IN THE INCOME TAX APPELLATE TRIBUNAL
"LARGER BENCH, GUWAHATI

Before Shri Rajpal Yadav, Vice-President,
Shri Sanjay Garg, Judicial Member and
Dr. Manish Borad, Accountant Member

I.T.A. Nos.348 to 350/GTY/2018
Assessment Years: 2013-14 to 2015-16

M/s Hotel Centre Point, Shillong…….....…..……....Appellant
Police Bazar, Shillong,
Meghalaya – 793001
[PAN: AAGFH6360L]

vs.

ITO, Ward-1 & TPS, Shillong .....…..…..... Respondent

&

I.T.A. No.351/GTY/2018
Assessment Year: 2015-16

M/s Ri-Kynjai Serenity By The Lake, Shillong ...…..…..……....Appellant
C/o M/s Hotel Centre Point,
Police Bazar, Shillong,
Meghalaya – 793001
[PAN: ACBFS8181P]

vs.

ITO, Ward-2, Shillong…….....…..…..... Respondent

Appearances by:
Shri Sanjay Modi, FCA, appeared on behalf of the appellant.
Shri Arun Bhowmick, Sr. DR, appeared on behalf of the Respondent.

Date of physical hearing	: December 04, 2023
Date of furnishing/receipt of written submissions	: February 22, 2024
Date of pronouncing the order	: March 19, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

This Larger Bench of the Tribunal has been constituted on the directions of the Hon'ble Meghalaya High Court vide order dated 06.07.2023 to adjudicate upon the following issues afresh:

(i) *Whether a partnership firm consisting of individual partners would be entitled to the same exemption u/s 10(26) of the*

Income Tax Act, 1961 as any or all of the partners would be in their individual capacity?

(ii) *Whether the ratio decidendi in the judgment of Hon'ble Gauhati High Court in CIT v Mahari & Sons (1992) 195 ITR 630 (Gau) in context of 'Khasi Family' would also be applicable in case of a partnership firm constituted solely of the individuals who in their individual capacity are entitled to exemption u/s 10(26) of the Income Tax Act, 1961.*

2. The captioned four appeals for different assessment years have been filed by two assessees who are partnership firms, running hotel business. The assessee M/s Hotel Centre Point, a partnership firm having Shri Prabhat Dey Sawyan and Mr. Walamphang Roy as its parners who are uterine brothers has filed ITA No.348/GTY/2018, ITA No.349/GTY/2018 & ITA No.350/GTY/2018, whereas, assessee M/s RI-Kynjai Serenity By The Lake, a partnership firm having Shri Prabhat Dey Sawyan & Mrs. Lalparliani Sawyan as its parners, who are husband and wife has filed ITA No.351/GTY/2018. The facts and issues involved in all the appeals are identical. ITA No.348/GTY/2018 is taken lead case for the purpose of narration of facts.

ITA No.348/GTY/2018 for A.Y 2013-14:

3. The assessee partnership firm during the relevant year has been running hotel business under the name and style of M/s Hotel Centre Point at Shillong. It consisted of two partners namely Shri Prabhat Dey Sawyan and Mr. Walamphang Roy, both the partners are related to each other (brothers) and are belonged to Khasis tribe which is enlisted as Scheduled Tribe in the State of Meghalaya and is covered under

Clause (25) of Article 366 of the Constitution of India. They are residents of Khasi Hills Autonomous District which area is specified under Part-II of the Table appended to 6th Schedule to the Constitution of India and are, and thus are entitled to exemption u/s 10(26) of the Income Tax Act (in short 'the Act') in their individual capacity. The claim of the assessee before the Assessing Officer has been that since a partnership firm in itself is not a separate juridical person and it is only a collective or compendious name for all of its partners having no independent existence without them, and since the partners of the assessee firm are entitled to exemption u/s 10(26) of the Act, therefore, the same exemption u/s 10(26) is available to a partnership firm formed by such partners. However, the Assessing Officer did not agree with the aforesaid contention of the assessee. He observed that under section 2(31) of the Act defines "person" which includes a partnership firm. That as per the provisions of section 4(1) of the Act, Income Tax shall be charged for any assessment year at the prescribed rates in respect of total income of the previous year of every person. He therefore, held that under the Income Tax Act, the partnership firm is a separate legal entity chargeable to Income Tax. That the exemption u/s 10(26) of the Act was available to individual members of the recognized Scheduled Tribes and not to a partnership firm which is a separate entity under the Income Tax Act. The reliance placed by the assessee on the case laws "ITO vs. N. Takim Roy Rymbai" (1976) 103 ITR 82 (SC), "CIT vs. Marbaniang" (1973) 202 ITR 502 (Gau) and "CIT vs. Mahari & Sons" (1992) 195 ITR 630 (Gau), did not find favour with the Assessing Officer as he observed that the aforesaid case laws referred to individuals and group of family within the meaning of sub-clause (i) of

clause 31 of section 2 of the Act as "an individual" and not a partnership firm.

4. In first appeal, the ld. CIT(A) observed that the Hon'ble Gauhati High Court has held that exemption available to a member of Khasi Tribe will be available when income was earned by him not as individual but as a group of individual comprising the member of his family and such joint income is assessable in the status of BOI (Body of Individuals). According to him, decision of the Hon'ble Gauhati High Court in Mahari & Sons (supra) is not applicable in case where joint income of members of scheduled tribe is to be assessed in the status of Partnership Firm. He also noted that the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) v. Dilip Kumar & Co. (2018) 9 SCC 1 has held that where there is an ambiguity in exemption notification or provision, the benefit of ambiguity will go to Revenue/Government. He, therefore, upheld the order of the Assessing Officer.

5. On second appeal, the Gauhati Division Bench of the Tribunal vide its order dated 13.09.2019 upheld the order of the CIT(A) observing as under:

> *"17. We have given our thoughtful consideration to the foregoing rival contentions. Relevant case record(s) as well as various judicial precedents quoted during the course of hearing stand perused. We wish to make clear first of all that there is no dispute between the parties about the basic relevant facts. This assessee is a partnership firm consisting to two partners having equally share. The members of Khasi tribe entitled for 10(26) exemption in their individual capacity since covered under Article 366 of the Constitution of India. The question that requires our apt*

adjudication herein is as to whether the assessee / partnership firm itself can also be held to be entitled for the impugned sec. 10(26) exemption since its two partners are already eligible for the very relief.

18. Article 265 Constitution of India stipulates that "Taxes are not to be imposed qua by the authority of law. No tax shall be levied or collected except by the authority of law". The Legislative enacted the Income Tax Act, 1961 therefore to provide for levy and collection of tax on income earned by a "person" comprising of (I) to (VII) categories of an individual, HUF, company, a firm, an association of persons or a body of individuals; where incorporated or not, a legal authority and every judicial person not falling within any of the above specified classes u/s 2(31) of the Act. It further inserted Chapter-III in the Act comprising of section 10 to 13B specifying incomes which do not form part of the total income for the purpose of assessment and levy of tax. Since the instant lis raises the issue of ambit and scope of sec. 10(26) thereof, we deem to appropriate to reproduce the same as under:-

> *Section 10(26) of the Income Tax Act, 1961*
>
> *Incomes not included in total income- 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-*
>
> *xxx xxx xxxx xxxx xxxx xxx xxx xxxx*
>
> *(26) in the case of a member of Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by notification No. TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 as it stood immediately before the commencement of the North-Eastern Areas (Reorganization) Act, 1971 (81 of 1971) or in the Ladakh region of the State of Jammu and Kashmir, any income which accrues or arises to him,-*

It is clear that the specified (a) member of a Scheduled Tribe only; who is covered under Article 366 of the Constitution of India enjoys, exemption of his income derived from "any source in the area" and also "income from dividend or interest on securities." It transpires from a perusal of the above statutory provision that the legislature has not only granted exemption income of "any person" only but also it applies the impugned benefit in case of a member of Scheduled Tribe" only.

19. Hon'ble apex court has also been settling the relevant principles of interpretation to be adopted in case of taxation laws from time to time. Their lordships latest constitution bench's decision in M/s Dilip Kumar and Company & Ors. (supra) holds that "every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provision the benefit must go in favour of a subject / assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue / State". Their lordships yet another decision in Raghunath Rai Bareza vs. PNB (2007) 135 Company Cases 163 (SC) holds that it is the cardinal rule of interpretation that words used by the legislature are to be understood in their natural, ordinary or popular sense and construed as per their grammatical meaning unless such a construction leads to some absurdity or there is something in the context or in the object of the statute to suggest to the contrary. Their lordships also invoked the "Golden Rule" of Interpretation that words of a statute must prima facie to be given their ordinary meaning only.

20. Hon'ble apex court's yet another landmark decision in Smt. Tarulata Shyam and Others vs. Commissioner of Income-tax (1977) 108 ITR 345 (SC) also holds there is no scope of intendment in tax laws as follows:-

> *"We have given anxious thought to the persuasive argument.... (which) if accepted, will certainly soften the rigour of this externally drastic provision and bring it more in conformity with logic and equity. But, the language of the sections ..... is clear and unambiguous. There is no scope for importing into the statute the words which are not there. Such interpretation would be, not to construe, but to amend the*

> *statute. Even if there is causes omicus the defect can be remedied only by legislative and not by judicial interpretation."*

21. We proceed to examine with the instant issue of assessee / partnership firm's entitlement for sec.10(26) exemption in the light of the above narrated facts and settled principles of interpretation of a tax statute. It has placed a heavy reliance on hon'ble Guwahati high court's decision in Mahari & Sons (supra) affirming the tribunal's order that sec. 10(26) exemption does not apply only in case of an individual but to a Khasi family as well. Their lordships have taken note the beneficial nature of provision to uphold the tribunal's order on 82 ITD 408 (Gau) that the legislature had deliberately not used the word "individual" in sec. 10(26) but the employed the expression "person" which is wide enough to include in its ambit, unit as that of Khasi family structure as under:-

> *"10A. On the second count, however, we are not inclined to accept the contention of the learned departmental representative. The ordinary state of Khasi society is that of jointness, wherein the individual is not the unit of society; the families constitute the clan and the various clans constitute the society. The ancestral properties, as in the present case, are inherited and held not by an individual for her own exclusive use, but by Ka Khaddu for the benefit of the entire family, which in the case of Khasis, is matriarchal in form. Even the self-occupied property of a male Khasi, if acquired before marriage, and if he dies before getting married, goes to his mother or "Kur".*
>
> *The earnings of the male are regarded as part of the family earnings and are placed by him at the disposal of the mother. Even if he keeps some income for himself, on his death, his mother or her nearest female kur, takes it. After marriage, the Khasi husband goes to live in thehouse of the mother of his wife or in the house of his wife. Before the wife has a child, the husband uses sufficient part of is own earnings for the maintenance of his wife, the surplus or a portion of this surplus, he my give to his kurs. After the birth of the child, husband and wife work and earn jointly for the child. The husband works with his wife on the land, or is engaged in the trade with the capital supplied by her. The earnings of the*

male in such a situation cannot be distinguished from those of his wife. The individual property is thus not the norm in the Khasi society. It is, of course, not to suggest that a Khasi male cannot have his own property, earned by his own sweat. There are men of considerable property, who will dispose of that property among their relatives as they deem fit. By pointing out the above peculiarities of the Khasi clan, the point that is sought to be emphasised is that amongst the Khasis, the individual is not the unit of society. It is the family which is the unit, and, if this peculiarity is kept in mind, it would be immediately obvious that the ancestral properties would always be held by Ka Khaddu for the family, and most the self-acquired properties also would become the properties of family either on the mother's side or of that consisting of wife and the children. The use of the word 'person' in section 10(26) in the context of the above peculiarities of the Tribal law, assumes importance. The Legislature has deliberately not use the word "individual" in section 10(26) and has, instead, used the words 'person', which is wide enough to include in its ambit, a unit as that of Khasi family as in the present case. It is difficult to believe that the Parliament intended to grant exemption only to Khasi individuals who own properties though only marginally, and intended to leave out the bulk of the Khasi society, wherein properties and businesses are owned by family units, and in which the individual members do not have any determinate interest and unlike Hindus, cannot even ask for division of properties. If we interpret section 10(26) as suggested by the revenue, we would be rendering the exemption illusory. Apart from it, it would not be in accordance with the deliberate language used by the Parliament."

We notice in this backdrop that since the sacred family fibre as per Khasi schedule tribe remained intact as per the relevant convention for the entire family being assessed as a body of individual u/s 2(31) of the Act, the learned co-ordinate bench had not examined the another clinching statutory expression "in the case of a member of Scheduled Tribe". It is in this backdrop of facts that we hold the learned co-ordinate bench's decision to be per imcuriam and not a binding precedent in view of the Commissioner of Income-tax vs. B.R. Constructions (199)

202 ITR 222 (AP) [FB]. We also wish to make it clear that the beneficial interpretation taken recourse to in the above stated decision no more holds the field going by hon'ble apex court's recent constitution bench judgment (supra). Whilst observing so, we are very much conscious of the fact that hon'ble Gauhati high court had acted as hon'ble jurisdictional high court as well till March 2013 when hon'ble Meghalaya high court at Shillong came to be established after suitable amendments in the "Constitution of India and North-Eastern Areas (Re-organisation) Acts of 1971. Be that as it may, their lordships of the hon'ble apex court have settled the law how that the benefit of doubt in relation to an exemption provision in a tax law goes in favour the Revenue / State and not to the taxpayer anymore. We follow the same to hold that the assessee's arguments that a partnership firm is "a member of a scheduled tribe" is not liable to be accepted.

We also make it clear that this is going by their lordships foregoing landmark decision(s), there is no scope left for us hold that there is any scope of intendment in the impugned statutory provision stretching the impugned exemption to a partnership firm as a member of Scheduled Tribe under Article 366 Constitution of India.

22. The assessee's next argument that sec. 13 of the General Clauses Act, 1897 (supra) treats masculine and singular expression in central regulations to be inter-changeable famine gender plural expression; also carries no substance since the legislature expression herein is very much clear that the impugned exemption benefit is available to a member "a of Scheduled Tribe" only takes to a partnership firm consisting of partners who are member of such a Scheduled Tribe. We reiterate that the said provision General Clause Act itself contains a stipulation that "unless there is anything repugnant in the subject or context". We therefore decline the assessee's instant argument as well. We make it clear whilst holding so the Income Tax Act is complete code in itself in the nature of specific law which applies at the cost of all the general laws going by the legal maxim "generalia specialibes non derogant" as per hon'ble apex court's decision in Union of India and Another vs. Indian Fisheries (P) Ltd. (1965) 57 ITR 331 (SC).

23. We also wish to quote hon'ble apex court's foregoing decision in "M/s Jullunder Vegetables" holding that though under the Partnership Law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. That being the case, we hold that mere fact that the assessee's two partners are already enjoying sec. 10(26) exemption does not amount to overstretching the very relief to their partnership firm as well.

24. Learned counsel has also referred to various statutory provisions i.e. sec. 10(26AAA), 87A, 54 and 54F (supra) that the legislature has explicitly incorporated the statutory expression "individual" as against "person" in sec. 10(26) of the Act. Meaning thereby that it intends to provide the impugned exemption to all categories in sec.2(31) of the Act. We see no merit in the instant plea as well. We notice that sec. 10(26) comes into play "in case of a member of a Scheduled Tribe" notified in Article 366 of the Constitution of India. Similar exemption clauses sec. 26A is applicable to any income accruing or arising to any source in the district of Ladakh are admittedly applicable in cases of individual; HUF, firms, association of person and company u/s 6 (1) to (4) and sec. 10(26AAA) deals with an individual only; respectively. The necessary inference that flows from a comparative analysis of all these exemption provisions is that sec. 10(26) pre-possess "any person" who is also a member of a Scheduled Tribe as against sec. 10(26A) and 10(26AAA) applicable in case of specified categories of person respectively. We also involve the doctrine of necessary implication in this backdrop that what is implied in the statute is as much a part thereof as that what is expressed. We thus find no infirmity in the CIT(A)'s lower appellate order upholding the Assessing Officer's action that the assessee is not entitled for the exemption benefit u/s. 10(26) of the Act.

25. Coming to various judicial precedents quoted at the assessee's behest (supra), we find that none of these deals with an instant of interpretation of an exemption provision in tax laws. Their lordships determine inter-play between a partnership firm and its partners' compendious structure, former's formation and joint business carried out the former's name followed by distributing profits. There can be no dispute

about the law settled therein. The same; however, does not apply in issue of sec. 10(26) exemption before us in view of our foregoing detailed discussion. We accordingly decline the "lead" case Ita No.348/Gau/2018."

6. On a further appeal, the Hon'ble Meghalaya High Court vide its order and judgment dated 06.07.2023 has set aside the above order and remanded the matter back to the Tribunal for consideration afresh. The relevant observations and direction of the Hon'ble Meghalaya High Court in the said order and judgment are as under:-

1. *"These four appeals involve a common question of law. In short, the issue is whether the ratio decidendi in the judgment reported at (1992) 195 ITR 630 (Gau) (Commissioner of Income-Tax v. Mahari & Sons) would be applicable in these matters. The ancillary issue is whether the dictum in Mahari & Sons still holds good despite apparently contrary judgments of the Supreme Court pronounced in matters pertaining to the interpretation of a taxing statute and the strict interpretation of an exemption clause in a taxing statute.*

2. *In Mahari & Sons, members of a family, all of them tribals and individually entitled to the benefits under Section 10(26) of the Income Tax Act, 1961, were engaged in a business and the question that arose was whether the exemption granted under Section 10(26) of the Act was restricted to an individual or whether the same could be extended to a group of individuals, particularly if they were family members. The Gauhati High Court ruled in Mahari & Sons that when certain individuals who belonged to the same family had set up a business jointly, they would be entitled to the benefit of the exemption under Section 10(26) of the Act.*

3. *In the common judgment and order of the Income-Tax Appellate Tribunal impugned herein, the Tribunal found that the law laid down in Mahari & Sons no longer held good. The basis for such view was that subsequent judgments of the Supreme Court had discredited the previous principle that a taxing statute had to be interpreted strictly and the benefit of*

the doubt had to be given to the assessee. The Tribunal was of the opinion that the law as it now stands is that the taxing statute has to be interpreted strictly but it no longer holds good that the benefit of any doubt would go to the assessee. Several Supreme Court judgments have been read by the Tribunal in the impugned order to lay down the law in such regard.

4. *The further ground indicated in the impugned order is that at any rate, it is axiomatic that when a juristic entity seeks to claim a benefit of an exemption, it must fall within the class or classes of persons to whom the exemption has been extended and that an exemption clause cannot be charitably interpreted to enlarge the scope thereof and confer benefits on others not specifically intended to be covered by the same. In such regard, the Tribunal has held in the order impugned that when Section 10(26) refers to an individual being a member of a relevant scheduled tribe and the income of such person accruing in one of the notified areas, the benefit under such exemption could not be extended to persons other than individuals who are defined in the statute as such other persons cannot be regarded as individuals within the restricted meaning of that word in Section 10(26) of the Act.*

5. *In such context, both the Tribunal in the order impugned and the Department in course of the present appeals, have referred to Section 2(31) of the Act and Section 184 thereof. The order impugned has also reasoned that since an individual has to be seen distinct from a partnership firm in view of Section 2(31) of the Act, when an assessee is an association of persons belonging to the same scheduled tribe where their incomes accrue within a notified area, such assessee will not be entitled to the benefit under Section 10(26) of the Act.*

6. *In the present appeals, in one of the matters the registered partnership firm has a husband and wife as partners. In the other matters, uterine brothers constitute the partnership firm in each case. Going by the dictum in Mahari & Sons and, particularly, the interpretation of the concept of family made therein, it would appear that an association, even if it be a*

partnership, between a husband and wife or between a brother and another, would be entitled to the same exemption as any of the partners would in their individual capacity.

7. *It cannot also be missed that the rule which has been enunciated in Mahari & Sons has held the field for more than three decades and persons may have organised their businesses in accordance therewith.*

8. *There is no doubt that the Appellate Tribunal noticed the dictum in Mahari & Sons in the common order impugned and, in effect, held that such rule was per incuriam or, at any rate, no longer good law in view of subsequent Supreme Court pronouncements. However, the exercise appears to have been done in a rather cavalier manner without covering the entire gamut of the discussion possible on the issue. For instance, the Tribunal makes no distinction in the order impugned between a partnership firm with close relatives as partners and any other partnership firm where the partners are unrelated. Despite the recognition of the wide ambit of what can be called family business in Mahari & Sons, the order impugned places reliance only on the fact that close relatives had formed a partnership firm while missing out the applicability of the dictum in Mahari & Sons by virtue of the partners being close relatives.*

9. *At any rate, none of the Supreme Court judgments referred to in the order impugned by the Tribunal expressly deals with the situation covered by Mahari & Sons. The general dicta pertaining to interpretation of a taxing statute and an exemption clause contained in a taxing statute have been relied upon by the Tribunal in the order impugned dated September 13, 2019 to come to a conclusion that the principle enunciated in Mahari & Sons no longer holds the field.*

10. *At the same time, when Constitutional Courts take up challenges to orders passed by a specialised tribunal, such courts have to tread with extreme care and caution. A body that deals with a particular type of matters on an everyday basis would be expected to have greater command over the law applicable in the field and a Constitutional Court would*

not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost outlandish.

11. Balancing both sides – the fact that the dictum in Mahari & Sons has held the field for three decades and the recognition that the order impugned has been rendered by a specialised tribunal – it is deemed fit and proper to remand the matter before the Appellate Tribunal with a request to the President of the Tribunal to constitute a larger bench without including either member who was a party to the order impugned, for the consideration of the entire gamut of the matter. The President is requested to ensure that a larger ench of at least three members is constituted within a month of the receipt of an authenticated copy of this order with a request to the relevant bench to dispose of the legal issue which has arisen as expeditiously as possible and, preferably, within three months of the first sitting of such bench.

.....
13. None of the observations herein would stand in the way of the special bench of the Appellate Tribunal deciding the primary legal issue in accordance with law."

7. In view of the directions of the Hon'ble Meghalaya High Court, we proceed to decide the issues afresh.

8. Shri Sanjay Modi, the ld. AR of the assessee, has not only addressed the Bench orally but later on also sent written submissions through email, which have been taken on record which are summarized as under:

(i) That prior to March, 2013 when Hon'ble Meghalaya High Court came to be established, the Gauhati High Court was Common High Court also for the State of Meghalaya and hence, its decision

of December 07, 1991 is the decision of the Jurisdictional High Court.

(ii) The decision of the Hon'ble Guwahati High Court in Mahari & Sons (supra) has also become final as SLP preferred by the Revenue there against was dismissed by the Hon'ble Supreme Court in SLP No. 3499-502/91.

(iii) That the Hon'ble Guwahati High Court in the case of Mahari & Sons (supra) has held that the word 'family' refers to a group of persons consisting of parents and children, spouse, brother, sister etc. who are related to each other. That a Khasi family would mean a group of Khasis who are blood relatives or who spring from a common root. That the benefit of exemption under section 10(26) will be available even in cases where the income accrues not to an individual member of Khasi Tribe, but to a family comprising such members.

(iv) That Section 10(26) is a beneficial provision intended to provide protection to the members of the Scheduled Tribes from the burden of income-tax and therefore, it should be interpreted liberally.

(v) That in the decision of the Hon'ble Supreme Court in **Commissioner of Customs (Import) v. Dilip Kumar and Company & Ors. [2018] 9 SCC 1 (SC)** referred to in order of the

Tribunal dated 13.09.2019, it has been held that Exemption notification should be interpreted strictly and that When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

(vi) That the judgment dated July 30, 2018 in **Dilip Kumar & Co., (supra)** came up for consideration by the Hon'ble Supreme Court on March 01, 2021 in **Government of Kerala v. Mother Superior Adoration Convent 2021 SCC Online SC 151** wherein the Hon'ble Supreme Court has explained that there is **a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose.** That, the Hon'ble Supreme Court in **Mother Superior** (supra) has laid down that while applying rule of interpretation one has to distinguish exemption provisions generally on the one hand and on the other hand exemption provisions which have a beneficial purpose. In case of general exemption provision the rule of strict interpretation will apply. However, in case of beneficial exemption provision, liberal rule of construction shall apply and if any ambiguity arises in construction, such ambiguity must be in favour of that which is exempted.

(vii) That the object and purpose of section 10(26) of the Act is to ensure growth, progress and economic development of the scheduled tribe areas. That the Hon'ble Supreme Court in

Income-tax Officer v. N. Takin Roy Rymbai [1976] 103 ITR 82 (SC), has also held so.

(viii) That the only difference in the present matters and the facts in the case of **Mahari & Sons** (supra) is that in Mahari & Sons joint income was of group of members of Scheduled Tribe who were relatives and joint income was assessable in the status of 'BOI' [Body of Individuals] whereas in the present matters such joint income of group (two) of members of Scheduled Tribe who are also relatives and family members is assessable in the status of 'Firm' [Partnership Firm].

(ix) That it has been held by various courts of law that a 'Firm" is an '**association or body of individuals'**. It is a a conglomeration of individuals who carry on some activity with the object of earning income. In the instant matters, also both the firms are also a conglomeration of two individuals only who carry on activity with the object of earning income.

(x) That under section 2(31) of the Income Tax Act , it has been provided that the words 'Firm' or 'Partnership' shall have the same meaning as assigned to them in the Indian Partnership Act, 1932. Whereas as per section 4 of the Indian Partnership Act, 'Partnership' is a '**relation' between 'persons'**. The entities who enter into relationship as partners have to be 'Persons'. But, 'Partnership' is merely a 'relationship' and the same is not person per se.

(xi) That in the instant matters, the income of Firm is joint income of two members of Scheduled Tribe and the are entitled to exemption u/s 10(26) of the Act not only individually but jointly also.

(xii) That the Hon'ble Gauahti High Court in **Mahari & Sons** (supra) has allowed the benefit of section 10(26) to the Khasi family which was assessed in the status of Body of Individuals (BOI) which is defined as a separate person u/s 2(31) of the Act. The same analogy can be extended in the case of 'Firm' also. That the benefit of provisions of section 10(26) cannot be denied by making a distinction that such joint income of members of Scheduled Tribe is assessable in the status of 'Firm' and not 'BOI'.

(xiii) That the object and purpose of section 2(31) of the Act is only to establish distinct units of assessment for the purpose of Income-tax Act so as to facilitate assessment of joint income when earned collectively. The object is not to confer a full-fledged legal personality to such units of assessment.

(xiv) That the Hon'ble Supreme Court has repeatedly held in a plethora of decisions that under Income Tax, for purposes other than for process of assessment and powers to be exercised in process of assessment, partnership firm is only a compendious form of indicating partners thereof and not a legal entity. Partners

are collectively called firm. The partnership firm and the partners are one and same in the eye of law including Income-tax Act. Reliance has been placed on the following case laws:

i) ITO v. Arunagiri Chettiar (1996) 220 ITR 232 (SC) / 1996 (9) SCC 33
ii) Dulichand Laxminarayan v CIT (1956) 29 ITR 535 (SC) (Larger Bench) –
iii) CIT v. R. M. Chidambram Pillai (1977) 106 ITR 292 (SC)/1977 AIR 489:
iv) CIT v. Ramniklal Kothari (1969) 74 ITR 57 (SC)
v) N. Khadervali Saheb and another v. N. Gudu Sahib (Decd.) and others [2003] 261 ITR 1 (SC)(Larger Bench)
vi) CIT v. Lokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj):
vii) CIT v. V. Sivakumar [2013] 354 ITR 9 (Mad):
viii) CIT v. Muthoot Financiers [2015] 371 ITR 408 (Delhi)
ix) Malabar Fisheries Co. v. CIT (1979) 120 ITR 49 (SC).

(xv) That had 'Firm' or 'AOP' or 'BOI' been a legal entity separate and independent from the partners or members constituting the same, there would not have been any need to enact separately provisions of section 45(3) and 45(4) of the Act read with section 9B of the Act. If such an unincorporated body would have been a legal entity for the all the purposes of Income Tax, in that case, any transfer of capital asset by a partner to Firm or by a member to Association of Person or Body of Individuals, or vice-versa would have been covered by provisions of section 45(1) itself.

(xvi) That further, the provisions of section 28(v) of the Act read with Explanation 2 to section 15 also evidences that under the scheme of the Income Tax Act, 1961, business done in the name of the 'Firm' is treated as business of partners. Any amount apportioned by the Firm to a Partner as 'Salary' or 'Interest', is charged to tax in the hands of the partner as his business income under the head 'Profit and Gains from Business or Profession' under section 28(v). If 'Firm' was treated as a separate legal entity, the 'Salary' received by Partner would have been assessed under the head 'Income from Salary' under section 15 and similarly,

'interest' would have been charged to tax under the head 'Income from Other Sources' under section 56.

(xvii) That the dictum of the decision of the Hon'ble Common High Court in **Mahari & Sons** (supra) is holding field for the last more than 32 years and rule of certainty and consistency of law is applicable.

(xviii) Thus, in the decision of the Hon'ble Supreme Court in the case of **Jullunder Vegetables** (supra) is in the context of power of taxing authority to make an assessment; when a partnership firm is treated as a separate unit of assessment by the concerned taxing statute. This decision does not lay down that even for purposes which does not involve powers to be exercised in connection with procedure of assessment or process of assessment, the partnership firm is to be treated as a separate legal entity. It is a well settled position of law that a decision is only an authority for what it decides and not what may logically follow from it.

(xix) That there are plethora of decisions of the Hon'ble Supreme Court, wherein it has been categorically and repeatedly laid down that even for purposes of Income Tax Act the partnership firm is not a legal entity or person but merely a collective name of persons who chose to become a partner in the said partnership firm. The Hon'ble Supreme Court itself vide its decision dated May 07, 1996 in the case of **Arunagiri Chettiar** (supra) has explained that, "It is true that under the Income- tax law a firm is treated as an entity distinct from its partners, but that is so only for the purposes of assessment."

9. The sum and substance of the entire argument of the ld. AR of the assessee is that a partnership firm is not a juristic or legal person distinct from its partners, rather, it is the collective or compendious name of the partners who have joined together to carry on some activities with the object of earning income. It has been submitted that the partners in the firm were related to each other and both the

partners belong to Khasi tribe whose income was exempt u/s 10(26) of the Income Tax Act. That the dictum of the decision of the Hon'ble Guwahati High Court in the case of "Mahari & Sons (supra)" as propounded in the case of the "family" is squarely applicable in the case of the assessee partnership firm also. Further that the exemption is granted u/s 10(26) of the Act to the Khasi tribe residing in the specified area with the object and purpose of growth progress and economic development of the Scheduled Tribes residing in a backward area. The provisions of Section 10(26) of the Act for particular community and area should be interpreted liberally.

10. The ld. DR, on the other hand, has relied upon the decision of the lower authorities as well as of the decision of the Tribunal dated 13.09.2019. The case of the revenue is that the partnership firm under the Income Tax Act is a separate and district entity and is assessed separately from its partners. That the benefits, if any, available to the individuals cannot be conferred upon the partnership firm, even though, such partnership firm consists of such individual partners who are eligible of benefits in their individual capacity.

11. We have given our thoughtful consideration to the rival submissions of Ld. Representatives of the parties.

12. The Hon'ble Meghalaya High Court has directed to refer this matter to the Larger Bench of the Tribunal observing that the Division Bench of the Tribunal has made no distinction between a partnership firm with close relatives as partners and any other partnership firm where the partners are unrelated. That the Tribunal has not taken into

consideration the concept of the 'family business' as ruled in the case of 'Mahari & Sons,' and missed out the applicability of the said dictum in Mahari & Sons by virtue of the partners being close relatives and further that even none of the Supreme Court judgments referred to in the order impugned by the Tribunal expressly deals with the situation covered by Mahari & Sons. To address this issue, we deem it appropriate to refer to the relevant statutory provisions the Income Tax Act,1961 and Indian Partnership Act, 1932:

That the provisions of section 2(31) of the Act which defines 'Person' as under:-

> *"2. In this Act, unless the context otherwise requires,-*
>
> *….*
>
> *(31) "person" includes –*
>
> ***(i) an individual,***
>
> *(ii) a Hindu undivided family,*
>
> *(iii) a company,*
>
> ***(iv) a firm,***
>
> ***(v) an association of persons or a body of individuals, whether incorporated or not,***
>
> *(vi) a local authority, and*
>
> *(vii) every artificial juridical person, not falling within any of the preceding sub- clauses;"*

13. A perusal of the afore reproduced provisions of the Income Tax Act, 1961 reveals beyond doubt that under the Income Tax Act, a firm has been specifically included in the definition of person and is treated at par with every artificial juridical person .

14. Section 2(23) of the Income Tax Act defines 'Firm', 'Partner' and 'Partnership' as under:-

"2. In this Act, unless the context otherwise requires,-

….

(23) (i) "firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);

(ii) "partner" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include,—

(a) any person who, being a minor, has been admitted to the benefits of partnership; and

(b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);

(iii) ***"partnership" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932****), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);*

15. Section 4 of the 'Indian Partnership Act, 1932' inter-alia defines 'Partnership' and 'Firm' as under:

"Section 4 :
DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM NAME".

*'****Partnership****' is the* ***relation between persons*** *who have agreed to share the profits of a business carried on by all or any of them acting for all.*

Persons who have entered into partnership *with one another are called individually 'Partners' and* ***collectively 'a firm'****, and the name under which their business is carried on is called the 'firm name'."*

16. The relevant provisions of the Limited Liability Partnership Act, 2008, are also reproduced as under:

"Sections

***2(d) : "body corporate**" means a company as defined in 4[clause (20) of section 2] of 3[the Companies Act, 2013 (18 of 2013)] and includes—*

(i) a limited liability partnership registered under this Act;

(ii) a limited liability partnership incorporated outside India; and

(iii) a company incorporated outside India, but does not include—

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate (not being a company as defined in 4[clause (20) of section 2] of 3[the Companies Act, 2013 (18 of 2013)] or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

***3. Limited liability partnership to be body corporate**.—*

(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

***4. Non-applicability of the Indian Partnership Act, 1932**.—*

Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership."

17. Under Section 2(23) of the Income Tax Act, 1961, the firm and partnership have the meaning as assigned to them in Indian Partnership Act, 1932, but also includes in them limited Liability partnership as defined under Limited Liability Partnership Act, 2008. Section (2(d) of Limited liability Partnership Act, 2008 defines 'body corporate' as a company as defined under companies Act, and includes

a LLP. Section 3 of Limited Liability Partnership Act, 2008 specifically states that an LLP under the said Act of 2008 will be a body corporate and a legal entity separate from its partners. Though, section 4 of the Limited Liability Partnership Act, 2008 specifically bars the applicability of the Indian Partnership Act 1932 to a limited liability Partnership, however, the special provisions of the Income Tax Act do not differentiate between a Partnership Firm as defined under the Indian Partnership Act, 1932 and Limited Liability Partnership firm (LLP) as defined under Limited Liability Partnership Act, 2008 (6 of 2009). The inclusion of the Limited Liability partnership into the definition of firm makes it clear that a firm is separate assessable legal entity and it does not distinguish between a body corporate or not.

18. Under the Income Tax Act, a partnership firm is a separate and distinct "person" assessable to Income Tax. There are separate provisions relating to the rate of Income Tax, deduction and allowances etc. in relation to a firm as compared to an individual. The benefits in the shape of deductions or exemptions available to an individual are not transferrable or inter-changeable to the firm nor the vice versa. The firm in general law may not be treated as a separate juristic person, however, under the Income Tax Act, it is assessable as a separate and distinct juristic person. The Income Tax Act is a special legislation, therefore, the interpretation given in general law cannot be imported when the special law defines the "firm" as a separate person assessable to Income Tax.

19. As per Section 2(a) of the Indian Partnership Act 1932, any act or omission by all or any of the partners is treated as an act of the firm, giving rise to a right enforceable by or against the firm; which means,

rights can be enforced in the court of law by or against a firm. Section 5, about which we will make more discussion in later part of this order, states that partnership is created by contract between the partners and not by their status being members of a HUF or family. As per Section 10, every partner has a duty to indemnify the firm for any loss caused by his fraud in the conduct of business. The rights and duties between the partners are determined by contract between them and not by their status and even such contracts may provide that a partner shall not carry on any business other than that of the Firm while he is a partner. As per Section 14, the firm holds the property which includes goodwill of business also, which, as per section 15, is to be used by partners exclusively for the purpose of the business of the Firm. Even as per section 16, if personal profits are derived by a partner from any transaction or from the use of the property, business connection or even firm's name, he shall account for that profit and pay the same to the firm. Even if a partner carries on any business in competition with that of the firm, he is liable to pay the firm all profits made by him in that business. As per section 18, a partner is the agent of the firm for all purposes of the business of the firm. The act of the partner binds the firm towards third parties. A firm has its intellectual properties such as trademark, trade name, goodwill, etc. which cannot be used by the partners in their individual capacity and even an outgoing partner, subject to a contract to the contrary, is not entitled to use firm's name or represent himself on behalf of the firm.. Even after a firm is dissolved, in the absence of a contract to the contrary, a partner may restrain other partner or his representative from carrying on similar business in the firm's name. Even name and goodwill of a firm can be sold to third parties, who thereafter, can use the same for their

business. Section 56 to Section 70 prescribe for registration of firms and effect of non-registration etc. A firm can be duly registered with the registrar of the firms. Section 69 prescribes effect of non-registration of the firm. As per section 69 (1), no partner can sue for a right, arising out from a contract or conferred by the Act, against the firm or any other partner unless the firm is registered and the person suing in shown in the register of firms as partner. As per sub-section (2), no suit can be brought by or on behalf of a firm to enforce a right arising from a contract against a third party unless the firm is registered. Sub-section (3) prescribes that the aforesaid disabilities shall not affect the enforcement of any right to sue in case of a dissolved firm. Section 70 makes it punishable to give false particulars in respect of registration of firms. Further, as per Order 30 Rule 1 of the Civil Procedure Code, a firm can sue or be sued in its name. When the aforesaid provision of the Partnership Act 1932 are read together with the relevant provisions of the Income Tax Act and The Code of Civil procedure, it leaves no doubt in our mind that for the purpose of Income tax Act, a partnership firm is a separate assessable legal entity which has can sue or be sued in its own name, can hold properties, and is subjected to certain restrictions for want of non-registration. Merely because the liability of the partners is unlimited or to say that the rights against the firm can be enforced against the individual partners also, that, in our view, is not enough to hold that partnership is not a distinct entity from its individual members under the Income Tax Act, especially when in the definition of person under the income tax act, corporate and non corporate , juridical and non juridical persons, as mentioned therein, have been included as separate assessable entities. Moreover, as discussed above, there are many rights and obligations and restrictions of the partners to

and against the firm which have been prescribed, which distinguishes a firm from its partners as separate entity.

Therefore, the contention of the Ld. Counsel that section 2(23) of the Income Tax Act gives meaning to firm, partner and partnership as defined in the Indian Partnership Act, 1932, in our view, does not, in any way, effect, take-away or exclude the "firm" from the definition of "person" as defined u/s 2(31) of the Income Tax Act. Under the relevant provisions of the Indian Partnership Act, 1932, the "partnership firm" has been defined as a relationship between the persons who have agreed to share the profits of the business carried on by all or any of them acting for all and the persons who have entered into partnership with one another is called individually partners and collectively a firm. The contention of the ld. AR is that the partnership is a relation between "persons" and that partnership is not a person in itself. The aforesaid contention of the ld. AR in the light of the specific definition given of the word "person" u/s 2(31) of the Income Tax Act and in view of the discussion made above, in our view, is misconceived and not tenable.

20. The Hon'ble Supreme Court in the case of "**Dy. Commissioner of Sales Tax vs. K. Kelukutty" reported in (1985) 22 Taxman 25(SC)** has held *"therefore, a partnership firm must be regarded under that Act as an assessable entity separate and distinct from its individual partners. That would be in line with the view taken by this Court respecting a partnership firm as an assessable entity under the Income Tax Act.* ***See Commissioner of Income-Tax, West Bengal v. A. W. Figgies and Company and Others(2).*"** The Hon'ble supreme court further held that even two firms consisting of exactly same partners,

carrying on different businesses could not be treated as a single partnership firm for the purpose of sales tax assessment on turnover of both the businesses. The Hon'ble Supreme Court referring to the decision in the case of ***"Watson & Everitt v. Blunden [1933] 18 TC 402(CA)"*** which has been further approved by the House of Lords in ***"CIT v. Gibbs [1942] 10 ITR 121 (Suppl.)"*** has held that what is that for the purposes of assessment to tax the income of the partnership firm has to be assessed in the hands of the firm as a single unit, the firm itself being treated as an assessable entity separate and distinct from the partners constituting it. The firm is an assessable unit separate and distinct from the individual partners, who as individuals constitute assessable units separate and distinct from the firm. The relevant part of the decision of the Hon'ble Supreme Court in the case of ***"Dy. Commissioner of Sales Tax vs. K. Kelukutty"*** **(supra)** is reproduced as under:

> ***"8.*** *As long ago as Watson & Everitt v. Blunden [1933] 18 TC 402(CA), Romer, L.J. said that for taxing purposes 'a partnership firm is treated as an entity distinct from the persons who constituted the firm'. This dictum was approved by the House of Lords in CIT v. Gibbs [1942] 10 ITR 121 (Suppl.) and was accepted as good law in India in respect of a partnership firm under the Indian Income-tax Act in A.W. Piggies & Co.'s case (supra). What that implies is that for the purposes of assessment to tax the income of the partnership firm has to be assessed in the hands of the firm as a single unit, the firm itself being treated as an assessable entity separate and distinct from the partners constituting it. The firm is an assessable unit separate and distinct from the individual partners, who as individuals constitute assessable units separate and distinct from the firm. It is on that basis that the provisions of the tax law are structured into a scheme providing for the assessment of partnership income. We do not think the principle goes beyond the purposes of that scheme. It does not confer a corporate personality on the firm. Beyond the area within which that principle operates, the general law, that is to say, the partnership law holds undisputed domain.*

9. *Now in every case when the assessee professes that it is a partnership firm and claims to be taxed in that status, the first duty of the assessing officer is to determine whether it is, in law and in fact, a partnership firm. The definition in the tax law defines an 'assessee' or a 'dealer' as including a firm. But for determining whether there is a firm, the assessing officer will apply the partnership law, subject of course, to any specific provision in that regard in the tax law modifying the partnership law. If the tax law is silent, it is the partnership law only to which he will refer. Having decided the legal identity of the assessee, that it is a partnership firm, he will then turn to the tax law and apply its relevant provisions for assessing the partnership income.*

10. *The Kerala General Sales Tax Act contains no provision which bears on the identity of a partnership firm. Therefore, recourse must be had for that purpose to the partnership law alone. Where it is claimed that they are not one but two partnership firms constituted by the same persons and carrying on different businesses, the assessing authority must test the claim in the light of the partnership law. It is only after that question has been first determined, namely, whether in law there is only one partnership firm or two partnership firms, that the next question arises: whether the turnover is assessable in the hands of the partnership firm as a taxable entity separate and distinct from the partners? There is first a decision under the law of partnership; thereafter, the second question arises, the question as to assessment under the tax law. It is clear, therefore, that reference must be made first to the partnership law.*

11. *The Indian Partnership Act, 1932 ('the Act') has, by section 4 of the Act, defined a 'partnership' as 'the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all'. The section declares further that the persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm'. The components of the definition of 'partnership', and, therefore, of 'a firm' consist of (a) persons, (b) a. business carried on by all of them or any of them acting for all, and (c) an agreement between those persons to carry on such business and to share its profits. It is the relationship between those persons which constitutes the partnership. The relation is founded in the agreement between them. The foundation of a partnership and, therefore, of a firm is a partnership agreement. A partnership agreement is the source of a partnership; it also gives expression to the other ingredients defining the partnership, specifying the business agreed to be carried on, the persons who will actually carry on the business, the shares in which*

> *the profits will be divided, and the several other considerations which constitute such an organic relationship. It is permissible to say that a partnership agreement creates and defines the relation of partnership and, therefore, identifies the firm. If that conclusion be right, it is only a further step to hold that each partnership agreement may constitute a distinct and separate partnership and, therefore, distinct and separate firms. That is not to say that a firm is a corporate entity or enjoys a juristic personality in that sense. The firm name is only a collective name for the individual partners. But each partnership is a distinct relationship. The partners may be different and yet the nature of the business may be the same, the business may be different and yet the partners may be the same. An agreement between the partners to carry on a business and share its profits may be followed by a separate agreement between the same partners to carry on another business and share the profits therein. The intention may be to constitute two separate partnerships and, therefore, two distinct firms. Or to extend merely a partnership, originally constituted to carry on one business, to the carrying on of another business. It will all depend on the intention of the partners. The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and other incidents of the respective businesses."*

21. The aforesaid proposition of law has been reiterated by the Hon'ble Supreme Court in the case of "*CIT vs. G. Parthasarthy Naidy*" reported in (1999) 104 Taxman 197(SC). The hon'ble Supreme court in the case of Commissioner of Income-Tax, West Bengal v. A. W. Figgies and Company and Others reported in AIR 1953 SUPREME COURT 455 has held as under:

> *"The partners of the firm are distinct assessable entities, while the firm as such is a separate and distinct unit for purposes of assessment. Sections 26, 48 and 55 of the Act fully bear out this position. These provisions of the Act go to show that the technical view of the nature of a partnership under English law or Indian law cannot be taken in applying the law of income tax."*

22. The hon'ble Calcutta High Court in the case of Prodip Kumar Bothra v. Commissioner of Income-tax, Kolkata [2012] 18 taxmann.com 177 (Calcutta)has held as under :

> ***"17.*** *As pointed out by a Division Bench of this Court in the case of Sarvamangala Properties Ltd. (supra), under the Indian Partnership Act, a firm is an entity known to law and is capable of acquiring and owning property, both moveable and immoveable, and under the law of income tax in India, a firm owning a property would be liable to taxation. It was further pointed out that under the Indian Income Tax Act, 1922, a firm is a person liable to tax as the owner of the property and under Section 9 thereof, in case of property owned by firm, the same is to be treated as the property of the firm and not of its partners. The same principles have been maintained in the Income Tax Act, 1961."*

23. Interestingly, the Ld. Counsel for the assessee has also referred to the decision of the Hon'ble Supreme court in the case of **State of Punjab v. Jullunder Vegetables 1966 AIR 1295,** which decision has also been relied upon by the revenue. Admittedly, the issue before the Hon'ble Supreme Court was as to whether in absence of any specific provision, the taxing authority has the authority to make an assessment in case of a partnership firm after its dissolution under the East Punjab General Sales Tax Act in respect of turnover affected during its existence. The Hon'ble Court observed that the issue was decided by the Full Bench of the Punjab High Court in favour of the assessee and the main reason for the decision was :

> *"The main reason given by it for its decision was that* ***firm was a separate assessable entity under the Act*** *and that there was no machinery provided under the Act for assessing a firm after its dissolution in respect of its turnover of business before the said dissolution."*

The Hon'ble Supreme Court has observed that as per the provisions of section 2 of the said Sales-tax Act, a partnership firm is a 'dealer', i.e., a separate assessable unit. The Hon'ble Court observed:

> *"A dealer and its partners are jointly and severally responsible to pay the tax assessed on dealer.* ***But, there is no provision***

> ***expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution.*** *The question is whether such a power can be gathered by necessary implication from the other provisions of the Act. The first question is whether a firm is a separate assessable entity for the purposes of the Act or whether it is only a compendious term used to denote a group of partners. The definition of "dealer" takes in three categories of assessable units, namely, person, firm or a Hindu Joint family. The substantive and the procedural provisions of the Act prescribe the mode of assessment and realization of the tax assessed on such a dealer. If we read the expression "firm" in substitution of the word "dealer",* ***it will be apparent that a firm is an independent assessable unit for the purposes of the Act.*** *Indeed, a firm has been given the same status under the Act as is given to it under the Income-tax Act. Under S. 3 of the Income-tax Act "firm" is treated as a unit of assessment and as a distinct assessable entity.* ***Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity.*** *If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no -longer any scope for assessing the firm which ceased to have a legal existence. ….unless there is an express provision, no assessment can be made on a firm which has* ***lost its character as an assessable entity****.*
> *…….There is, therefore, a lacuna in the Act, which was filled up later on by an amending Act; but the said Amending Act, it is conceded, is not retrospective in operation."*

The Hon'ble Supreme Court has also categorically held that the question of statutory power of assessing a dissolved firm with the liability of the partners thereof to pay tax so assessed on the firm before dissolution cannot be mixed up.

24. The Ld. Counsel for the assessee, referring to the above observation of the hon'ble Supreme Court in his written submissions has contended that " the above decision of the Hon'ble Supreme Court in the case of **Jullunder Vegetables** (supra) is an authority for the

proposition that when under a taxing statute, be it income tax or sales tax, partnership firm is treated as a separate assessable unit; the power of taxing authorities to assess such separate assessable unit has to be traced in the respective taxing statute itself. In a case where such statute does not specifically empower the taxing authority to assess an assessable unit after its disruption, such power cannot be read into it by implication. This decision is in the context of power of taxing authority to make an assessment; when a partnership firm is treated as a separate unit of assessment by the concerned taxing statute. This decision does not lay down that even for purposes which does not involve powers to be exercised in connection with procedure of assessment or process of assessment, the partnership firm is to be treated as a separate legal entity. It is a well settled position of law that a decision is only an authority for what it decides and not what may logically follow from it."

The above submissions of the Ld. Counsel, in fact further affirms our view that under the income Tax Act, a partnership is a separate entity distinct from its partners. In case of Jullunder Vegetables (supra) the question before the hon'ble Supreme Court was as to whether in absence of any specific provision, whether assessment of a dissolved partnership firm after its dissolution can be made under East Punjab General Sales Tax Act in respect of turnover affected during its existence. The question was whether assessment can be made or not ? In the case in hand also, the claim of the Ld. AR is that the income of the assessee partnership since exempt, hence not taxable and no assessment is required to be made. The assessees herein even did not file the returns of the income. The hon'ble Supreme Court has held

though under the partnership law a firm is not a legal entity but for tax law, income-tax as well as sales-tax, it is a legal entity. However on dissolution, the firm ceases to be a legal entity. Thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, it can not be done. However, in the case of the assessees herein, the firm has been subsisting firm and there was no provision, either express or implied, that the income of the assessee firm is to be treated as exempt because of the individual status of the partners, therefore the above decision of the hon'ble supreme court is squarely applicable in this case.

The ld. Counsel for the assessee has also placed reliance on another decision of the hon'ble Supreme Court dated May 07, 1996 in the case of **Arunagiri Chettiar** (supra) wherein it has been observed, *"It is true that under the Income- tax law a firm is treated as an entity distinct from its partners, but that is so only for the purposes of assessment.*"

The issue before us is also relating to the assessment of a firm under Income Tax Act, hence, the said decision of the hon'ble supreme court is also squarely applicable.

25. Even under the Negotiable Instruments Act, a firm is treated at par with a company. In explanation to section 141 of the Negotiable Instruments Act it is provided that " "company" means any body corporate and includes a firm or other association of individuals; and director", in relation to a firm, means a partner in the firm". The hon'ble Supreme court in S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan (2023) 10 SCC] i has held that for the purpose of Section 141 of the NI Act, a firm comes within the ambit of a company.

Therefore, the status of the firm is to traced under the respective special statutes and not under the general law.

26. So for as the issue for which the hon'ble Meghalaya High Court has referred this matter by observing that no distinction has been drawn, either in the impugned order of the Tribunal or in the case laws relied upon, regarding distinction between a partnership firm with close relatives as partners and any other partnership firm where the partners are unrelated is concerned, most respectfully, in our humble view, no such distinction can be drawn in case of a Partnership Firm. Having held above that under the Income Tax Act, a Partnership Firm is a separate assessable entity distinct from its partners, we further refer to the following provisions of Indian Partnership Act, 1932:

> ***"Section 5: PARTNERSHIP NOT CREATED BY STATUS****: The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business."*

27. A perusal of the above provision of section 5 of the Indian partnership act would reveal that a partnership is created by contract between the partners and not by their status being members of HUF or of same family. It has been specifically stated that members of a Hindu Undivided Family as such, or a Burmese Buddhist husband and wife, carrying on business are not partners in such business. In the case in hand, even though the partners of the firm are brothers in one case and Husband and wife in another case, but their relation does not affect either the status of the partnership firm nor its taxability in any manner. Partnership arises out from a legal contract of sharing profits of a business and in that case, even in a case of partnership Firm

having partners of a Khasi family only, the mother or wife, as the case may be, being the head named as " Kur" would not be having any dominant position. All the partners, subject to the terms of the contract between them , will have equal status and rights inter se and even equal duties and liabilities towards firm. The profit of the partnership firm are shared as per the agreement/capital contributed by the partners. Neither the capital, nor the profits of the firm can be held to be the joint property of the family. There is no obligation on the partners being related or to say members of the same family to contribute the profits to the other family members or any other obligation towards them.

The hon'ble Meghalaya High Court, in Mohari & Sons case (Supra) has discussed the characteristic of a Khasi family as reproduced in para 10A of the order that in Khasi society, ancestral properties are held by Ka Khaddu for the benefit of the entire family, which is matriarchal. Even self-occupied property of a male Khasi, acquired before marriage and if he dies unmarried, goes to his mother or "Kur". A Khasi husband lives in his wife's mother's house or his wife's house after marriage. Before childbirth, the husband uses his earnings for his wife's maintenance, with surplus going to his kurs. After child birth, husband and wife jointly earn for the child, with the husband often working with his wife or using capital provided by her. Individual property isn't the norm; it's the family unit that's emphasized. While a Khasi male can have personal property, it's often disposed of among relatives, highlighting the family as the primary social unit.

However, such a concept can not be applied to a partnership firm. Even though the partners are husband and wife, the wife can not claim the

entire or higher share of profits in the business of the firm. The concept of family, jointness, family property and the property of the male being put at the disposal of the wife or the mother for common benefit of the family is not applicable in the case of a partnership firm. As discussed above, in a partnership, the relation between the partners is purely contractual and no obligation arises out of the family status or relationship, inter se of the partners. A male member having received his share of profit may apply it as per the societal norms of the Khasi community. However, his rights in the business of the partnership firm as a partner does not get affected in any manner, even though he is or all of partners are members of the same Khasi Family. A partner, irrespective of his relation or status with other partners, enjoys equal rights among all partners subject to the contract between the partners. Under the Income Tax Act, once two or more individuals enter into a partnership agreement and forms a firm, the same becomes a separate assessable entity, different from its partners.

28. An Association of Persons or a Body Of Individuals whether incorporated or not has also been included in the definition of person under the Income Tax Act. AOP (Association of persons) and BOI (body of individuals) under the income Tax Act are general terms which includes different type of societies including co-operative societies, clubs, trusts including charitable trusts, associations and organizations etc. , whether incorporated or not and whether formed with the motive of earning of income or not. Therefore, AOP or BOI are genre in class whereas societies, trusts, clubs etc. are species, which have a common genre 'AOP'. Technically speaking, a firm is also a species with ' AOP' its genre. However, under the Income Tax Act, a firm

is not included under the AOP or BOI but has been given a separate and distinct identity. It is pertinent to mention here that though, certain charitable Trusts and certain type of societies and co-operative societies etc. have not been specifically included in the definition of " Person" under the Income Tax Act, and thus are assessed as " AOP" but special privileges in the shape of deductions and exemptions have been given to them subject to fulfilment of the prescribed conditions. However, such benefits and privileges are not available to members of such Trusts and societies in their individual Capacity. Even such benefits are not available to all type of trusts, societies or institutions, rather it all depends upon their nature and characteristics e.g. their constitution, , object and purpose, nature of their activities ,nature of business carried on, income threshold and even on application of income also. For different type of AOPs, different criterion is applicable. One or more factors or characteristics as prescribed under the Act may be applicable to different type of AOPs. All AOPs are not seen or taxed with the same yard stick. Different type of AOP are entitled to different type of benefits in the shape of allowances, deductions and exemptions. However, this type of differentiation is not applicable in case of firms. The hon'ble Meghalya High Court in the case Mohari & sons (supra) has considered the peculiar characteristics of 'Khasi Family' and held that exemption is available to it being an AOP of a particular species. However, such type of test or distinction is not applicable in case of firms. The relevant provisions as prescribed under the Income Tax Act for taxability of firms, as defined under Indian Partnership Act, 1932, make no distinction between such firms on the basis of their constitution i.e. whether consisting of partners being relatives or not.

Therefore, the dictum given in Mohari & sons , in our humble view, can not be imported in case of partnership firms.

29. Now coming to the next contention raised by the Ld. AR. The share of profit which has already been subjected to Income tax in the hands of the partnership firm, is not subjected again to taxation in the hands of individual to avoid double taxation of the same amount as it would create hardship and discourage the partnership business. However, that, in our view, does not mean that the individual partners and the firm are one and the same entity and that the tax benefits available to a partner in his individual capacity will also be available to the firm or vice-versa.

Let us take the case of a Hindu Undivided Family (HUF) which has also been recognized as a separate assessable person under the Income Tax Act. The standard deduction as available to an individual is also available to the HUF, which is formed of such individuals. The property of the HUF is property of its members. An HUF in general law is not a separate and distinct entity from its members, however, under the Income Tax Act, it has been recognized as a separate entity. If the individual members of an HUF earn income in individual capacity and they also earn some income collectively through and in the name of HUF, separate standard deduction is permissible both to the HUF and to the individual. It, under the circumstances, amounts to benefit of double deduction as the income of the individual and the HUF was not clubbed. If the argument of the Ld. AR is to be accepted then the HUF being the common or collective name of the Hindu Undivided Family having no separate or distinct entity should not be treated as a separate assessable person and in such a case, the income of the HUF will be

added as per their share in the properties/income of HUF in the income of the individuals and in that case, the double benefit of standard deduction will not be available and the income being increased will also be subjected to higher rate of tax. But, under the Income Tax Act, HUF has been regarded as separate and distinct entity even from the individual family members of the HUF, however, it is not so regarded in general or civil law.

30. The next contention of the Ld. Counsel that "had 'Firm' or 'AOP' or 'BOI' been a legal entity separate and independent from the partners or members constituting the same, there would not have been any need to enact separately provisions of section 45(3) and 45(4) of the Act read with section 9B of the Act" seems to have no force. Section 9B inserted by the Finance Act, 2021 read with section (45(4) says that where a 'specified person' (partner or member) receives any capital asset or stock in trade or both in connection with the dissolution or reconstitution of a specified entity (Firm AOP), then any profits and gains arising from transfer of a capital asset or stock in trade shall be chargeable to tax in the hands of the specified entity viz. firm, AOP or BOI. However, the income chargeable to income-tax would be the amount received in excess of the balance in capital account of the recipient partner. The purpose is only to tax the profit element in relation to stock in trade and value of appreciation in capital received by the partners on dissolution or reconstitution of firms or AOP. Section 45(3) of the Act, in fact specifically recognizes the separate entity of firms different from its' partners. At the time of transfer of a capital asset by a partner to a firm by way of capital, the amount of value recorded in the books of the firm is treated as the transfer/sale value of

such asset and the difference/appreciation in the price is charged as capital gains tax. These provision clarify that by contribution of asset by a partner to the firm, it is treated as " "transfer" of asset by the partner to firm. It becomes the property of the firm. The partner loses its exclusive ownership over such asset. It is settled law that no one can transfer a property to himself. This section declares that partners and the firm are separate entities and transaction of transfer of asset by partner to firm is subjected to tax. So far as the salary or the interest income received by a partner is taxed as business income is on the basis that such receipts are out of the business income of the firm which are chargeable at the hands of the partners but the character of such receipts is not changed. These provisions, in no way , implies that the firm and partners are not separate entities under the Act.

31. Though, it is true, as held in various decisions of the Hon'ble Supreme Court as referred to by the ld. AR that the beneficial and promotional exemption provision should be given liberal interpretation. However, in our humble opinion, liberal interpretation does not mean that the benefit of such exemption provision could be extended to bypass the express provisions of the fiscal law, which as held time and again has to be construed strictly. The exemption u/s 10(26) of the Act has been specifically conferred on members of the Scheduled Tribe residing in the specified area. This exemption, in our view, cannot be extended to another separate and distinct "person", that is the partnership firm, though such partnership firm consist of the individual partners who in their individual capacity are entitled to such exemption. A partnership firm is a separate and district entity under the Income Tax Act and as observed above, its income is separately

assessable subject to admissible exemptions and deductions. It has been held time and again that the benefit of deduction of loss/depreciation etc. in case of a partnership firm cannot even be transferred and taken into consideration for the purpose of assessment of income of another partnership firm consisting of same members, what to say of adjustment of the same in the income of the individual. Even if by any reason the Assessing Officer fails to assess the income of a partnership firm or there is an escapement of some income of the partnership firm, such an escaped income cannot be assessed in the hands of the individual at the time of his assessment in the individual capacity despite the fact that the share of profit from the partnership firm is not taxable in the hands of the individual. The proposition of law in general cannot be imported in a fiscal statue where there are special and express provisions relating to such subject-matter.

32. There is a separate proforma of information required in case of firm as compared to an individual. The individual members of the Scheduled Tribe whose income is exempt under the Income Tax Act, are even not supposed to file the Income Tax Return subject to the fulfilment of the relevant conditions as prescribed under law. Though, a firm may consist of partners who belong to the exempted category of Scheduled Tribe in their individual capacity, however, there will be not any mechanism available to the Assessing Officer to know that such a firm consists of the individuals whose income is exempt or not. Suppose a firm is consisted of partners, some of whom fall in the exempted category and the others not, and such a firm does not file its Income Tax Return, the Assessing Officer will not have any mechanism to assess the income of such a firm as the Assessing Officer will not have

any information about the individual status of the partners of the firm. Suppose a male member of the Scheduled Tribe of exempted category marries to a girl of non-exempted category and that girl becomes the members of the HUF, we ask ourselves whether in such a condition the income of the HUF or to say of the family will be exempt u/s 10(26) of the Act?, the answer obviously will be "no". Though an argument will be there that the exemption will be allowable if all the members of the family/HUF are of the exempted category, but the question before us is how the Income Tax Authorities would know that in the family one member is of non-exempted category. There is no such mechanism available to the Income Tax Authorities to know the status to each of the member of a family/HUF and even in the case of a partnership firm. The partners in a firm may change during the year, replacing a non-exempted category partners with an exempted category partner. Can under such circumstances it be argued that income of the firm is exempt on the ground that the firm at the end of the year was having partners of the exempted category only and the Assessing Officer having no such information of change of partners. The answer, in our view, will be negative. What we want to convey with our above discussion is that under the Income Tax Act, the exemption of 10(26) of the Act is available to the individual members of the Scheduled Tribe and that this benefit cannot be extended to a firm which has been recognized as a separate assessable person under the Income Tax Act. The advantages and disadvantages conferred under the Act on separate class of persons are neither transferrable nor inter-changeable. The scope of the beneficial provisions cannot be extended to a different person under the Act, even after liberal interpretation as it may defeat

the mechanism and process provided under the Income Tax Act for assessment of different class/category of persons.

In view of the discussions made above, both the proposed questions as noted in the opening para of this order are answered in negative by holding that a partnership firm being a separate assessable 'person' under the Income Tax Act, would not be entitled to the same exemption u/s 10(26) of the Income Tax Act, 1961 as any or all of the individual partners would be in their individual capacity and further that the ratio decidendi in the judgment of Hon'ble Gauhati High Court in CIT v Mahari & Sons (1992) 195 ITR 630 (Gau) in context of a 'Khasi family' would not be applicable in case of a partnership firm, though consisting solely of partners, who in their individual capacity are entitled to exemption u/s 10(26) of the income Tax Act, 1961.

33. In view of the above conclusion drawn, all the captioned appeals of the two assessee-partnership firms are hereby dismissed.

34. Before parting, it is pertinent to mention here that this case was physically heard on 04.12.2013. Since, the ld. AR also requested to furnish written submissions, the parties were directed to file their written submissions within 10-15 days. The written submissions of the ld. AR of the assessee were received on 25th December 2023 through email, however, the same could not be downloaded/printed due to some technical error. Thereafter, the hard copy and soft copy of the submissions were furnished/received on 22.02.2024. Thereafter, the order was dictated which is hereby pronounced within 30 days from the date of receipt of the written submissions of the assessee and well within the prescribed period of 90 days from the date of

furnishing/conclusion of the arguments through oral as well as written submissions.

Order pronounced on the 19th March, 2024.

Sd/-	Sd/-	Sd/-
[Rajpal Yadav]	**[Dr. Manish Borad]**	**[Sanjay Garg]**
Vice-President	**Accountant Member**	**Judicial Member**

Dated: 19.03.2024.
RS

Copy of the order forwarded to:
1. (i) M/s Hotel Centre Point, Shillong
   (ii) M/s Ri-Kynjai Serenity By The Lake, Shillong
2. (i) ITO, Ward-1 & TPS, Shillong
   (ii) ITO, Ward-2, Shillong
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches