INCOME TAX: Where assessee, a partnership firm, claimed exemption under section 10(26) contending that partners of firm belonged to Khasi Scheduled Tribe under article 366 of the Constitution and, thus, firm was entitled to section 10(26) exemption, since a partnership firm cannot be accepted as a member of Scheduled Tribe, said exemption could not be granted to assessee

[2019] 109 taxmann.com 223 (Guwahati - Trib.)

IN THE ITAT BENCH GUWAHATI

Hotel Centre Point

v.

Income Tax Officer

S.S. GODARA, JUDICIAL MEMBER
AND DR. A.L. SAINI, ACCOUNTANT MEMBER
M.A. NOS. 3 TO 6 (GAU.) OF 2016 & OTHS.
SEPTEMBER 13, 2019

Sanjay Modi *for the Appellant.* **Sandeep Sengupta** *for the Respondent.*

ORDER

S.S. Godara, Judicial Member - These two assessees have filed their instant four miscellaneous application(s) u/s. 254(2) of the Income Tax Act, 1961, in short 'the Act' seeking to recall our *ex parte* order(s) dated 01.07.2019 dismissing the main appeal(s) on account of non-prosecution since their Authorized Representative could not appear on account of medical issue.

Heard both the assessee and the Revenue.

2. The assessees have filed medical record of the learned authorized representative that his absence in the main cases' on 01.07.2019 heard on account of illness. The Revenue is fair enough in not disputing correctness all these averments. We therefore recall our order(s) dated 01.07.2019. All these four miscellaneous applications MA No.3-5/Gau/2019 & 06/Gau/2019 are accepted. The corresponding four appeal(s) ITA Nos. 348-351/Gau/2018 are restored at their original number(s).

With the consent of all the learned representatives appearing at the assessees' and Revenue's behest, we have heard these four main cases as well.

3. The assessees' identical sole substantive ground pleaded in these appeals is that the Assessing Officer as well as CIT(A) have erred in denying sec. 10(26) exemption relief to the two partnership firms. We thus treat former assessee M/s Hotel Centre Point Shillong's appeal No. 348/Gau/2018 for assessment year 2013-14 as the "**lead**" case.

ITA No.348/Gau/2018 AY 2013-14:-

4. We start with the basic relevant fact qua the instant sole issue of denial of sec.10(26) exemption to the assessee/partnership firm. This taxpayer is a partnership firm running its eponymous hotel business under the name and style of M/s Hotel Centre Point at Shillong. It consists of two partners S/Sh Prabhat Dey Sawyan, son of Ka Lisimon Jaid Dkhar residing at Lower Mawprem, and Mr. Walamphang Roy son of Pismon Jaid Dkhar resident of Umsohsun, Shillong. Both these partners are khasis by tribe is a

schedule tribe in the state of Meghalaya. They are residents of Khasi Hills Autonomous District covered under the Constitution of India, VIth Schedule part-II of the table. There is no quarrel that the assessee's both these partners' income enjoy sec. 10(26) exemption. The Assessing Officer's assessment order dated 13.07.2017 suggests that the assessee had not filed its return at the first instance. This firm was treated as a non filer liable for sec. 266 proceedings as per the CBDT's instruction dated 07.07.2015. The assessee's response pleaded for exemption as a firm consisting of two partners covered u/s 10(26) of the Act. It quoted a catena of case law *ITO* v. *N. Takim Roy Rymbai* (1976) 103 ITR. 82 (SC) *CIT* v. *Marbaniang* (1973) 202 ITR 502 (Gau.) and *CIT* v. *Mahari & Sons* (1992) 195 ITR 630 (Gau.) to strengthen its case.

5. The assessee further stated before the Assessing Officer that sec. 2(31) envisages that a partnership firm is treated as an independent and distinct jurisdict person for the purpose of framing assessment. It quoted sec, 10(26) of the Act also that since both its partners are eligible for 10(26) exemption, the very benefit ought to be extended to the firm as well. It referred the relevant provisions in the Indian Partnership Act, 1932 *inter alia* to explain that a partnership is only collective or compendious name for all of its partners having no independent existence without them. The partners undertake to bring a firm into existence by their mutual consent to carry out all activities and works. And that the firm lasts till its partners exist and if the partners are not there, a firm gets dissolved. A partnership firm has no independent function except those carried out by the partners in its name. It further stand was that a firm is not a juristic person or a legal entity alike a company or a corporation.

6. The assessee further submitted before the Assessing Officer that the relevant provisions in the partnership law do not recognize a firm as a separate independent entity or a person in law since it is merely an association or construction of persons agreeing or carry on a business with a motive to share the partners. And that partnership firms are not entitled to enter into partnership with another firms or individuals and it is also not a legal personality distinct from its partners since the partner's only share profits. The Assessing Officer saw no merit in assessee's foregoing explanation. He quoted sec. 4(1) of the Act in the nature of the basic charging provision applicable in respect of the total income of the previous year of every person. Section 2(31) defined a "**person**" to include a firm as well. This followed reference to u/s 2(23) of the Act defining a firm, partner and partnership to be having the same meaning assigned to them under the Indian Partnership Act 1932. The Assessing Officer observed in the light of these provision of the Act that it was clear that a firm is a "**person**" chargeable to income-tax as per corresponding rates prescribed in the statute.

7. Relevant assessment order dated. 13.02.2017 indicates that the assessee had also furnished a copy of its partnership deed during the course of assessment. The Assessing Officer estimated its gross profit @ 3.5% on the total turnover of Rs. 6,65,84,000/- after holding the assessee not to have submitted books of account and vouchers for necessary factual verification of the corresponding business expenses. He therefore accordingly declined the assessee's foregoing explanation to conclude that sec. 10(26) of the Act does not include a partnership firm for the purpose of granting exemption. All this resulted in consequential addition of Rs. 23,30,440/- made in assessee's hands.

8. The CIT(A) upholds the Assessing Officer's action as under:-

> "4. Ground No. 1.
>
> The ground is directed against denial of exemption u/s 10(26) in the case of assessee partnership firm that was formed by two tribal individuals.
>
> 4.1 From information available in Income tax Departmental System, it was found that assessee was having substantial receipt from contract as well as hotel business. Assessee was found not to have filed its return of income. On being questioned by the AO regarding the reason why no return of

income was filed and why no income tax was paid, it was claimed that the partnership firm was formed by two tribal individuals whose income from scheduled area was exemption tax u/s 10(26) of the IT Act, 1961. It was explained before the AO that a firm had no separate legal existence on its own. It was argued that a firm was only a collective or compendious name of the partners. Hence, if income in capacity as individual members scheduled tribe stood exempt, there was no requirement of taxing the income arising in the name of the firm. Reliance was placed in following discussions.

i. ITO v. *N. Takim Roy Rymbai* (1976) 103 ITR 82 (SC)

ii. CIT v. *Marbaniang* (1993) 212 ITR 502(Gau.)

iii. CIT v. *Mahari & Sons* (1992) 195 ITR (Gau.)

However, the AO refused to accept the claim of assessee. According to the AO, firm is a separate entity per the income tax Act. A registered partnership deed entered into by the partners was in existence. The AO stated that case laws relied upon by assessee pertained to individuals or family. The AO therefore rejected assessee's claim of exemption u/s 10(26) of the Act.

4.2 Detailed argument was placed before me. The same is extracted as under:

"1. We are a partnership firm under the name and style of M/s Hotel Centre Point having our principal place of business at Police Bazar, Shillong-793001 and carrying on the business of running a hotel cum Shopping complex on commercial considerations, The firm consists of two partners, namely, Mr Prabna: Dey Sawyan, son of Ka Lisimon Jaid Dkhar residing at Lowre Mawprem, Shillong - 793002 and Mr Wallamphang Roy son of Pismon Jaid Dkhar residing at Umsohsun, Shillong.

2. It is stated that the partners are by caste belonging to Khasi Tribe which is Scheduled Tribe in the State of Meghalaya. Both the partners are residing within lire area of Khasi Hills Autonomous District specified in Part - II of the Table appended to Para 20 of the Sixth Schedule to the Constitution of India. The income arising to both the partners in the tribal areas is exempt from income-tax by virtue of the provision contained under section .10(26) of the Income Tax Act, 1961 since such income does not form part of the total income liable to tax under the aforesaid Act.

3. The provisions contained under the Income Tax Act, 1961 as well as under the Constitution of India being relevant for consideration in the instant case are reproduced here-under for the sake of ready reference:

(*a*) **Section 10(26)** of the Income Tax Act, 1961

"10. 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-

** ** **

(26) in the case of a member of s 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,-

(*a*) from any source in the areas or States aforesaid, or

(*b*) by way of dividend or interest on securities;"

(*b*) **Clause (25) of Article 366** of the Constitution

"366. Definition.- III this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

** ** **

(25) "**Scheduled Tribes**" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;"

(*c*) Provision contained under the Sixth Schedule attached to the Constitution of India

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

PROVISIONS AS TO THE ADMINISTRATION OF TRIBAL AREAS IN THE STATES OF ASSAM, MEGHALAYA, TRIPURA AND MIZORAM

** ** **

20. Tribal areas- (1) The areas specified in Parts 1, I1, IIA and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram.

(2) Any reference in Part I, Part II or Part I11 of the table below to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of that North-Eastern Areas (Reorganization) Act, 1971:

Provided that for the purposes of clauses (e) and (j) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub- paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District.

(3) The reference in Part IIA in the table below to the "**Tripura Tribal Areas District**" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.

TABLE

PART I

1. The North Cashar Hills District.

2. The Karbi Anglang District.

PART II

1. Khasi Hills District.

2. Jaintia Hills District.

3. The Garo Hills District.

PART IIA

Tripura Tribal Areas District.

PART III

1. The Chakma District

2. The Mara District.

3. The Lai District.

4. It is the well-settled law as pronounced by the Hon'ble Supreme Court as well as Hon'ble High Courts in numerous cases that income earned by a member of Schedule: Tribe from any source in the areas specified in the Sixth Schedule to the Constitution of India is wholly exempt from income-tax.

In support of the above contention, reliance is placed on the under-noted decisions of the Hon'ble Supreme Court and High Court.:

(1976) 103 ITR 82 (SC)

Income Tax Officer v. *N. Takin Ray Rymbai*

Held: "An analysis of this provision [Sec. 10(26)] shows that in order to entitle a person to the exemption, three conditions must co-exist:

(*i*) He should be a member of Scheduled Tribe as defined in clause (25) of article 366 of the Constitution;

(*ii*) He should be residing in any area specified in Part I or Part Il of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution; or the State or Union Territories mentioned in this provision;

(*iii*) The income in respect of which exemption is claimed must be an income which accrues or arises to him-

(*a*) from any source in the area, State or Union territories mentioned in the provision,

or

(*b*) by way of dividend or interest on securities."

(1993) 202 ITR 502 (Gau.)

Commissioner of Income Tax v. *Marbaniang*

"Held (as in the Head Note), that the assessee satisfied the first condition required under section 10(26) as she was a member of a Scheduled Tribe. The area of residence contemplated in section 10(26) is the Khasi Hills District, which includes areas of the Shillong municipality and the cantonment. The assessee resided within the Shillong municipality and satisfied the second condition contemplated in section 10(26). The third condition was that the income must have accrued or arisen from any source in the areas, States or Union Territories aforesaid. The Government college where the assessee was working was within the cantonment area. Her salary was paid by the State Government of Meghalaya, whose capital was in the Shillong town. In either view of the case, the income accrued from a source in the areas specified in Part II of the Table

appended to paragraph 20 of the Sixth Schedule. The third condition was also satisfied. It must, therefore, follow that the assessee was entitled to the exemption under section 10(26) (see pp. 504C, 507H, 508A-C)."

5. It may be mentioned that the words used in section 10(26) of the Income Tax Act, 1961 for importing masculine gender are to be taken to include females as well as the words used in singular number are to be taken to include the plural numbers as provided in section 13 of the General Clauses Act, 1897.

The aforesaid clause 13 of the General Clauses Act, 1897 is reproduced before for the sake of ready reference

"13. Gender and number:- In all Central Acts and Regulations, unless there is anything repugnant in the subject or context-

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa."

6. The Central Legislature, while extending the application of the provisions of the Income Tax Act, 1961 to the whole of India, considered it reasonable and proper to exempt the members of the Scheduled Castes and Scheduled Tribes residing in the areas specified in the Table attached to Paragraph 20 of the Sixth Schedule to the Constitution from the burden of income tax as because the aforesaid members as well as the areas where they resided permanently were under-developed economically as well as educationally. The object of providing exemption was to grant impetus to them for improving their lot by carrying on various productive activities including business enterprises so that during the period of subsistence of such exemption, they may rise to remunerative positions in services and business and successfully compete with their brethren in other parts of the Country.

It may also be noted that the provision of such exemption was incorporated for the first time in the Indian Income Tax Act, 1922 by the Finance Act, 1955 and thereafter, it was continued in the Income Tax Act, 1961 which came into force on 1st April, 1962. Since then, the said provision has continued to exist, with substitution and/or amendment, made by the Central Legislature from time to time and has come up for consideration before the Apex Court and High Courts who have adopted a liberal approach in construction/interpretation thereof for awarding the benefit to the recipients.

7. It is respectfully submitted that the provision contained under section 10(26) is a beneficial provision and its primary object is to provide protection to the weaker sections of the society. The Central Legislature has made this provision specifically in appreciation of the directive principle embodied in **Article 46 of the Constitution of India**. Article 46 is reproduced below for the sake of ready reference:

"46. Promotion of educational and economic interests of Schedules Castes, Scheduled Tribes and other weaker sections.- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of explanation. "

In short, it is urged that the Central Legislature has incorporated the provision of exemption under section 10(26) of 1961 Act on due consideration of relevant mandatory provisions contained under the Constitution of India and in the light of the predominant objective of economic and other empowerment of the people residing in tribal areas as required and/or directed by the above

constitutional provision. Therefore, it is quite imperative that not only the Courts, the authorities appointed and functioning under the 1961 Act ought to take a liberal view in granting exemption of income-tax to the deserving individuals and/or units.

8. It is not disputed that under the Income Tax Act, 1961, a firm is an independent and distinct juristic person for the purpose of assessment since it has been deemed to be a '**person**' within the meaning of section 2(3) of the 1961 Act.

However, in the back drop of the provision contained under section 10(26), it is contended that a partnership firm constituted by the members of the tribal areas specified in Part - II of the Table appended to Paragraph 20 of the Sixth Schedule for the purpose of earning income from any source of income arising in the said specified area is also entitled to avail exemption in respect of its income under section 10(26) of the 1961 Act since such income is shared by the partners who are members of the Schedule Tribes as defined in clause (25) of Article 366 of the Constitution.

This is so because a partnership firm is only a collective or compendious name for all the partners. The partnership firm has no existence do hors its partners .. It is the partners who undertake to bring the firm into existence by their mutual consent and execute all the activities and works of the firm starting from the business till its end. The moment partners are out of the firm, the firm loses its identity and acquires the status of a zero. The firm itself has no independent functions or activities to be performed by it except what are accomplished by the partners acting in the joint name of the firm. The firm is not a juridical person or a legal entity like a company or corporation. Under the Indian Partnership Act, 1932, the partnership firm is not, a separate independent entity or person in law but is merely an association or combination of persons agreeing to carry on business with a motive to share the profits. It is also well- settled that a firm as such is not entitled to enter into partnership with another firm or individual and is not a legal personality apart from its partners. The profits earned or losses sustained are shared by the partners only. In the light of the above discussion, it is requested that in the case projected by the partners belonging to the Schedule Tribes in the matter of constitution of the partnership by them for claiming exemption from income tax in respect thereof may within the limits of the specified areas be considered sympathetically and allow the same for the ends of justice.

In support of the above contention, reliance is placed on the decision of the Hon'ble Gawuhati High Court in *Commissioner of Income Tax* v. *Mahari & Sons* (1992) ITR 630 (Gau) :: (1992) 1 GLR 124.

(1992) 195 ITR 630 (Gau)/(1992) 1 GLR 124

Commissioner of Income Tax v. *Mahari & Sons*

In this case, the question before the Hon'ble High Court was that whether the income owned by a Khasi family as a unit would be entitled to exemption 'as in the case of an individual Khasi.

In the context of the requirement of existence of last two conditions referred to by the Hon'ble Supreme Court in *Income Tax Officer* v. *N. Takin Ray Rymbai* (1976) 103 ITR 82 (SC) for the purpose of claiming exemption under section 10(26), the Hon'ble Gauhaii High Court observed as under:

"5. In the instant case there is no controversy about the existence of the last two conditions. There is also no controversy that Khasis are members of Scheduled Tribe as defined in Clause (25) of Article 366 of the Constitution. It is also not in dispute that had the income in question in the instant case accrued to a single member of Khasi Tribe it would have been exempt under section 10(26) of the Act. The only controversy is that the income in the instant case having accrued not to an

individual Khasi but to a Khasi family, whether this exemption will be available. In other words, whether the benefit of exemption available to a member of Khasi Tribe will be available even if the income is earned by him not as an individual but as a group of individuals comprising of the members of his family. There is no dispute that all the members of the family are Khasis.

6. We have carefully applied our mind to the controversy. The words "**family**" is a popular expression. It should be given a normal meaning and should not be construed technically unless it is so intended by the statute. Most commonly the word "**family**" refers to a group of persons consisting of parents and children; father, mother and their children; immediate kindred. It also means a collective body of persons who live in one house and under one head or management; a group of blood relatives; all the relations who descend from a common ancestor, or who spring from a common root; a group of hindered persons, husband and wife and their children. (**See Black's Law Dictionary**). So construed, a Khasi family would mean a group of Khasis who are blood relatives or who spring from a common root.

Viewed thus, it is difficult to say that the benefit of exemption from income-tax given under section 10(26) of the Act to a member of a Khasi tribe will cease to be available if such income accrues not to an individual member, but collectively to a number of such members known as family. It must be remembered 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. The benefit is confined to tribal people residing in specified areas and that too is available only in respect of income accruing or arising to them from any source in such areas. Thus whatever limitation the legislature wanted to put, it has specifically incorporated in the clause itself No more condition or restriction can be added, nor such beneficial provision can be given too narrow a meaning which may result in disentitling the member of the Khasi tribe from the benefit conferred by this clause."

In the background of the above observations, the Hon'ble High Court finally held das under:

"7. In the light of the foregoing discussion, we are of the clear opinion that the benefit of exemption under section 10(26) of the Act will be available even in cases where income accrues not to an individual member of Khasi Tribe, but to a family comprising of such members. Accordingly, we answer the question referred to us in the affirmative and in favour of the assessee."

It is submitted that the ratio decidendi of the above case is applicable in the instant case before your honour.

9. It may further be appreciated that classification of the source of income for the purpose of imposition of income-tax and exemption thereof is essentially part and parcel of the basic scheme of 1961 Act. Presently, section 10 itself contains numerous instances of such classification for the purpose of granting exemption from tax. It is also undisputed that the Central Legislature has levied income-tax on numerous sources of income by enlarging the scope and meaning of 'income' defined under clause (24) of section 2 of the 1961 Act.

In support of the above, reliance is placed on the observations made by the Hon 'ble Apex Court in Income Tax Officer v. N. Takin Ray Rymbai (1976) 103 ITR 82 (SC) at page 89-90:

"Classification for purposes of taxation or for exempting from tax with reference to the source of the income is integral to the fundamental scheme of the Income-tax Act. Indeed, the entire warp and woof of the 1961 Act has been woven on this pattern.

Section 2(45) defines total income to mean "the total amount of income referred to in section 5 computed in the manner laid down in-this Act".

Section 5 makes the chargeability of income dependent upon the locality of accrual or receipt of the income. It defines the extent of total income with reference to the residence of the assessee and thus makes the incidence of taxation dependent upon whether the assessee is a resident in India. It is the residence in India which entails liability to tax. A non-resident is not liable in India to get his income assessed, but if any part of his income accrues or arises whether directly or indirectly through any business connection in India or from any property in India, the same would be assessable. An "**ordinary resident**" as defined in section 6, does not attract additional chargeability; but being "**not ordinarily resident**" entitles a person to partial exemption from chargeability as a resident, to which exemption of a person who is "ordinarily resident" is not entitled. (See Kanga and Palkiuala. volume 1 - Income-tax, 6th edition, page 162).

The 1961 Act abounds in instances whereby certain sources of income have been exempted from tax, while others are assessable.

Section 10 of the 1961 Act itself contains no less than 30 instances of such classification for the purpose of granting exemptions from tax.

This is so, in spite of the fact that another source of the same person's income may be assessable. A person may have agricultural income apart from salary or business income. The income from the former source is not to be included in the total income of the assessee (vide section 10(1)), while income from the latter source is not so exempted. Again interest realised from scheduled banks on deposits up to a certain limit is exempt, while interest realised from non-banking concerns is assessable.

Sections 80A to 50U further provide exemptions from tax to incomes derived from certain sources. A business man's income is assessable, but if it is from a newly established industrial undertaking or priority industry, to that extent the same is exempted. Section 80H provides for deductions in cases of new industrial undertakings employing displaced persons, etc.

It is not necessary to multiply such instances. Suffice it to say that classification of sources of income is integral to the basic scheme of the 1961 Act."

It may kindly be appreciated that when chargeability of income-tax has been made dependent upon the locality of accrual or receipt of income by section 5 itself for the purpose of determination of total income of every person, it would be arbitrary, improper, unreasonable and unjustified to take a different view in the case involving application of section 10(26) which also clearly makes the exemption dependent on the accrual or arising of income on the locality i.e. the areas specified in the Sixth Schedule only. To do so will tantamount to discarding and/or ignoring the provision of section 10(26) when it is very much present and binding on the authorities under the 1961 Act.

10. Apparently, the provision of section 10(26) brings to one's notice the differentiation between income accruing or received by a person from a source in the specified areas and the income accruing or received by a person from a source outside such areas. The object behind such differentiation is the legislative intention not only to grant benefit of exemption to the members of the scheduled tribes but also for benefit such areas economically.

In support of the above, reliance is placed again on the decision of the Apex Court in Income Tax Officer v. N. Takin Roy Rumbai (1976) 103 ITR 82 (SC) wherein the Hon'ble Supreme Court at page 90 has explained the objective behind such differentiation. The said observations are reproduced below:

"The object of this differentiation between income accruing or received from a source in the. specified areas and the income accruing or received from a source outside such areas, is to benefit

not only the members of the Scheduled Tribes residing in the specified areas but also to benefit economically such areas. If the contention advanced by Mr. Lahiri is accepted and a member of the Scheduled Tribe residing in a specified area is held entitled to the exemption irrespective of whether the source of his income lies within or outside such areas, it will lead to potentially mischievous results and evasion of tax by assesses who do not belong to Scheduled Tribes. All that a non-tribal assessee in India need do would be to enter into a sham partnership with a member of the Scheduled Tribe residing in the specified area and ostensibly give him under the partnership a substantial share of the profits of the business while in reality, pay the tribe only a nominal amount. Moreover, but for the condition provided in sub-clause (a), the exemption granted under section 10(26) is likely to operate unequally and cause inequality of treatment between individuals similarly situated. A Tribal residing in the Scheduled areas earning large income from business located outside the specified areas, would be totally exempt, while the non- tribal whose source of income is a share in the same business, would be taxed although with reference to the source of the income, both were similarly situated."

The situations explained and analysed by the Hon'ble Apex Court in the above extract will go to consideration of the firm taxable under the 1961 Act where both partners and firm are liable to tax and the firm constituted within the specified areas by the partners whose income is wholly exempt at the same footing will cause unequal treatment inviting application of Article 14 which declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

In the above background, it is urged that the authorities under the 1961 Act ought to lean in favour of positive attitude for granting exemption instead of denial of such exemption on technical considerations and/or grounds.

11. Under the Income Tax Act, 1961, the partnership firm has been recognized as a person for the purpose of taxing its income independently and various provisions have been enacted relating thereto.

However, the Income Tax Act, 1961 does not contain any specific provision declaring or providing that partnership formed by the partners belonging to scheduled castes and scheduled tribes for carrying on its business operations within the area specified in the Sixth schedule to the Constitution will also be a taxable unit notwithstanding that the partners of such firm are entitled to exemption from income-tax under section 10(26) in respect of their income accruing or arising in the specified area. The Income Tax Act, 1961 does not contain any specific and/or overriding provision either for considering such firm a taxable unit or a non-taxable unit. But in the context of the provision presently contained under section 10(26) in favour of the members of the schedule castes and schedule tribes only, it stands to reason to consider a partnership firm constituted by the members of the schedule caste and schedule tribe in the specified area for carrying on business operations only in the specified area as exempt from income tax. A negative view in the matter will tantamount to denial of the fundamental right ensured under Article 19(1)(g) to carry on trade or business under the nomenclature of a partnership firm to the members of the schedule castes and schedule tribes in the specified area. Not only this, this will also be apparently violative of the provision contained under Article 301 of the Constitution which unambiguously declares that subject to the other provisions of Part XIII of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free.

12. It is further submitted that income from business or profession does accrue or arise in the hands of the partnership constituted by the members of Schedule Tribes in the area specified in the Sixth Schedule and the business operations of the firm are also carried on within the specified area

referred to the above. Since the exemption provision under section 10(26) has been enacted for the benefit of scheduled castes and schedules tribes residing in the specified area, it would be most arbitrary, unreasonable and illogical to hold the income of such partnership liable to income tax. A negative view in the instant case will frustrate the very object of exemption ensured by the Parliament under section 10(26) of the Act. The exemption clause will become nugatory if income of the members of the schedule caste and schedule tribes residing in the specified areas is subjected to tax merely because they have fanned a partnership for earning in come from a source of income arising in the specified area.

13. It is respectfully submitted that the provision contained under section 10(26) has been designed by the Central Legislature to provide special exemption from income-tax to the member s of the Schedules tribes permanently residing within a specified area in respect of income accruing or arising to them from a source within the territorial jurisdiction of the specified area in consideration of essentiality/requirement of such provision for upliftment of the members of the scheduled castes and scheduled tribes as well as for the economic development of the specified areas. Keeping in view such legislative intendment behind such provision, the authorities under the 1961 Act are duty bound to interpret the legislation creatively by adhering to a liberal approach and not to disallow the claim of exemption on mere technicalities. A bare mechanical interpretation of the provision devoid of legislative intendment, if made, will reduce the beneficent legislation to futility.

In support of the above contentions, reliance is placed on the decision of the Hon 'ble Supreme Court in Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440. The relevant observations of the Hon'ble Apex Court in paragraphs 29 to 31 are reproduced below for the sake of ready reference:

"29. Subba Rao, C.J. speaking for the Bench in *Chandra Mohan* v. *State of U.P.* has pointed out that the fundamental rule of interpretation is that in construing the provisions of the Constitution or the Act of Parliament, the Court "will have to find out the express intention from the words of the Constitution or the Act, as the case may be ... " and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provisions of the existing law nugatory.

A.P. Sen, J. in Organo Chemical Industries v. Union of India has stated thus:

"A bare mechanical interpretation of the words 'devoid of concept or purpose' will reduce most of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole."

30. Krishna Iyer, J. has pointed out in his inimitable style I Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee: "To be literal ii meaning is to see the skin and miss the soul of the Regulation. "

31. True, normally courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In case of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for interfering that the legislature intended to exclude jurisdiction of the courts from authorising the detention of an arrestee whose arrest was effected on the ground that there is reason to believe that the said person has been guilty of an

offence punishable under the provisions of FERA or the Customs Act which kind of offences seriously create a dent on the economy of the nation and lead to hazardous consequences, it is permissible for courts to haves functional approaches and look into the legislature intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile."

14. A diverse view in respect of a partnership constituted in the specified area by the members of schedule caste and schedule tribe permanently residing in such area as elaborately clarified in the preceding paras will be arbitrary, wholly illegal and violative of the provision of equal treatment of law in Article 14 of the Constitution of India. A partnership formed by the persons residing inside or outside the specified areas is liable to income tax doubtlessly in the whole of India. But if a partnership formed by the persons belonging to scheduled castes and scheduled tribes residing in the specified area for earning income in the specified area is also considered on the same level, it will amount to unequal treatment of law in the case of such partnership in flagrant violation of the provision contained under section 10(26) of the Act and will be hit by Article 14 of the Constitution of India. It is, therefore, urged that the distinction pointed out above deserves a judicious consideration in the spirit of the provision contained under section 10(26).

15. The learned assessing officer, in order to refute the claim of the assessee, has relied up on the conditions laid down in Section 184 of the Act whereas such reliance has no direct nexus to the claim of exemption as made by the assessee. He has failed to rebut the submission supporting the claim of exempted entity, of the assessee with a speaking order. Justice is not only to be done but also seen to be done. The various case laws related to the issue, most importantly Mahari and Sons, Supra cited by the assessee have not been dealt with at all.

16. The nomenclature of Chapter II of the Income tax Act, 1961 is "**Incomes Which Do Not Form Part Of Total Income**" and section 10(26) comes under the same chapter. To get a complete understanding, Section 10(26) therefore has to be read as follows "In computing the total income of a previous year of any person, any income falling within the clause 10(26) shall not be included - in the case of a member of a Scheduled Tribe…. ….. "

Emphasis is laid on the mention of word **Person** in the prelude to the Chapter. The word **person** also includes, in Income tax parlance, a Firm and therefore within the meaning of Clause 10(26) a firm of tribal members also is not liable to pay tax if other conditions as embedded in the clause are complied with. Only after careful consideration, the law makers have placed the words person and member in their respective places, otherwise in the clause there would have been the mention of word Individual in place of member.

The use of the word "**person"** in Section 10 in the context of the peculiarities of the Tribal law, assumes importance. The legislature has deliberately not used the word individual in Clause 10[26]. Instead, use of the word "**person"** in the prelude of the Chapter lends a wide enough ambit to include AOP/BOI/Firm etc. of tribal members. The definition of Person in Section 2(31) includes AOP/BOI/Firm etc. Therefore the word "**person**" used in Section 10 would include a BOI/Firm of tribal members in its compass, and that profit made by a AOP/BOI/firm consisting of members of the scheduled tribe would be exempt under the section 10(26).

Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law, Section 10(26) of the Income-tax Act, 1961 provides exemption to a member of the Scheduled Tribes as defined in Article 366(25) of the Constitution, As per article 366(25) of the Constitution Scheduled Tribes means such tribes or tribal communities or parts of or groups within

such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution.

If the intention of the Act was to limit the exemption available u/s 10(26) to individuals to the exclusion of the AOP/BOI/Firm/Family/and Clan, etc. it would have made it abundantly clear as in the case of Hindu undivided family, etc. In the absence of such a clear-cut distinction, the Income-tax Officer is not justified in assigning restrictive meaning to the term member so as to deprive the appellant, the exemption available.

17. That the decision in Mahari & Sons Supra is squarely applicable in our case with the only difference in situation that in Mahari & Sons the assessee is assessed as BOI and in the instant case it is assessed as Firm. BOI is included in the definition of Person in Section 2(31) of the Income tax Act, 1961. Here in our case the status determined is that of a Firm as per item 2(31)(iv). Now taking the spirit of the decision given in Mahari & Sons by the Hon'ble Guwahati High Court, the Learned income tax Officer should have granted exemption to a firm of tribals which otherwise conforms to the parameters of Section 10(26). In Mahari & Sons it has been clearly held that benefit of the section also accrues to Group of People, as that has been intended in the Statute. A partnership firm is not a separate legal entity distinct from its members. It is merely a collective name given to the individuals composing it. A firm cannot possess property or employ servants, neither it can a debtor or a creditor. It cannot sue or be sued by the others. Actually the property on which the resort is situated is jointly owned by both the partners viz. Shri Prabhat Dey Sawyan and Shri Wallamphang Ray. They are cousin brothers. Section 10(26) has been intended to be a beneficial provision to provide protection to the members of the Scheduled Tribe from the burden of income-tax. In this context your attention is drawn to the concluding paragraph of the order which states that In the light of forgoing discussion we are of the clear opinion that the benefit of exemption will not only be available in cases where income accrues not to an individual but also to a group of individuals who otherwise are entitled to the benefits of section 10(26). Thus the Hon'ble High Court in unambiguous terms opined that the benefit of exemption will also be available to a group of people irrespective of status. In that pretext it may kindly be assumed that there is no distinction to be made between BOI or Firm as far as extension of the benefit of Section 10(26) of the Act. Both BOI and Firm are a group of people numbering more than one and both unite in order to pursue an object. Therefore the benefit arising out of the underlying spirit of section 10(26) cannot be denied to a firm of tribal people. The advantages of a joint business are manifold and in order to reap such benefits the business was started jointly and such joint business require an orgarsional structure which could be any of the forms viz.,. AOP, BOI, Firm etc. In that view of the mater three cannot be any distinction between BOI and Firm of Scheduled Tribes for the purpose of ascertaining of the legal to get the benefits arising from the provisions of Section 10(26) of the Income Tax, 1961. Since Honb'le Guwahati High Court (Mahari & Sons) supra has kept a BOI outside the impact of Income tax Act, 1961, there is no reason why such beneficial provisions should not be enjoyed by a Firm when all other stipulations of Section 10(26) prevail.

18. In the backdrop of the submissions cited above, it is respectfully submitted that the income of the assessee firm should be declared to be exempt under section 10(26) of the Income tax Act, 1961.

4.3 I have carefully considered the matter. The AO had not doubted the fact of the partners being tribals and resident of scheduled area. The fact of the source from where assessee earned its income being from scheduled area is also not in doubt. That the fact of Income of partners in individual capacities and which is earned from scheduled area is exempt from tax is also not in question. In view of binding decision of Hon'ble Jurisdictional Tribunal in case of Mahari & Sons (supra) and subsequent decision of Hon'ble Gauhati High Court, the income of firm would have been exempt

had the same business' been ran by partners as BOI and not firm is also not in question. In view of this, the crux of matter to be examined is whether exemption available to Tribal members in scheduled area from business ran in capacity as Individual or BOI would be available if the same is conducted through partnership firm formed by tax-exempt partners.

4.3.1 According to section 4(1) of the Act income tax is charged on person in accordance with Central Act. Person is detained u/s 2(31). The same is extracted as. under:

(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-clause

From a reading of the inclusive definition, it is clear that firm has distinct identity as separate from that of Individual or BOI though outside of the income tax Act, it might not have separate legal existence. Not only is a firm recognized as separate person, the IT. Act provides for separate scheme of taxation for firms as under:

1. A firm is taxed as a separate entity. It is separate from its partners. It does not matter whether the firm is registered or not.
2. The definition of firm includes a Limited Liability Partneship and LLP is treated same as firm.
3. The share of partners in the income of the firm is exempted from being separately taxed, while computing his/her individual income.
4. Salary, Bonus, Commission or remuneration (by whatever name called) paid /payable to partners is allowed as deduction to the firm and same will be taxable in the hand of partners. These expenses are allowed as deduction subject to certain restriction under the Income Tax Act, 1961.
5. The interest to partners paid by firm is deductible subject to maximum rate of interest @12% pa. The amount is taxable in the hand of partners.
6. The firm is taxed @30.9% or 33.99% (subject to net income of firm is Rs. 1 Crore or exceeds Rs. 1 Crore),

The Income Tax Act endowed distinct identity to partnership firms and there is separate scheme of taxation and assessment meant for firms only. In fact, a whole chapter i.e. Chapter XVI of the Income Tax Act is dedicated to assessment of firms with the heading: "**Special Provision Applicable to Firms.**" A firm cannot be equated to individuals and BOI. BOI can be formed by individuals; whereas firms may be formed by non-individuals who have legal entities.

4.3.2 In the written submission, assessee reproduced text of section 10(26). Opening line of the section says: "**In the case of a member of a scheduled Tribe ……**" A reading of the section makes it very clear that an assessee has to be a member of a scheduled Tribe. Even by common

understanding, one has to be an individual to be a member of any tribe or, say any community. Hence, no entity, other than an individual can be a member of Scheduled Tribe. Consequently, a firm cannot be a member of Scheduled Tribe. Therefore, section 10(26) by implication, gives exemption to individuals and not to Firm.

4.3.3. Assessee heavily relied on decision of Hon'ble Cauhati High Court in case of Mahari & Sons (supra). In that case, the Hon'ble Gauhati High Court had extended the benefit of section 10(26) of the Act to a Khasi family. The Hon'ble High Court considered the question as to whether the exemption available to a member of Khasi tribe will be available when income was earned by him not as an individual but as a group of individuals comprising the members of his family. The Hon'ble High Court answered the question in the affirmative for the following reasons/rationale.

(*i*) Family is a group of blood relatives descending from a common ancestor.

(*ii*) The exemption will be availed by father, mother and children - the immediate kindred, who live in one house.

(*iii*) Section 10(26) is a beneficial provision and benefit is to be given to tribal people and members of Khasi tribe cannot be disentitled.

From the order, it seems that the benefit has been extended from an "**individual**" to a "**Body of Individual**". The reasons why this decision cannot be extended to other "**Persons**", i.e. firm, company, HUF, AJP, AOP, trusts, JV etc. are as under:

(*i*) There is very little difference between "**individuals**" and "**Body of Individuals**" in the sense that an accumulation of individuals is a B0I. That is a BOI comprises only of individuals.

(*ii*) On the other hand, an AOP, a firm, a company could contain other entities. Hence, what applies to an "**individual**" may well apply to its collective, i.e. a B01. But it would most certainly not apply to AOP, Firm or Companies.

(*iii*) Companies, firms and non-individuals cannot be members of BOI, which can have only human beings or a plurality of individuals.

(*iv*) Thus the logic can be that an individual earning income can be exempt u/s 10(26) of the Act, and, so can a conglomeration of individuals.

(*v*) The case deals with "**Khasi family**". A "family" must always and necessarily have natural individuals. There cannot be a partnership firm or an AOP in a "**Khasi family**". Hence, this case is not applicable to other categories (**Para-6 of Hon'ble Court' s order**)

(*vi*) The decision speaks of "father, mother and children". This can never include a firm or an AOP

(*vii*) As per decision, it applies to persons "who live in one house" and are a group of "**blood relatives**". A firm/AOP/Company cannot "live" in a house and can never be "**blood**" relatives. They can never be "**husband**" or a "**wife**" or a "**child**" or kindred. A firm will not" **descend from a common ancestor**". Neither can a firm or company or AOP be characterized as "**Khasi people**".

Hence, it is manifest that the said decision of the Hon'ble Gauhati High Court lacks any application what-so-ever to any person other than a BOI. Thus, this case is of no assistance to the assessee. Other case laws relied upon viz. *Takin Ray Rymbai* (*supra*) and *Marbaniang* (*supra*) pertained to exemption allowable in cases of individuals. They are therefore, not applicable to the case of assessee.

4.3.4 The issue under discussion relates to tax exemption. Very recently, a Constitution Bench of the Hon'ble Supreme Court in *Commissioner of Customs (Import)* v. *M/s Dilip Kumar and Company & Ors.* (Civil Appeal 3327 of 2007 dated July 30, 2018) held that where there is an ambiguity in exemption, the same is subject to a strict interpretation and benefit of such ambiguity cannot be claimed by the assessee and it must be il1ll'rprl'lcd in the favour of revenue.

The Hon'ble Apex Court held:

"52. To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) 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.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands **overruled**."

The aforementioned decision of as-Judge Benchy of Hon'ble Apex Court applies in fullest measure to the appeal under consideration. On strict interpretation of section 10(26), there is no reason to believe that exemption given to members of Scheduled Tribe can be extended to Partnership Firm formed by such individual tribals.

4.3.5 A/R also relied on provision of clause 13 of General Clauses Act. The said clause states that word importing masculine gender shall include females also and that singular shall include plural and vice versa. Placing reliance on this clause to mean that a partnership firm can be treated as belonging to a member of Scheduled Tribe is too far-fetched interpretation. The Income tax Act distinguished a firm and individual partners. They are to be assessed separately and at different rates of tax. Hence contention made in this regard is not legally acceptable.

4.3.6 A/R also referred to Article 46 of the Constitution. That article is part of Directive Principles of State Policy. Per the Article, the state is to promote educational and economic interest of weaker sections of the people, including scheduled Tribes. It is not in doubt that exemption is granted even by the LT. Act, to members of scheduled tribe in respect of certain income. But it will not be-proper to import the provision of Director Principle of State Policy into the Income-tax Act and give exemption which is not granted by the expressed provision of the Act.

4.3.7 The AIR also argued that in prelude to the Chapter on Exemption, the Act states: "**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.**" According to the A/R, corollary to this is that income of any person falling within clause 10(26) shall not be included 10 the income. Therefore, as a firm comes within the definition of person, income of firm which is formed by tax-exempt individuals should also be exempt from tax.

In my view, the argument is fallacious. If one goes through the Chapter on Exemption, it is seen that some of the clauses are meant for individuals, some for non-residents, some for companies, some for local authorities and so forth. If the contention of the assessee is accepted, incomes of even Companies and Trusts formed and owned exclusively by tribals who are residing in scheduled areas will be exempt from payment of tax. This will over-stretch the exemption provision of the Act, which in my considered view, is not in consonance with the recent ruling of Hon'ble Apex

Court in the case of *Dilip Kumar and Co* (*supra*).

4.3.7. Considering the above discussion and in view of expressed provision of the Act as well as the judgment of Hon'ble Apex Court in the case of *Dilip Kumar and Co* (*supra*), I am of the considered view that exemption provision u/s 10(26) of the Act cannot be extended to partnership firm constituted by tax-exempt individual tribals. Consequently, **ground No. 1 is decided against appellant**."

9. Learned authorized representative vehemently contends during the course of hearing that both the lower authorities have erred in law as well as on facts in holding that this assessee a registered partnership firm, is not entitled for sec. 10(216) exemption under the provision of the Act. He submits that the assessee's both partners are very much eligible for the impugned exemption. They could have continued to carry on the very relief in case the income in issue would have been treated to have accrued in their individual hands. It is time and again emphasised that both these partners are members of a Scheduled tribe defined under Article 366 of the Constitution of India. And that the impugned relief would also have been extended to them in the status of "***Body of individuals***" *qua* this income arising to a schedule tribe's members since accruing them in the specified tribal area.

10. Learned authorized representative next quotes sec. 10(26) of the Act that the same applies in case of computation of total income of any "**person**" of a previous year who is member of a schedule tribe than to an individual assessee only. His case is that the legislature has nowhere used the clinching expression "***individual***" category of assessee alike that u/s 10(26AAA) sec. 87A, sec. 54(1) and sec. 54F(1) etc. Learned counsel contends that wherever the legislature has intended to restrict the impugned exemption benefit, it has made it explicitly clear in the relevant legislation culminating in various statutory provisions. And that such a restrictive interpretation of sec. 10(26) would tantamount to putting the provision itself astricter to liberal use only. Our attention has been invited to the co-ordinate bench's decision in CIT v. Mahari & Sons (supra) that the legislature has deliberately not used the expression "***individual"*** in sec. 10(26) and has, employed the word "**person**" which is wide enough to include in its ambit a unit as that of Khasi family as in the present case." Hon'ble Guwahati high court's decision (supra) has discussed the issue as under:-

"Viewed thus, it is difficult to say that the benefit of exemption from income-tax given under section 10(26) to a member of a Khasi Tribe will cease to be available if such income accrues not to an individual member, but collectively to a number of such members known as family. It must be remembered 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. The benefit is confined to tribal people residing in specified areas and that too is available only in respect of income accruing or arsing to them from any source in such areas. Thus, whatever limitation the Legislature wanted to put, it has specifically incorporated in the clause itself no more condition or restriction can be added, nor can such beneficial provision be given too narrow a meaning which may result in disentitling the members of the Khasi Tribe from the benefit conferred by this clause."

11. The assessee next refers to sec. 13 of the General Clauses Act, 1897 that in all Central Acts & Regulation; unless there is anything repugnant in subject or context words imparting masculine gender also include feminine gender and words in singular shall includes plural and *vice versa*. Its case therefore is that the legislative expression "**member**" used in sec. 10(26) of the Act included "**members**" as well since the assessee-firm's income is the joint income of the eligible schedule tribe's members/partners already enjoying exemption. And that it is also entitled for the very relief as a necessary corollary. It is re-emphasised with the hon'ble Guwahati high court has already held the impugned statutory provision as beneficial in nature.

12. Mr. Modi next invites our attention to sec. 2(31) of the Act defining a "person" to include an

individual, HUF, a company, a firm, an association of persons or a body of individuals (***whether incorporated or not***), a local authority and every artificial juristic person not falling under any of the preceding clause. He pleads that the lower authorities have erred in denying the impugned exemption benefit to a firm thereby creating an artificial definition between a body of individual and a firm whereas both of them contains joint incomes of their members and partners; respectively.

13. The assessee's next cotes hon'ble Gujarat high court's decision *CIT* v. *Harivadan Tribhovandas* (2002) 106 ITR 494 (Guj.) that a body of individuals "BOI" accruing in sec. 2(31) of the Act means a glomeration of individuals who carry on the same activity with the object of earning income. Its submissions is that a partnership firm is nothing such a glomeration of individuals only. And that sec. 2(31) of the Act imports definition of a firm, a partner and partnership from the Indian Partnership Act, 1932 only meaning thereby partners collectively are taken as a firm.

14. Learned counsel thereafter referred to hon'ble apex court's decision in *Dulichand Laxminarayana* v. *Commissioner of Income-tax* (1956) 29 ITR 535 (SC) that a firm's name is merely an expression; only a compendious mode of designating the persons who have agreed to carry on the business in partnership. And *Commissioner of Income-tax* v. *Ramniklal Kothari* (1969) 74 ITR 57 (SC) also hold that the business carried out by a firm is business carried out by its partners wherein the former's profits are earned by the latter. The assessee's next quotes sec. 10(26) exemption clause in the statute that hon'ble apex court's decision in *Commissioner of Income-tax* v. *R.M. Chidambaram Pillai* (1977) 106 ITR 292 (SC) holds that "*the statement of the law that although, for the purpose the Income-tax Act, a firm has certain attributes simulative of personalities. We have to take it that a partnership is not a person but a plurality of persons*". Their lordship's yet another decision in *N. Khadervali Saheb And Another* v. *N. Gudu Sahib (Decd.) And Others* (2004) 261 ITR 1 (SC) holds that "*a firm is not an independent entity; its partners are the real owners of the assets of the firm. The firm name is only a compendious name given to the partnership for the sake of convenience. The assets of the firm belong to and are owned by the partners of the firm*".

15. Learned counsel accordingly contends that the assessee has firmly established that by virtue of sec. 2(31)(v) of the Act, a firm has been included in the definition "**person**" and treated as a distinct assessable unit. It is equally undisputable that by virtue of sec. 2(31) therein, the firm has been assigned the same meaning as in the partnership law. All the partners are collectively called a firm. A firm is synonymous that to all the partners collectively and *vice versa.* And Hotel Centre Point is therefore only a compendious name of the schedule tribe's members/partners having 50% share each making it entitled for sec. 10(26) exemption. Mr. Modi accordingly prays for acceptance of the instant appeal in assessee's favour.

16. Mr. Sengupata the learned is departmental representative at Revenue's behest. He strongly supports both the lower authorities' action denying sec. 10(26) exemption benefit to the assessee-firm during the course of assessment as well as in lower appellate proceedings. He invited our attention to the CIT(A)'s detailed discussion extracted in the preceding paragraphs in light of hon'ble apex court's recent constitution bench's decision in *M/s Dilip Kumar and Company & Ors.* (**Civil Appeal 3327 of 2007**) dated 30.07.2018 settling the law in case of an exemption/deduction clause in a tax statute. He quotes their lordship yet another judgment in *State of Punjab* v. *M/s Jullandr Vegetables* 1966 AIR 1295 (SC) that for the purpose of sales tax assessment, a partnership firm is a separate assessable entity distinct from its partners. We are taken to their lordship's detailed discussion declining the department's argument that a partnership firm's partners could be assessed on its behalf post dissolution as well. Their lordship hold "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". MR. Sengupta accordingly urges us to affirm both the lower authorities' action holding the assessee as not entitled for sec. 10(26) exemption even if it is a partnership firm consisting of two partners having

equal share who are themselves eligible for the very relief in individual capacity.

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-
>
> ** ** **
>
> (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) (b) member of a Scheduled Tribe only 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* v. *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* v. *Commissioner of Income-tax* (1977) 108 ITR 345 (SC) also holds than 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 h4er 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, in-stead, 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* v. *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 now 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 "g*eneralia specialibes non derogant"* as per hon'ble apex court's decision in *Union of India and Another* v. *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(216) exemption before us in view of our foregoing detailed discussion. We accordingly decline the "***lead***" case ITA No.348/Gau/2018.

26. Same order to follow in former assessee's remaining two appeal(s) ITA No.349 and 350/Gau/2018 the latter assessee's appeal ITA No.351/Gau/2018 for assessment year 2015-16; respectively as it has come on record that the sole identical issue raised therein is also that of eligibility of a partnership firm for sec. 10(26) exemption. Both the learned lower authorities have rejected the assessee's exemption in assessment as well as in lower appellate proceedings.

27. Both these assessees' four miscellaneous applications MA No.03 to 05/Gau/2019 and 06/Gau/2019 are allowed in above terms whereas their main appeal(s) ITA No. 348 to 351/Gau/2018 are dismissed. Ordered accordingly. ***A copy of this order be placed in the respective case files***.

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