

LLP receiving share of profit from other partnership firm is eligible for exemption under Income Tax

The ITAT, Bangalore in *M/s Mulberry Textiles LLP v. ITO [ITA No. 757/Bang/2022 dated January 3, 2023]* has held that, Limited Liability Partnership (“LLP”) is to be treated as a firm under the Income Tax Act, 1961 (“the IT Act”) and a firm can be a partner in other partnership firms therefore, the assessee being a LLP is eligible to exemption under Section 10(2A) of the IT Act from the share of profit received from other partnership firms.

Facts:

M/s Mulberry Textiles LLP (“the Appellant”) filed an income tax return on October 17, 2020 declaring a total income of INR 3,75,710/- which was processed under Section 143(1) of the IT Act and the exemption under Section 10(2A) of the IT Act was denied by the Revenue Department (“the Respondent”). Thereafter, the Appellant filed a rectification application under Section 154 of the IT Act, which was also rejected.

Being aggrieved this appeal has been filed.

It is contended that the Appellant is a LLP, which is a firm as per Section 2(23) of the IT Act and further that, there is an exemption provided under Section 10(2A) of the IT Act stating that the share of profit received by the partner of firm is not included in the total income, for which the Appellant is eligible.

Further, the Respondent submitted that the Appellant is not eligible to claim exemption under Section 10(2A) of the IT Act because it will amount to double deduction.

Issue:

Whether the Appellant is eligible to exemption under Section 10(2A) of the IT Act?

Held:

The ITAT, Bangalore in **ITA No. 757/Bang/2022** held as under:

- Observed that, the Appellant is a LLP and the IT Act is very clear that the LLP is to be treated as a firm and a firm can be a partner in other partnership firms.
- Relied upon the judgement of the Hon'ble Gauhati High Court in **Radha Krishna Jalan v. CIT [[2007] 294 ITR 28 (Gauhati)]** wherein, it was stated that there is no scope of double taxation of an income by a partner of a firm which is separately assessed to tax and therefore, when an income is already assessed in the hands of the firm is obviously not exigible to tax in the hands of the partner.
- Held that, the Appellant is eligible for exemption under Section 10(2A) of the IT Act from the share of profit received from the partnership firm.

Relevant Provisions:

Section 10(2A) of the IT Act:

"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-

(2A) in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

Explanation-*For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits."*

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