capital undertaking" and whether the specific income in question was earned from an investment which remained within the permissible regulatory boundaries. The negative list operates as an exclusion, but the investee must still satisfy the affirmative elements of the definition and the investment must not, in substance, cross into prohibited financial activity.

28. On an evaluation of the material placed before us, including the paper book filed by the assessee, it emerges that the disallowance has been made primarily on the premise that the investee company functioned as a mere pass-through entity and that the funds were allegedly routed onward, leading the Assessing Officer to infer that the transaction was in the nature of borrowing and lending and that no eligible business activity was carried on by the investee during the relevant year.

29. However, the contemporaneous documentary evidence placed on record demonstrates that the investment structure was conceived as a healthcare acquisition and operating model implemented through Special Purpose Vehicles and was aligned with the regulatory framework governing Venture Capital Funds. The assessee has produced before the lower authorities as well as before us the relevant documents, including the NCLT-related records, SEBI quarterly and sector-wise filings and investment deployment details, which establish that the investee entity was incorporated and structured for acquisition and operation of hospital and healthcare assets. These materials further show that the sectoral deployment of funds was in healthcare and real estate, which do not fall within the negative list prescribed under the Third Schedule to the SEBI (Venture Capital Funds) Regulations, 1996.

30. We find that the Assessing Officer and the CIT(A) have proceeded largely on inferences drawn from the absence of immediate commercial operations and from the onward

deployment of funds, without appreciating the business model of venture capital investments, which inherently involves phased implementation and use of SPVs for acquisition and consolidation of operating assets. The conclusion that the investee acted merely as a pass-through entity is not borne out by the contemporaneous material placed on record. On the contrary, the paper book evidences regulatory acceptance of the assessee's investment structure by SEBI and reflects the intended operational role of the investee in the healthcare sector.

31. Further, after the amendment to Explanation 1(c) to section 10(23FB) with effect from 01.04.2013, the eligibility of a venture capital undertaking is required to be examined strictly with reference to the SEBI (Venture Capital Funds) Regulations, 1996. On a holistic consideration of the definition contained therein and the negative list appended thereto, we are satisfied that Mahip Hospital Private Limited answers the regulatory description of a venture capital undertaking and does not fall within any prohibited activity or sector. Once this statutory requirement is fulfilled and the assessee is admittedly a SEBI-registered Venture Capital Fund, the condition prescribed under section 10(23FB) stands satisfied.

32. We also find merit in the submission of the learned AR that denial of exemption merely on the ground that full-fledged hospital operations had not commenced during the relevant year would defeat the legislative intent underlying section 10(23FB), which is to promote venture capital investments in infrastructure

and growth sectors such as healthcare, where gestation periods are inherent. The authorities below have, in effect, imported conditions into the statute which are not contemplated either by section 10(23FB) or by the SEBI Regulations.

33. In view of the foregoing discussion and on a holistic appreciation of the material placed on record, including the regulatory framework under the SEBI (Venture Capital Funds) Regulations, 1996, the contemporaneous filings made with SEBI and the documented scheme of amalgamation and demerger forming part of the assessee's investment strategy, we are satisfied that Mahip Hospital Private Limited qualified as a Venture Capital Undertaking within the meaning of section 10(23FB) of the Act read with the SEBI Regulations. We are further satisfied that the income in question was derived from a qualifying investment made by the assessee as a SEBI-registered Venture Capital Fund.

34. Accordingly, the disallowance of exemption under section 10(23FB) made by the Assessing Officer and sustained by the CIT(A) is unsustainable both in law and on facts. The assessee is entitled to exemption under section 10(23FB) in respect of the income earned from its investment in Mahip Hospital Private Limited.

35. Thus, for A.Y. 2016–17, being the lead year, the ground relating to exemption under section 10(23FB) is allowed. The

same conclusion shall apply *mutatis mutandis* to A.Ys. 2017-18 and 2018-19, the issue being identical on facts and in law.

36. In the result, the appeals of the assessee for A.Ys. 2016-17, 2017-18 and 2018-19 are allowed.

Order pronounced in the open court on 30.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 30/01/2026
Dhananjay, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai