



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

INCOME TAX APPEAL No. 272 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
WITH

INCOME TAX APPEAL No. 237 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 238 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 239 of 2022



PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 240 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 241 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 242 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 243 of 2022

PRINCIPAL COMMISSIONER

Versus



SHRI RAMESH CHANDRA RAI

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 244 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 245 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 246 of 2022

PRINCIPAL COMMISSIONER

Versus

SHRI RAMESH CHANDRA RAI

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 247 of 2022

PR. COMMISSIONER

Versus

SHRI HARMINDAR SINGH BHATIA



Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 248 of 2022

PR. COMMISSIONER OF

Versus

SHRI HARMINDAR SINGH BHATIA

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Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 249 of 2022

PR. COMMISSIONER OF

Versus

SHRI HARMINDAR SINGH BHATIA

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Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 250 of 2022

PR. COMMISSIONER OF

Versus

SHRI HARMINDAR SINGH BHATIA

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 251 of 2022

PR. COMMISSIONER OF INCOME TAX (CENTRAL) MP AND CG

Versus

SHRI HARMINDAR SINGH BHATIA

.....
Appearance:



Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 252 of 2022

PR. COMMISSIONER OF

Versus

SHRI HARMINDAR SINGH BHATIA

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 253 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 255 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 256 of 2022

PR. COMMISSIONER OF

Versus

SHRI HARMINDAR SINGH BHATIA

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.



.....
INCOME TAX APPEAL No. 257 of 2022

PR. COMMISSIONER OF INCOME TAX (CENTRAL) MP AND CG

Versus

SHRI HARMINDAR SINGH BHATIA

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 258 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMSWAROOP SHIVHARE

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 259 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMSWAROOP SHIVHARE

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 260 of 2022

PRINCIPAL COMMISSIONER OF

Versus

SHRI RAMSWAROOP SHIVHARE

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 262 of 2022



PRINCIPAL COMMISSIONER OF
Versus
SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 264 of 2022

PRINCIPAL COMMISSIONER OF
Versus
SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 265 of 2022

PRINCIPAL COMMISSIONER OF
Versus
SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 266 of 2022

PRINCIPAL COMMISSIONER OF
Versus
SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 269 of 2022

PRINCIPAL COMMISSIONER OF
Versus



SHRI RAMSWAROOP SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 17 of 2024

PR. COMMISSIONER OF INCOME TAX CENTRAL

Versus

VIKRAM SINGH

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 24 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 26 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 27 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARYAN SHIVHARE



Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 28 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

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Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 29 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

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Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 30 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

.....
Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

.....
INCOME TAX APPEAL No. 31 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

LAXMI NARAYAN SHIVHARE

.....
Appearance:



Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 46 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

HARI MOHAN SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 47 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

HARI MOHAN SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

INCOME TAX APPEAL No. 48 of 2024

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) BHOPAL

Versus

HARI MOHAN SHIVHARE

Appearance:

Shri Siddharth Sharma-Advocate for the appellant.

Shri Vashistha Narayan Dubey-Advocate for the respondent.

Reserved on :- 24.09.2024

Pronounced on :- 21.10.2024

JUDGMENT

Per. Justice Sushrut Arvind Dharmadhikari

Heard on I.A.Nos.14638/2022, 14551/2022, 14523/2022, 14665/2022,
14641/2022, 14405/2022, 12607/2023, 14412/2022, 14629/2022,



14414/2022, 14401/2022, 14404/2022, 14408/2022, 14409/2022 and 14406/2022, applications under Section 5 of the Limitation Act for condonation of delay in respective appeals.

For the reasons stated in these appeals, the aforesaid I.As are allowed and the delay caused in filing the appeals are hereby condoned.

With the consent of learned counsel for the parties, the appeals are finally heard.

2 . Learned counsel for the appellants has submitted that some of the appeals have been admitted on the substantial questions of law and some of the appeals have not been admitted, though the issue involved in all the appeals is similar and identical. Learned counsel for the respondent who is on caveat in ITA No.272/2022, therefore, the same is taken up as lead case for the purpose of decision of these appeals analogously.

3. Since similar issue is involved in the aforesaid appeals, therefore, these appeals are heard analogously and are being decided by a common judgment. For the sake of convenience the facts and grounds mentioned in ITA No.272/2022 are taken up.

4. These appeals have been filed by the appellants under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act of 1961) being aggrieved by the order dated 18.04.2022 passed in IT(SS)A No.121/IND/2020 by the learned Income Tax Appellate Tribunal, Indore. The following substantial questions of law have been proposed in connected appeal ITA No.30/2024:-

"1. Whether, on the facts and within the legal spectrum of the case, the ITAT erred in deleting the addition of Rs.65,43,78,036/- made by the Assessing Officer on the grounds of appellant's share of profit derived by various syndicates maintaining that share of profit is taxable in the hands of syndicate and not in the hands of the assessee as per the extant provisions of the Income Tax Act, 1961? "



2. *Whether, such syndicate did not have any PAN and that they were not filing statutory tax returns, fully establishing mens rea on the part of the assessee and taxing share of profits of such colourable devices (syndicates) in the hands of the assessee in all practicality is in the spirit of the 'Doctrine of lifting of corporate veil' in larger public interest also not appreciating the judgment of the Hon'ble Supreme Court in the case of Mcdowell & Co. Ltd. Vs Commercial Tax Officer 154 ITR 148 wherein the Hon'ble Apex Court held that colourable devices cannot be used for tax evasion in the garb of tax planning?*

5. The brief facts of the case are that, the respondent/assessee is an individual mainly deriving income from carrying out the business of sale of liquor. Besides, the assessee also derived income from his hotel business under a proprietorship concern namely M/s. Hotel Ambrosia. Further, the assessee also derives income from certain partnership firms in which he is one of the partners. The assessee also derives salary and rental income. The assessee furnished his original returns of income for the various years under Section 139 of the Act of 1961. Search and seizure operations under Section 132 of the Act was carried out at various premises of Shivhare group and the assessee on 07.01.2016. Consequently, notices under Section 153A of the Act was issued to the assessee for Assessment Year 2010-11 to Assessment Year 2015-16 on 27.10.2016. In response to the above notices, the assessee filed returns of income for Assessment Years 2010-11 to 2015-16 on various dates. The assessee filed regular return of income for Assessment Year 2016-17 on 31.03.2017 declaring income of Rs. 98,89,480/-.

6. The only issue that was argued by the appellant Revenue counsel before us that as to whether, the ITAT had erred in deleting the additions (of various amounts in other connected appeals) made by the Assessing Officer on the ground of appellant's share in profit derived by various syndicates maintaining that share of profit is taxable in the hands of syndicate and not in the hands of the assessee as per the extant provisions of the Income Tax Act,



1961.

7. Heard learned counsel for the parties. In short, the question that arises for consideration in these appeals are whether these appeals involve any substantial question of law, as is required to be made out under Section 260-A of the Act of 1961, that being the prerequisite of admission of the appeal.

8. In the case of the assessee, a reference was made for special audit under Section 142(2A) of the Act and accordingly, the special auditors submitted their report on 18.06.2018. The report of the special auditors, as produced by the assessee, was duly perused and considered by the AO and as also by the CIT(A).

9. Finally, the Assessing Officer made additions of Rs.69,98,079/- in A.Y. 2010-11, Rs.2,31,19,457/- in A.Y. 2011-12, Rs.6,26,53,801/- in A.Y. 2012-13, Rs.5,89,58,701/- in A.Y. 2013-14, Rs. 5,81,39,858/- in A.Y. 2014-15, Rs.8,48,67,951/- in A.Y. 2015-16 and Rs.1,32,43,450/- in A.Y. 2016-17 on account of share of assessee in undisclosed income of some syndicates, share in inadmissible expenses incurred by such syndicates and some undisclosed capital invested by the assessee in various syndicates.

10. Aggrieved, assessees preferred separate appeals for all the assessment years under consideration before CIT(A). The CIT(A), vide his common order dated 06.07.2020 adjudicated the appeals of the assessee thereby giving substantial relief and also confirming certain additions for the assessment years under consideration. While passing the Order, the CIT(A) also made enhancement in the income of the assessee under Section 251 of the Act, amounting to Rs. 35,10,000/-Rs. 77,28,310/-, Rs. 4,00,000/- and Rs. 2,00,000/- respectively for Assessment Year 2012-13, Assessment Year 2013-14, Assessment Year 2014-15 and Assessment Year 2016-17 on account of unexplained investment of the assessee in purchase of some land situated at Lalitpur.

11. Amongst other ground raised by the assessee the issue under consideration in these 40 Appeals, in which the CIT(A) went on to hold that



although, the assessee had undisputedly formed various syndicates/groups with different persons for carrying out the business of liquor for a definite share of profit, but, in any case, the share of the assessee in the profit of those syndicates and also, in the inadmissible expenses incurred by such syndicates cannot be added to the income of the assessee in view of the specific provision of section 86 read with section 67A of the Income-Tax Act, 1961. According to CIT(A), the status of syndicates is that of Association of Persons (AOP) or Body of Individuals (BOI) which are separately and specifically included in the definition of the expression 'Person' as prescribed in section 2(31) of the Act. According to CIT(A), such syndicates are a separate taxable legal entity and separately charged to tax U/s 4 of the Act at the maximum marginal rate (MMR). The CIT(A) further held that income derived by various syndicates, in which the assessee was one of the members, was required to be assessed in the hands of syndicates only and the direct assessment in the hands of the assessee could not have been made in respect of income derived by syndicates. The CIT(A) also held that even the question of admissibility or inadmissibility of any expenditure could have been raised in the assessments of syndicates. The CIT(A) further held that the assessee could have, at the best, been assessed in respect of his share in income of such syndicates but even that could not be taxed due to the specific provision of section 86 of the Act, which provides that Income-Tax shall not be payable by the assessee in respect of his share in the income of "Association of Persons" or "Body of Individuals" for the reason that, making any addition on account of income earned by syndicate in the hands of assessee is nothing but double taxation of the same income. The settled law is that right income should be added in the hands of the right person and in the right year. Finally, relying upon the decision of Hon'ble Supreme Court in the case of ITO Vs. CH. Atchajiah - (1996) 218 ITR 239 (SC) = (1996) 1 SCC 417, the CIT(A) deleted the additions made by the AO in the assessee's hands, for various assessment years, on account of (i) assessee's share in profit of syndicates and (ii) assessee's share in the inadmissible expenses incurred by such syndicates.



12. Aggrieved by the relief granted by CIT(A) to the assessee, Revenue preferred Appeal before the ITAT for the assessment years under consideration and against the deletion of additions made by AO, the assessee also had preferred cross appeals before the ITAT.

13. Since all the appeals relate to the same assessee and the issues raised were common, the ITAT heard all the appeals together and disposed off vide the order impugned by the Revenue.

14. The ITAT, amongst other grounds raised by the Revenue as well as the Assessee in the Appeal, decided the issue under consideration herein where the ITAT concurred with the decision of the CIT(A) by holding as under :-

“8.3.1 We find that as per the provisions of section 86, as contained in Chapter VII of the Income-Tax Act, 1961, the entire share of an assessee in income of the Association of Persons or Body of Individuals, as computed in the manner provided in Section 67A shall not be chargeable to income-tax. In our view, in the present case, the clause (a) of the first proviso to section 86 would apply, inasmuch, the syndicates are chargeable to tax at the maximum marginal rate and consequently, the share of any member in the syndicates as computed in the manner provided in section 67A shall not be included in the total income of the member i.e. the assessee in the present case.

8.3.2 We find as per the provisions of section 67A of the Act, in computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known, after making certain adjustments share of each member is required to be computed. However, after making the computation of share of a member in AOP or BOI as per the provisions of section 67A, in view of the specific provisions of section 86, such share of income shall be excluded from the total income of the assessee. We find that there are only two exceptions to the applicability of the provisions of section 86 viz. (i) when the association or body is not chargeable to tax on its total income at the maximum marginal rate or any higher rate; and (ii) where no income-tax is chargeable on the total income of the association or body, but, for the reasons discussed



herein below, none of the exceptions to section 86 are applicable in the present case.

8.3.3 We further find that in the instant case, as per the findings given by the AO himself, the share of the assessee as a member of the syndicates (AOPs) was determinate and therefore, the assessee's case would not fall under the provisions of sub-section (1) to section 167B of the Act. On the other hand, the case of the assessee would fall under the provisions of sub-section (2) to section 167B of the Act. In such a situation, the entire income of the syndicates, of which the assessee was found to be a member, would be chargeable to maximum marginal rate in accordance with clause (i) of subsection (2) to section 167B of the Act in the hands of such syndicates only.

8.3.4 We find that since all the subject syndicates are liable for charge of tax at the maximum marginal rate and therefore, the first exclusion as contemplated in clause (b) of the first proviso to the section 86 read with clause (a) of the first proviso thereof would have no application. For the second proviso to section 86, we find that the income of the syndicates are, undisputedly, chargeable to tax under section 167B of the Act and therefore, such proviso would also not apply in the instant case. In other words, by having a combined reading of section 167B, section 86 and section 67A, it can be safely concluded that the share of profit of the assessee in various syndicates, which in the eyes of the law are nothing but Association of Persons, would be completely entitled for exclusion of total income of the assessee.

8.3.5 In the light of the legal position, as enunciated hereinabove, in our considered view, income of all the syndicates, as determined by the AO, can be assessed in the hands of the respective syndicates only as these syndicates, being AOPs are classified as separate persons and tax entity u/s. 2(31) of the Act, but, in any circumstance, in the present case, any share of profit from such syndicates cannot be added as income chargeable to tax in the hands of any of its members. We find that, as per the findings given by the Id. CIT(A) at para (4.7.6) which remained uncontroverted by the Revenue, even in respect of some of the syndicates, separate assessments have already been framed by the various assessing officers u/s. 144/153C r.w.s. 153A of the Act and



while making assessments in the hands of such syndicates, the amount of undisclosed income earned by these syndicates, have already been determined. It is well known maxim of the law that same income cannot be taxed twice in the multiple hands unless otherwise so warranted by the specific provisions of the Act itself.

8.3.6 In the present case, we also find that the Ld.AO besides making addition on account of assessee's having derived share of profit from various syndicates, has also made addition, to the extent of the assessee's share in such syndicate, qua some alleged inadmissible expenses incurred by such syndicates. We find full substance in the assessee's contention that since none of these inadmissible expenditure was claimed by the assessee himself, and therefore, any disallowance for claim of any such expenses can only be made in the hands of the syndicates which have actually incurred such expenditure. In our view, after making such additions on account of disallowances of expenses, the income of the syndicates ought to have been computed in accordance with the various provisions of the Act and once such income of the syndicate was computed, for the purpose of section 67A, the resultant share of income of the assessee in the total income of the syndicates was required to be apportioned. Thus, any share of the assessee in the inadmissible expenses of the syndicates ought to have been taken as in the nature of share of profit and that was required to be added under section 67A of the Act, but again, after making such addition, the necessary relief in accordance with the provisions of section 86 ought to have been granted by the AO to the assessee which has not been so done in the instant case.

8.3.7 In our view, even if for any reason the Revenue failed to make any assessment in the hands of the syndicates, then also the income, which is otherwise chargeable to tax in a different tax entity i.e. the syndicate, cannot be added to the income of the assessee. We find that unlike under section 3 of the Income-Tax Act, 1922, in the present Income Tax Act, 1961 there is no such discretion or option available to an assessing officer as regard to taxing of any income earned by an AOP either in the hands of AOP or its members. Now, the assessing officer, subject to the provisions contained in ss. 67A, 86 and 167B is statutorily bound to make the assessment only in the hands of AOP and no addition, on the



count of share of profit of a member in the AOP, can be made in the hands of such member. For such proposition, we rely on the decision of the *Hon'ble Apex Court* in the case of *ITO vs. Ch. Atchiah - (1996) 218 ITR 0239 (SC)* in which their Lordships were pleased to hold that under the present Act there is no discretion available to an AO either to assess the income in the hands of AOP or its members, but the same has to be assessed only in the hands of the AOP. The Apex Court further held that right income must be assessed in the hands of the right person. We also respectfully follow the decision of the Hon'ble High Court of Karnataka in the case of *Pr. CIT vs. Ind Sing Developers (P) Ltd. - (2016) 288 CTR 0154 (Kar)* in which the Lordships relying upon the decision of Hon'ble Supreme Court of *Ch. Atchiah* held that merely because the right person could not be taxed it would not be open to the Revenue to tax a wrong person. We find that the similar view was expressed by the Coordinate Delhi 'G' Special Bench, in the case of *Pradeep Agencies – Joint Venture vs. ITO - (2007) 111 TTJ 0346 (SB)* and as also, by the Bangalore Bench, in the case of *K.S. Sathyanarayana vs. ACIT - (2008) TTJ 0716.*

8.4. In view of the above findings, we find no infirmity in the findings given by the Id. CIT(A) in deleting the entire additions made by the AO in the hands of the assessee on account of assessee's share in profit and inadmissible expenses of various syndicates, for various assessment years in the appeal. Accordingly, Ground No. 1 for A.Y. 2010-11 to A.Y. 2013-14 & A.Y. 2015-16 & Ground No. 2 for A.Y. 2016-17 raised by the Revenue, being devoid of any merit, are hereby dismissed."

15. The counsel for the revenue has argued that the order passed by the ITAT is perverse and not in accordance with law inasmuch as ITAT has committed an error in deleting the additions made by the Assessing Officer on the grounds of assesses share in profit derived by various syndicates maintaining that share of profit is taxable in the hands of syndicate and not in the hands of the assessee as per the existing provisions of the Income Tax Act, 1961.

16. Before dealing with the aforesaid controversy, it would be expedient to refer to Section 86 and Section 67A of the Act of 1961. The provisions,



relevant for our purpose, read thus :-

[Method of computing a member's share in income of association of persons or body of individuals.

67A. (1) In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known [other than a company or a cooperative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely :—

(a) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body ;

(b) where the amount apportioned to a member under clause (a) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be added to that amount, and the result shall be treated as the member's share in the income of the association or body ;

(c) where the amount apportioned to a member under clause (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

(2) The share of a member in the income or loss of the association or body, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(3) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.



Explanation.—In this section, “paid” has the same meaning as is assigned to it in clause (2) of section 43.]

[Share of member of an association of persons or body of individuals in the income of the association or body.

86. Where the assessee is a member of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India), income-tax shall not be payable by the assessee in respect of his share in the income of the association or body computed in the manner provided in section 67A :

Provided that,—

(a) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;

(b) in any other case, the share of a member computed as aforesaid shall form part of his total income :

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.]

17. We find that, as per the findings given by the CIT(A) at para (4.7.6) and reproduced by the ITAT in para (8.3.5) which remained uncontroverted by the Revenue, even in respect of some of the syndicates, separate assessments have already been framed by the various assessing officers u/s. 144/153C r.w.s. 153A of the Act and while making assessments in the hands of such syndicates, the amount of undisclosed income earned by these syndicates, have already been determined.

18. Besides the above findings, it is also pertinent to mention that it is a well settled legal position that as per clause (a) of proviso to section 86 of the Act r.w.s 67A of the Act, if the assessee is a member in AOP/BOI and income earned from such AOP/BOI have been offered to tax, then, the share received by the assessee from such AOP/BOI after payment of due taxes cannot be taxed again in the hands of the recipient assessee.



19. The CIT(A) as well as the ITAT referred to the legal position rendered by the Hon'ble Supreme Court in the case of *ITO vs. Ch. Achatalya (supra)* and took the view that the income derived by various syndicates in which the assessee was found one of the members, was required to be assessed in the hands of such syndicates only and a direct assessment in the hands of the assessee could not have been made in respect of such income derived by the syndicates.

20. Thus, as per the scheme of the Act, the issue is covered in favour of the assessee as per clause (a) of the first proviso to section 86 r.w.s. 67A of the Act.

21. In view of the above, we are totally in agreement with the conclusion reached by both the lower appellate authority i.e. CIT(A) as well as the ITAT holding that, the assessee was a member of an association of persons or body individuals, share of members of such association of persons or body individuals were determinate and known. Such association of persons or body individuals were chargeable to tax on their total at the maximum marginal rate or any higher rate. In such a factual position and circumstances, the share of profit/income received by the assessee from association of persons or body individuals/syndicates fall under the clause (a) of the first proviso to section 86 r.w.s 67A of the Act and, thus, the AO was not justified in making the addition in the hands of the assessee on account of his share in profits of syndicates and on account of his share of inadmissible expenses incurred by the syndicates.

22. Therefore, we are in agreement that, the CIT(A) was right in deleting the addition in the hands of the assessee and, consequently, the sole ground of the Revenue being devoid of merits is not sustainable.

23. Thus, when tested on the anvil of the afore-noted legal principles, we are of the opinion that in these appeals no substantial question of law arises from the order of the Tribunal. This Court refrains from entertaining these appeals as there is no perversity in the order passed by the ITAT since the ITAT has dealt with all the grounds raised by the appellant in the order



impugned and has passed a well reasoned and speaking order taking into consideration all the material available on record.

24. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference with the concurrent findings of the CIT (A) as well as the ITAT therewith by this Court is not warranted.

25. For the aforesaid reasons, we have no hesitation in holding that no question of law, more so a substantial one, arises from the order of the Tribunal requiring consideration of this court. There is no merit in these appeals as the Tribunal has not committed any error in deleting the additions which was made by the Assessing Officer as the same cannot be said to be erroneous and prejudicial to the interest of revenue. Thus, in our opinion, the present set of cases does not involve any substantial question of law so as to meet the provisions of Section 260-A of the Act for admitting these appeals.

26. In view of the aforesaid discussion, we do not find any merit in these appeals, which in our opinion, deserves to be and are hereby dismissed in *limine*.

27. Let a copy of this judgment be kept in the record of all connected appeals.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(ANURADHA SHUKLA)
JUDGE