

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 7504/Mum/2019 (Assessment Year 2016-17)

ACIT-23(1) Room No. 113 1 st Floor Matru Mandir Grant Road Mumbai-400 007.	Vs.	M/s. Aditya Birla Real Estate Fund Plot No. C-22, G Block The IL & FS Financial Centre, BKC, Bandra- E, Mumbai-400 051. PAN : AACTA6619B
(Appellant)		(Respondent)

Assessee by	Shri Dhanesh Bafna
Department by	Shri Brajendra Kumar
Date of Hearing	25.06.2021
Date of Pronouncement	13.08.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 18.9.2019 pertaining to assessment year 2016-17.

2. Grounds of appeal read as under :-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO and allowing the exemption u/s 10(23FB) of the Act of Rs.63,43,60,000/- which is partially denying the exemption by the AO and taxed under head "Income from other sources" by the assessing officer and for reasons discussed in detail in the assessment order."

2. "Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in not upholding the status of three investee companies of the assessee as NON-VCU for the reason discussed in detail in the assessment order."

3. "Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in allowing the exemption u/s 10(35) of the Act in income of Rs.6,64,92,670/- earned from distribution from units held's in mutual funds."

4. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

Ground No. 1

3. Brief facts of the case are that the assessee is incorporated as a trust and registered with SEBI as a Venture Capital Fund' (VCF) under the SEBI (Venture Capital Fund) Regulations, 1996 (VCF Regulations). The assessee has filed its return of income on 25.07.2016 declaring total income at Rs.49,13,700/-. The same was processed u/s. 143(1) of the Act. The case was selected for scrutiny under CASS and accordingly, statutory notices were issued to the assessee. Assessing Officer on perusal of details filed by the assessee observed that the assessee has filed the return of income as a venture capital fund (referred to as VCF hereinafter) wherein it has made, investment in VCU's (Venture Capital Undertakings) and accordingly claimed exemption for income from these investments u/s. 10(23FB). Further, it has made other investments in mutual funds and claimed the exemption u/s. 10(35) of the Act in respect of dividend received from such non-VCU investment. "The AO has observed that Section 10(23FB), of IT Act is a special instrument which has been inserted to give benefit of exemption to venture capital fund/companies for certain specialized investments subject to fulfillment of certain conditions. In the instant case, the assessee has derived two types of incomes:

- Income of Rs. 110,91,81,102/- derived from investment in companies which are claimed to be VCU's by the assessee (from the Total Investment in Optionally Convertible Debentures (OCDs) of VCUs of Rs. 814,93,89,286/-).
- Income of Rs. 6,64,92,670/- derived from investment in Mutual Fund (from Total investment in Mutual funds of Rs. 74,04,81,089/-).

4. The Assessing Officer asked to clarify its position regarding me exemption that it has claimed in section 10(23FB), in light of the definition of VCU as per Clause 1, Explanation) 1 to section 10(23FB) made effective from 1.04.2013.

The assessee was asked to submit the financials VCUS in which it has made portfolio investments in FY 2015-16. The assessee filed submissions and details including financials of 8 VCUs in which investment had been made. From the financials submitted by assessee, the Assessing Officer noticed that three entities out of total Eleven VCUs failed to fulfill the criteria in Order to qualify as VCUs namely-

1. Amrapali Smart City Developers Pvt. Ltd., since the said company was not carrying out any real estate business as there were no financials maintained by the company for FY 2015-16 and the directors were in jail for various defaults. Thus, the said concern was not carrying out any business during FY 2015-16 and did not qualify as a VCU. Hence, deduction u/s 10(23FB) was denied on income of Rs.40,34,20,000/- derived from investment in OCD's of the said company.

2. CSN Estate Private Ltd., since the entire amount of Rs. 100 crores received as investment by the company was further lent to another company Lemon Tree land & Developers P Ltd and thus merely acted as a pass through entity. This activity of borrowing money and lending it to another concern was found to be in the nature of a financial activity which is in violation of the definition of VCU as per section 2(n) of SEBI (VCF) Regulations 1996. Thus, the said concern could not be treated as a VCU and deduction of exemption u/s. 10(23FB) was denied on the income of Rs.23,09,40,000/- derived from the investment in OCD's of the said company.

3. Starteck Infraprojects Pvt. Ltd., since the entire amount received as investment was lent to other body corporates. No disallowance was made since no income was received from the said investment.

5. Upon assessee's appeal learned CIT(A) noted the submission. He obtained remand report from the Assessing Officer and thereafter rejoinder from the assessee he decided the issue in favour of the assessee by holding as under :-

"I have considered the AO's order, remand report, submissions and details filed by the appellant. I find that the appellant, Aditya Birla Real Estate Fund, is a Trust, established under the Indian Trusts Act, 1882, by way of a Trust Deed dated 16.11.2009 and duly registered under the Registration Act, 1908 on 20.11.2009. The Trust was set up with the objective of investing in the Investee companies engaged in the construction and development of real estate in India. The trust has been settled by Aditya Birla Financial Service's Pvt. Ltd with 1L&FS Trust Company Ltd as the Trustee. It is provided that the Trustee will call for the contributions from the Contributors for making investment in various schemes of the Trust and the Trustee shall in turn make the investments in accordance with the objectives of the

respective scheme. By an Investment Management agreement, the Trustee has appointed Birla Sunlife Asset Management Co. Ltd. as the Investment manager in November, 2009 for the purpose of advising, managing and administering the Trust Fund by providing professional advice to the Trust and its schemes. The appellant was registered with SEBI as a Venture Capital Fund (VCF) under the SEBI (VCF) Regulations on 26.02.2010 and makes regular filings with the SEBI. Thus, it satisfies the following three conditions prescribed in section 10(23FB) to qualify as a VCF.

- i). 'The VCF is operating under a Trust Deed registered under the provisions of the Registration Act, 1908.
- ii). A certificate of registration should be granted by SEBI before 21 May 2012, and
- iii). The VCF should be regulated under the SEBI (VCF) Regulations.

5.4.1 The provision of section 10(23FB) of the Act, as amended w.e.f. 1.04.2013 provides that any income of a venture capital company or venture capital fund from investment in a venture capital undertaking shall not be included in computing the total income. The venture capital undertaking (VCU) in, the said section means a VCU as defined in clause (n) of regulation 2 of the VCF regulations, which is as under:

Clause (n) of Regulation 2 of the SEBI (VCF) Regulations,
"venture capital undertaking" means a domestic company -

(i) whose shares are not listed on a recognized stock exchange in India;

(ii) which engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by the Board with the approval of the Central Government by notification in the Official Gazette in this behalf.

It is an admitted fact that the construction and development of real estate in India real estate business is not in the negative list.

Further, the appellant has also complied with the provisions of section 115U(2) by filing disclosure in Form 64 to the prescribed income tax authority regarding the income credited to contributors/investors in the Fund.

5.4.2 The AO has held that interest income received on Optionally Convertible debentures (OCD) from the investment of Trust Fund in two out of 11 concerns, namely Amrapali Smart City Developers Pvt. Ltd (ASCD) and CSN Estates Private Limited ('CSN') cannot be considered for exemption under section 10(23FB) as these concerns cannot be considered as VCUs and has made a disallowance of Rs. 63, 43,60,000/- [Rs.40,34,20,000/+ Rs.23,09,40,000/-].

i) ASCD : In respect of this concern, the AO has held that the said concern can not be treated as a VCU since it was not engaged in carrying out real estate business during the AY2016-17, as there were no financials maintained by the company and as the directors of the said entity were in jail for making defaults. In this regard, I find that the appellant had made an investment in the OCDs of ASCD in November 2013, considering that the said concern was developing a project "Amrapali Golf Homes" in Sector 4 Greater Noida UP, which was under construction with critical approvals in place and sale of project having commenced. For this project, the said concern had taken land of 238,869.87 sqmts on lease for 90 years and by June 2013, had sold 4.236 residential units. During the year, the appellant held OCDs of Rs.150 crores in the said concern. Thus, the appellant had invested the said sum in November 2013 in a concern which qualified as a VCU. The exemption provision has to be considered strictly at the threshold and in this case the appellant had fulfilled the conditions required for claiming exemption under section 10(23FB) when it made the investment in the said concern in November 2013 and merely because there was a lull/breakdown in the business operations due to financial problems during the FY2015-16, it cannot be said that the ASCD was not engaged in the business of construction/real estates during AY2016-17 and was not qualified as a VCU. The investment in a Venture Capital Undertaking would entail the risk of failure of the business and it is not a case that the said concern had wound up its business altogether or the company had been closed down.

Further, I am also inclined to agree with the submission of the appellant that the interest income accruing from the said concern had been allocated to the various investors who would have included the same in their return for income tax and paid the due tax in terms section 115U and taxing the said income in the hands of the appellant would result in double taxation, in the whole scheme of provisions relating to taxation of VCF and the beneficiaries as provided in section 115U of the Act. In this regard, the appellant has filed confirmations from two such investors, Star Chemicals ' (Bombay) Pvt. Ltd, PAN AAACS7485E and Mr. Gautam Verma, PAN AIFPV3714P that they have disclosed the said interest income in their return of income for the AY 2016-17 and it is required to be disclosed separately in the Schedule PTI (Pass through income received from Business trust or investment Fund). In view of above discussion, I do not find merit in making an addition of Rs.40,34,20,000/- in the total income of the appellant and the same is hereby deleted.

ii) CSN (CSN Estates Pvt. Ltd) : The AO has held that since the entire amount of Rs.100 crores received as investment by the company CSN was further lent to another company Lemon Tree land & Developers P Ltd it cannot be regarded as a VCU since this activity of borrowing money and lending it to another concern was found to be in the nature of a financial activity which is in violation of the definition of VCU as per section 2(n) of SEBI(VCF) Regulations 1996. In this regard, I find that CSN, as per its MoA is in the business of construction and real estate development and had undertaken, the project named Gurgaon Gateway Sector 113 in joint venture

with Tata Housing through a JV Lemon Tree Land and Developer Pvt. Ltd. (Lemon Tree).

The CSN had the responsibility to obtain all the approvals, provide land for the project and had 51% share in JV while Tata Housing had 49% share and had the responsibility to market and sell the flats. Tata Housing had invested Rs.167 crores in the project for its 51% stake. Lemon Tree had the responsibility of developing and constructing the said property as per the approvals and sanctions, at its own cost.

CSN was granted licenses by the Haryana Government- Town and Country Banning Department under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Rule 1976 for setting up of residential group housing colony on the land belonging to CSN. For this purpose, CSN who has purchased land from various farmers and is the owner of various land parcels in sector 113, Gurgaon has entered into a development agreement dated 8 May 2012 for transfer of the development rights to Lemon Tree, where-in Lemon Tree has agreed to develop the residential group housing colony and, CSN has agreed to obtain all¹ the approvals from government authorities for development and completion of the Project. CSN has agreed to transfer all their development rights, title, interest with respect to the entire land made available to Lemon Tree to develop the CSN land and the consideration has been stated in para 5 of the development agreement dated 08.05.2012. The CSN has stated in the notes to accounts (note I) for F.Y 2012-13 that the amount of Rs. 1,430,237,069/- was receivable from Lemon Tree Land and Developers Pvt. Ltd., on account of development right given to it on which interest @18% per annum was receivable.

In view of above, I am of the considered view that CSN is engaged in the development of the project named Gurgaon Gateway Sector 113, considering that it has purchased and provided the land for the project, obtained necessary approvals and sanctions and has entered into development agreement with Lemon Tree for development and construction. The view taken by the AO that CSN has merely obtained loan from appellant and provided it to Lemon tree and has acted as a pass through entity cannot be held as correct. Therefore, it is held that CSN has rightly been treated as a VCU by the appellant and the interest income, received by the appellant on the investment of Rs. 100 crores by way of OCDs to CSN, is to be treated as exempt u/s10(23FB) of the Act. Addition of Rs.23,09,40,000/- is not found to be justified.

Since, no addition has been made in respect of the third entity Starteck Infraprojects Pvt. Ltd and appellant has not made any submission regarding the same, no finding is given in respect of treating the said concern as a Non-VCU.

5.4.3 In view of above discussion, the addition of Rs. 634,360,000/- is deleted and ground no. 4 and 4C are allowed, ground no. 4A is partly allowed. "Further, ground no. 4B is dismissed as infructuous as the addition of Rs. 634,366,000/- has been deleted while deciding ground no. 4."

6. Against the above order the Revenue is in appeal before us.

7. We have heard both the parties and perused the records. We find that in this case the assessee is registered mutual capital fund. It has registration with Securities Exchange Board of India (SEBI) under Venture Capital Fund (VCF) Regulations. No issue has been made out by the Revenue that the assessee has made any default in filing with SEBI or SEBI has taken adverse view on the issues raised by the Revenue. Learned CIT(A) has examined the conditions prescribed under section 10(23FB) to qualify as a VCF and has found that the assessee is duly qualified. No issue has been made by the Revenue that the assessee is not qualifying as a VCF. Out of 11 units the Assessing Officer has found fault with three of the VCUs and has made the impugned disallowances. As regards one of the VCUs namely as Starteck Infraprojects Pvt. Ltd., no addition has been made by the Assessing Officer.

8. One disallowance made by the Assessing Officer is with respect to Amrapali Smart City Developers Pvt. Ltd. (ASCD). The issue made out by the Assessing Officer is that the said VCU is not engaged in carrying out any real estate business during the financial year 2015-16 as there was no financials maintained by the company and as the directors of the said entity were in custody for making defaults. No case is that when it made the investment in the concern in November 2013 the company was in default. The case made out is that merely because there are no business carried out during financial year 2015-16 it does not qualify as a VCU. Learned CIT(A) has found that the assessee has made investment in OCDs of ASCD in November 2013 considering that the said concern was developing a project 'Amrapali Golf Homes' in Sector 4, Greater Noida UP, which was under construction with critical approvals in place and sale of project having commenced. That for this project the said concern had taken land of 238,869.87 square meters on lease for 90 years and by June 2013, had sold 4236 residential units. That during the year the assessee held OCDs of Rs. 150 crores in the said concern. Hence, learned CIT(A) is right in holding that the assessee had invested the said in

November, 2013 in a concern which qualified as a VCU. Just because units has run into a financial problems it cannot be said that the ASCD was not engaged in the business of construction/real estates during the assessment year 2016-17 and hence was not qualify as a VCU. Furthermore, learned CIT(A) has accepted the claim which has also been reiterated before us by learned Counsel of the assessee that interest income accruing from the said concern had been allocated to various investors who would have included the same in their return for income tax and paid the due tax in terms of section 115U and taxing the said income in the hands of the assessee would result in double taxation. In this regard we note that learned Counsel of the assessee has made further submissions before us that in the subsequent financial year the assessee has reversed the interest entries from this concern on the ground that receipt was extremely doubtful. However, it has been pointed out that the assessee has not claimed deduction of the said reversion in financial accounts. In this view of the matter, in our considered opinion order of the learned CIT(A) on this issue is cogent and does not need any interference in our part.

9. Another disallowance made by the Assessing Officer is with respect to CSN Estates Pvt. Ltd. The Assessing Officer claimed that the amount of Rs. 100 crores received as investment by this company has been further lent to another company Lemon Tree Land & Developers Pvt. Ltd., and thus it has merely acted as a pass through entity. That this act is in the nature of financial activity which is a violation of the definition of VCU as per section 2(n) of SEBI (VCF) Regulations 1996. Firstly, we note that no case has been made out by the Revenue that SEBI has taken any objection in this respect. It is the opinion of the Assessing Officer that CSN has merely obtained loan from assessee and provided it to Lemon Tree and has acted as a pass through entity. Learned CIT(A) in this regard has found that units CSN as per its MOA is in the business of construction and real estate development and had undertaken the project named 'Gurgaon Gateway', Sector 113 in joint venture with Tata Housing through a JV Lemon Tree Land and Developer Pvt. Ltd.

Learned CIT(A) further given finding in this regard which can be referred gainfully as under :-

“The CSN had the responsibility to obtain all the approvals, provide land for the project and had 51% share in JV while Tata Housing had 49% share and had the responsibility to market and sell the flats. Tata Housing had invested Rs.167 crores in the project for its 51% stake. Lemon Tree had the responsibility of developing and constructing the said property as per the approvals and sanctions, at its own cost.

CSN was granted licenses by the Haryana Government- Town and Country Banning Department under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Rule 1976 for setting up of residential group housing colony on the land belonging to CSN. For this purpose, CSN who has purchased land from various farmers and is the owner of various land parcels in sector 113, Gurgaon has entered into a development agreement dated 8 May 2012 for transfer of the development rights to Lemon Tree, where-in Lemon Tree has agreed to develop the residential group housing colony and, CSN has agreed to obtain all the approvals from government authorities for development and completion of the Project. CSN has agreed to transfer all their development rights, title, interest with respect to the entire land made available to Lemon Tree to develop the CSN land and the consideration has been stated in para 5 of the development agreement dated 08.05.2012. The CSN has stated in the notes to accounts (note I) for F.Y 2012-13 that the amount of Rs. 1,430,237,069/- was receivable from Lemon Tree Land and Developers Pvt. Ltd., on account of development right given to it on which interest @18% per annum was receivable.”

10. From the above in our considered opinion learned CIT(A) is correct in holding that CSN is engaged in the development of the project. That it has purchased and provided land for the project, obtained necessary approvals and sanctions and has entered into development agreement with Lemon Tree for development and construction. Hence, in our considered opinion disallowance made by the Assessing Officer has been rightly deleted by learned CIT(A).

11. Furthermore, we note that the ITAT in ITA No. 7472/Mum/2015 in the case of HDFC Property Fund Vs. ITO vide order dated 28.2.2019 has held that venture capital fund (VCF) cannot be denied benefit of section 10(23FB) if the same is operating in terms of trust deed, and its certificate granted by SEBI subsists and there is no adverse action taken or contemplated by SEBI for violation of any VCF Regulation. We may refer to para 14 of the said order as under :-

“14. To reiterate, it is abundantly clear that assessee is a VCF operating in terms of a Trust Deed registered under the provisions of the Registration Act, 1908; that it has been granted a Certificate of Registration as VCF by SEBI which continues to subsist; that there is no adverse action taken or contemplated by SEBI for violation of any VCF Regulations; that the targeted investment in VCU is within the purview of VCF Regulations of SEBI; that assessee is permitted by its Trust Deed as well as by the VCF Regulations of SEBI to temporarily deploy funds in units of mutual funds as well as in Convertible Debenture application money. Thus, in our view, assessee is entitled to exemption envisaged under Section 10(23FB) of the Act.”

12. In the background of aforesaid discussion and precedent we do not find any infirmity in the order of learned CIT(A). In this view of the matter we uphold the order of learned CIT(A).

Ground No. 2

13. Brief facts are that the AO stated in his order that the income of VCF shall be exempt only to the extent it is from the investment in venture capital undertaking. All other incomes would be taxable. On perusal of computation of income filed by 'the assessee, the AO noticed that the assessee has made investments in the units of Mutual Fund 'Birla Sun Life Cash Manager' to the tune of Rs. 74,04,81,089/- on which it has received dividend income of Rs.6,64,92,670/- and claimed exemption u/s. 10(35). The AO has disallowed the said claim of deduction u/s. 10(35) of the Act for the following reasons:

i) the assessee Fund which was created to function as a VCF was eligible for deduction under a specific section 10(23FB) and therefore it cannot claim deduction under another section of 10(35) on a part of its income. After the amendment in the provision of section 10(23FB) w.e.f. 1.04.2008, the exemption was made more restrictive and income' other than the income from investment in VCUs would be taxable.

The A. O relied on the following decisions

- a) Hon'ble ITAT, Mumbai in the case of ITO-19(2)(3) vs. M/s. Khitij Venture Capital Fund.
- b) Hon'ble ITAT, Ahmedabad Bench in, the case of ITO, Ward 10(20 Vs. Gujarat Information Technology Fund.

ii) the assessee, which is a VCF, is not covered by the definition of a 'person' as defined under section 2(31) of the Act, since it is a trust which enjoys a

special 'status' for the specific purpose of only exemption u/s 10(23FB) of the Act.

14. In view of the above, the AO has denied the assessee's claim of exemption with respect to income from mutual funds amounting to Rs.664,92,670/-.

15. Upon assessee's appeal learned CIT(A) deleted the disallowance by holding as under :-

"I have considered the AO's order and submissions and details filed by the appellant. The appellant is registered as a VCF under SEBI Regulations and its income from investment in VCUs is exempt u/s 10(23FB) of the Act. Further, it has earned some income which are not from investment in VCUs and the same has been offered to tax as Non VCU income. The non-VCU income includes, interest income on Fixed deposits, interest income on delayed payment of capital contribution, profit from sale of Units of Mutual Fund and dividend from investment in Mutual Fund.

6.3.1 The AO has disallowed the claim of exemption u/s. 10(35), in respect of the dividend income earned on Mutual Funds, on the ground that appellant is a Fund which was created to function as a VCF and was eligible for deduction under a specific section 10(23FB) and therefore it cannot claim deduction under (another section of 10(35) on a part of its income. Further, the AO has taken a view that the appellant being a Venture Capital Fund (VCF), is not covered by the definition of a 'person' as defined under section 2(31) of the Act, since it is a trust which enjoys a special 'status' for the specific purpose of only exemption u/s. 10(23FB) of the Act.

6.3.2 I find that the appellant is a Trust Fund and has been registered as a VCF by the SEBI Regulations. Its status is that of an AOP(Trust) and the return of income has been filed by the Trustee, in the status of AOP(Trust). The AO has also accepted the status of appellant as a Trust in the assessment order.

The general rule as laid down in section 161(1) is that income received by a trustee on behalf of the beneficiary shall be assessed in the hands of the trustee as representative assessee and such assessment shall be made and the tax thereon shall be levied upon and be recovered from the representative assessee in like manner and to the same extent as it would be leviable upon the recoverable from the person represented by him. So the view taken by the AO that the appellant is not covered by the definition of person under section 2(31) is not correct. Ground No. 6 is allowed.

6.3.3 The AO has sought to tax the income from Mutual Funds received as dividend and exempt u/s. 10(35). In this regard, I find that the operation of section 10(23FB) and 10(35) are independent. Since, the appellant Fund has income from investment in VCU the same has been excluded from its total

income u/s. 10(23FB), by treating it as a pass through entity for such, which is to be taxed in the hands of the investors/beneficiaries in terms of section 115U of the Act. However, since the non VCU income has not been so excluded, the same has been, offered to tax by the appellant and necessary exemption u/s 10(35) would be available to the appellant on such income, like any other person assessed to tax. The decisions cited by the A.O in the case of M/s, Kshitij Venture Capital Fund and M/s. Gujarat information Technology Fund are in respect of the exemption available to a VCF u/s, 10(23FB) and are not concerned in the issue of allowing exemption to a VCF u/s.10(35) of the Act. Thus, there is no justification for disallowing the claim of exemption in respect of income by way of dividends u/s. 10(35) of the Act. Further, I find that the appellant has not claimed any expenditure while computing its non VCU income and therefore, no disallowance u/s. 14A is required in the present facts of the case. In view of above discussion, the addition of Rs. 664,92,670/- on account of disallowance of exemption claimed u/s. 10(35) of the Act is deleted.”

16. Against the above order Revenue is in appeal before us.

17. We have heard both the parties and perused the records. Learned Departmental Representative relied upon the order of the Assessing Officer. However, he could not point out as to why assessee shall not be allowed exemption under section 10(35) of the Act with respect to dividend income.

18. Upon careful consideration we note that the Assessing Officer’s view that VCF was eligible for deduction under a specific section 10(23FB) and therefore it cannot claim deduction under another section 10(35) of the Act is totally inapplicable in the facts and circumstances of the case. Exemption under section 10(23FB) and exemption under section 10(25) of the Act operates in different fields. Learned CIT(A) is correct in holding that operations of these sections are independent. Assessee’s income in VCU is exempt under section 10(23FB) of the Act and the dividend income is exempt under section 10(35) of the Act. Hence, there is no infirmity in the assessee’s claim of exemption on dividend income under section 10(35) of the Act. Learned CIT(A)’s order in this regard is cogent. Decisions referred by the Assessing Officer has been duly distinguished by learned CIT(A). We do not find any infirmity in the same. Accordingly, we uphold the order of learned CIT(A).

19. In the result, this appeal by the Revenue stands dismissed.

Pronounced in the open court on 13.8.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 13/08/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS