

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3532 /Chny/2025
निर्धारण वर्ष /Assessment Year: 2020-21

&

आयकर अपील सं./ITA No.3533 /Chny/2025
निर्धारण वर्ष /Assessment Year: 2022-23

The Deputy Commissioner of Income
Tax,
2nd Floor Room No. 213 Tower 2,
BSNL Building, Greams Road,
Chennai-600006.

(अपीलार्थी/Appellant)

Sundaram Alternative Opp Series
High Yield Secured Debt Fund,
2nd Floor Sundaram Towers, 46
Whites Road Royapettah, Chennai-
600014.

PAN: AATAS 3714R

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr. Rahul Sarda, Advocate &
Mr. Rahul Chedda, C.A

प्रत्यर्थी की ओर से /Revenue by

: Mr. Pavuna Sundar.E, CIT

सुनवाई की तारीख/Date of Hearing

: 07.05.2026

घोषणा की तारीख /Date of Pronouncement

: 01. 06.2026

आदेश / ORDER

PER PADMAVATHY.S, A.M:

These appeals by the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'], Chennai-16, both dated 24.09.2025, passed under Section 250 of the Income Tax Act (the Act) for the assessment years 2020-21 and 2022-23.

2. The common grounds raised by the revenue in both the appeals are as under:-

“1. The order of the ld CIT(A) is contrary to law and facts and circumstances of

2. The ld CIT(A) erred in holding that the AO has failed to justify his finding that the assessee earned business income taxable u/s 10(23FBA) of the Act, thereby granting relief of exemption u/s 10(23FBA) of total income earned by the assessee to the tune of Rs.61,55, 12,750/-.

3. The Id CIT(A) failed to note that the total income earned by the assessee under different heads to the tune of Rs.61,55, 12,750/-, includes income earned in the nature of processing fee of Rs. 1,84,00,000/-, which is in the nature of business income not exempt as per section 10(23FBA) which grants exemption to any income of an investment fund (as defined under clause (a) of Explanation 1 of Sec. 115UB), other than the income chargeable under the head "Profits and gains of business or profession".

4. The ld CIT(A) ought to have noted that in order to avail the benefit of exemption for its entire income us 10(23FBA), including business income, the assessee has clubbed his business income in the nature of processing fee of Rs. 1,84,00,000/- with interest income in Form 64D under the head "others" and shown total income at Rs.57,92,59,756/-, and showed income under the head "Profits and gains of business or profession" in Form 64D as "Zero"

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Appellate Authority, i.e., NFAC, Delhi, may be set aside and that of the Assessing Officer restored.”

3. The assessee, Sundaram Alternative Opportunities Series – High Yield Secured Debt Fund, is set up as a scheme of Category II Alternative Investment Fund, a contributory trust under the provisions of the Indian Trust Act, 1882. The assessee is registered as a Category II Alternative Investment Fund with SEBI under the SEBI Alternative Investment Fund Regulations, 2012. The primary objective of the scheme is to invest predominantly in a

series of instruments which are fully secured, unlisted or listed securities of real estate builders and other entities in India. The assessee earns returns on these investments by way of interest or dividend income from portfolio investments and capital gains on sale or redemption of investments. For the purpose of adjudication we will take the appeal filed for AY 2020-21 as the lead case. The assessee filed the return of income for assessment year 2020-21 in which the assessee has claimed the following income as exempt under Section 10(23FBA) of the Act.

- i. Interest income-Rs.56, 08,59,756/-*
- ii. Short term capital gains (STCG)-Rs.3,62,52,992/-*
- iii. Processing fees-Rs.1,84,00,000/-*

4. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer held that the above incomes of the assessee are to be treated as income under the head “Profits and Gains from Business or Profession” and not under the head “Capital Gains” and other incomes as contended by the assessee. The Assessing Officer further held that the assessee has not provided any details about the nature and the amount of investments undertaken and in what capacity in various entities. The Assessing Officer also held that there are some discrepancies noticed in the ITR filed by the assessee in Schedule PTI. Therefore, the Assessing Officer held that the assessee cannot claim exemption under Section 10(23FBA) and disallowed the same. Aggrieved, the assessee filed further appeal before the CIT(A).

5. Before the CIT(A), the assessee submitted that it is a Category II AIF and is neither a Venture Capital Fund nor a Venture Capital Company. The assessee further submitted that the income earned by the assessee pertains to

capital gains on sale of investments and interest income on the said investments. The assessee also submitted that, as per the provisions of Section 10(23FBA), all income except income from business or profession of Category I and Category II AIF registered with SEBI would be tax exempt. The CIT(A) deleted the disallowance of exemption by the Assessing Officer by holding that-

6.17 It can be observed from the above provisions that, all income except business and profession income of Category I and Category I AIF registered with SEBI would be exempt. Since the appellant is a registered Category I Alternative Investment Fund under SEBI rules and regulations, the appellant is eligible to claim the exemption under section 10(23FBA). The appellant has explained that in response to the show cause notice issued dated 06th September 2022, it had duly furnished the AIF Certificate along with its response, which categorically stated that the Appellant is registered as a CAT I AIF with SEBI. However, despite the submission, the Ld. AO applied Section 10(23FB) to the present facts without appreciating the submissions of the appellant and concluded that the appellant is a Venture Capital Fund. The Appellant has challenged the conclusion drawn by the Ld. AO in the assessment order where the addition is made to the total income of the Appellant.

6.18 Taxation of Category-I and Category- I AIF is governed by the section 115UB of the Act which provides pass-through status to such funds whereby income (other than the income chargeable under the head business or profession) arising to such funds is exempted from tax in their hands under section 10(23FBA) and the said income is taxed in the hands of unit holders of the fund.

6.19 As can be seen from the perusal of the above-mentioned statutes that Explanation 1(a) to Section 115UB shall apply while examining the eligibility to seek exemption under Section 10(23FBA).

6.20 Further, the Ld. AO in the assessment order passed u/s 143(3), has erred in determining income of IN 61,55,12,750/- as earned under the head of Profit and Gains from Business and Profession. The Ld. AO has made the following observation in the order:

:- 5 -:

"However, the assessee himself contends that, "The primary objective of the scheme/assessee is to invest predominantly in series of instruments which are fully secured unlisted or listed security of real estate builders and other entities in India.

The assessee earns income namely capital gains on sale/redemption of above investment and interest Income on said investments.

During the year under consideration, assessee has earned short term capital gain (STCG) of INR 3,62,52,992, interest income of INR 56,08,59,756 and processing fee income of INR 1,84,00,000. Totalling to INR 61,55,12,750for which is proposed to be taxed by your good-self."

Therefore these incomes should principally come under the head of "business & profession" and not under the head "capital gain" & "other income" as contended by the assessee.

Further the assessee has not provided any details about the nature and amount of investments undertaken and in what capacity in various entities/

6.21 As can be seen from above, the Ld. AO has denied the exemption claimed under Section 10(23FBA) in a single paragraph with no proper analysis or reasoning.

The Ld. AO simply states that the incomes of the petitioner should principally come under the head of "business & profession" and not under the head "capital gains" & "other income", without any reasoning whatsoever. The said conclusion was made in just a single line in the order without any analysis/ reasoning.

1. 1. The Ld. AO has further stated that, as the appellant did not provide any details about the nature and amounts of investments undertaken, the said exemption could not be allowed. The appellant has, however, explained that at no stage of the assessment proceedings it was asked to provide such details. Neither in the show cause notice, nor during the course of personal hearing was the appellant even made aware that the Ld. AO was proposing to deny the exemption on this ground and therefore the appellant was not even granted an opportunity to canvass its submissions on this point.

2. The appellant has further submitted that as per provisions of Section 115UB(7) of the Act, the category I and I! AIF, are

required to file an annual form with the tax authority, for distribution of income to its unit holder in Form 64D. The said form contains the break-up nature of the income earned by the Cat II fund and the distribution of the same to respective unit holder. Based on the said filing, the tax authority generates a Form 64C, which is provided to respective unit holder. The unit holder would offer the income reported in Form 64C in their return of income.

3. The appellant company had filed Form 64D with Income Tax Authority on 28th November 2020. The said form also reflects the break-up of the income of Rs. 61,55,12,747 and it can be observed that business income is reported as 'Zero', which is also accepted by the Ld. AO and corresponding Form 64C are generated for unit holders. The appellant has also submitted the Form 64D filed with the Ld. AO.

4. It is also submitted that based on the Form 64C generated on Income Tax portal and issued to unit holders, the above referred income would have been offered to tax by the respective unit holders, as per the provisions of Section 115UB. In case, this is also taxed in the hands of the appellant company (i.e. Cat II AIF fund), the same may result in taxation of same income twice and would be bad in law. The appellant has relied on various case laws in this regard which clarify that the same income taxed twice would be against the fundamental principles of taxation.

1. 1. AIFs can be set up as a trust, limited liability partnership ("LLP"), or a company in India. While each form of entity has its benefits and limitations, a trust structure is among the most popular choices and prevalent for setting up an AIF. A trust structure involves a settlor and a trustee getting the trust initiated, with the contributors/ investors playing the role of beneficiaries of the trust contributing capital to the AIF under a contribution agreement. The AIF in turn enters into an agreement with an Investment Manager who is responsible for managing the AIF's investment activities. The investments are made and held by the AIF, with the beneficiaries entitled to their respective shares. The trust has no separate legal existence from its beneficiaries and hence, all the investments and income are held by the trustee in a fiduciary capacity for the beneficiaries.

2. Category I and I AIF Tax pass through

(a) Under the provisions of section 115UB read with section 10(23FBA) of the Act, any income earned by AIF from its investments (other than profits and gains of business or

:- 7 -:

profession) is exempt from tax for the AIF but taxable directly in the hands of the investors on a passthrough basis. The taxability in the hands of the investors is determined in the like and same manner as if such investment was made directly by the investors. Accordingly, the nature of income for investors is determined qua the nature of income earned by the AIF. For example, if AIF earns capital gain from sale of shares held in an Indian company, the investors are liable to tax under the head 'capital gains' at the rates applicable to respective investors.

(b) The Business Income is, however, taxable at AIF level at the rate specified in the Finance Act for AIF being a company or a limited liability partnership or at maximum marginal rate ("MMR") if the AIF is set up as a trust.

6.31 Business Income vs Capital Gains

As no tax pass through is available for Business Income, it is critical to assess whether the income arising from sale of shares and securities could be classified as Business Income or Capital Gains. Traditionally, the issue of characterization of exit gains (whether taxable as Business Income or Capital Gains) has been a subject matter of litigation. There have been judicial pronouncements on whether gains from transactions in securities should be taxed as "Business Income" or as "Capital Gains". However, these pronouncements, while laying down certain guiding principles have largely been driven by the facts and circumstances of each case.

Also, the Central Board of Direct Taxes ("CBDT") has provided guidance, vide its Instruction: No. 1827, dated 31 August 1989 and Circular No. 4/2007, dated 15 June 2007, in respect of characterisation of gains as either capital gains or business income. Following are the key illustrative factors indicative of capital gains characterisation (not Business Income):

(i) Intention at the time of acquisition - capital appreciation; (ii) Low transaction frequency;

(iii) Long period of holding;

(iv) Shown as investments in books of accounts (not stock in trade);

(v) Use of owned funds (as opposed to loan) for acquisition; (vi) Main object in constitution document is to make investments; and (vii) Higher level of control over the portfolio vehicle.

Taxation of IFSC Funds and its Investors

Further, the CBDT has issued various circulars clarifying the position on income arising from the transfer of listed and unlisted shares and securities. Accordingly, the characterization of income as Business Income or Capital Gain needs to be assessed and determined based on the facts and circumstances of each case considering the principles set out in judicial precedents and various instructions and circulars issued by the CBDT. However, the Ld. AO has not made any such analysis and directly arrived at the conclusion that the appellant has earned Business income and brought the same to tax, brushing aside the submission of the appellant.

6.32 Investors in Category I and II AIF

a) As mentioned above, Investors are liable to tax on income earned by AIF (other than Business Income. The tax liability is determined as if the investment by AIF was made directly by the investors and hence, the nature of income for the investors shall be the same as the income earned by AIF. Typically, an AIF could earn dividend income, interest income and capital gain on sale of shares and securities.

6.33 As the appellant has categorically explained that it is a Category AIF and has shown the income as exempt being dividend income, interest income and capital gain on sale of shares and securities, the Ld. AO has failed to justify his finding that the appellant is a VC and has earned business income taxable under the Sec 10(23FBA) of the Act.

6.34 In view of the above discussion and the case laws relied upon by the appellant, the Grounds No. 1 and 2 of the appeal are hereby ALLOWED.”

6. Aggrieved, the revenue is in appeals before the Tribunal.

7. The Id. AR submitted that the assessee, being a Category II AIF, is not engaged in any business. The activity of the assessee mainly involves pooling of funds to make investments and, therefore, cannot be regarded as business.

The Id. AR presented the following table to explain the nature of income earned by the assessee:-

SR. NO.	INCOME (WITH AMOUNT)	DESCRIPTION OF TRANSACTION/INCOME
1.	<i>Interest on debt securities (Rs. 56,08,59,756/-)</i>	<i>Since the investment objective is to invest in debt securities, the return is in the form of interest on debt securities. The Assessee made investment in NCDs of only 11 companies. Thus, there was no regular business. The strategy of the Assessee was to make investment in NCDs and generate interest income. Borrowings is one factor which shows carrying out of business. However, the Assessee is prohibited from borrowing funds to make investments (pg. 84). All investments are made from the investments made from investors' funds.</i>
2.	<i>Income from sale of units in mutual funds (Rs. 3,62,52,992/-)</i>	<i>Units in mutual funds are 'capital asset' u/s 2(14). They were shown in the balance sheet as 'Investments' (pg. 194) and not as stock-in-trade. The investment was made in order to generate return for the investors. Hence, the gain generated on their sale is treated as 'capital gains' as opposed to business income.</i>
3.	<i>Upfront additional income/ Return received from investee companies (termed processing fees) (Rs. 1,84,00,000/-)</i>	<i>This is nothing but in the nature of interest/ additional return generated on NCDs. This income is considered as return on investment and for computing the IRR on the investment and distributed to the investors. Additional upfront return is collected from investee companies to account for the inherent risk of making the investment.</i>

8. The Id. AR, during the course of hearing, took the Bench through various evidences to substantiate the claim that the assessee is a SEBI registered Category II AIF and is following the clauses of the trust deed.

“4.2. Schemes of the Trust: The Trustee may from time to time float multiple Schemes, wherein each such Scheme may have a different investment objective and policy, with prior written consent of the Investment Manager. The Trustee shall have the power to issue different Classes of Units in a Scheme with the prior written approval of the Investment Manager Each Scheme will be organized, administered and managed by the Trustee in accordance with this Deed, the respective Memorandum and Contribution Agreement of each such Scheme

:- 10 -:

and any other ancillary documents/agreements as may be considered necessary by the Trustee. This Deed shall bind all Schemes of the Trust that may be formed from time to time. Subject as otherwise provided in these presents or in the Act, no money belonging to the Trust and in the hands of the Trustee shall be recoverable by any person or by the Settlor or Contributors, or subscriptions under any circumstances otherwise than in accordance with the provisions of the Scheme Documents or of the Act, nor shall any other person or the Settlor or Contributors have any lien or charge of any description on the Trust or on any of the assets of the Trust.”

9. The Id. AR submitted that the Assessee satisfied the definition of an “investment fund” under section 115UB read with section 10(23FBA), since it was constituted as a trust and duly registered with SEBI as a Category II AIF. It was contended that the AO had proceeded on a fundamentally erroneous premise by treating the Assessee as a Venture Capital Fund and by applying provisions relating to section 10(23FB) and section 115U, which were wholly inapplicable to a Category II AIF governed by section 10(23FBA) and section 115UB. The Id. AR further submitted that the Assessee was not carrying on any business activity and that the pooling of investor funds for making investments could not be regarded as a business operation. The interest earned on debt securities represented return on investments made in a limited number of companies through NCDs, without any borrowing or leverage, as borrowing itself was prohibited under the AIF Regulations and the private placement memorandum. Similarly, gains arising from sale of mutual fund units were claimed as capital gains since the units constituted capital assets reflected as investments in the balance sheet and were only temporary parking of surplus funds. The so-called processing fee received from investee companies was also explained as an additional return or interest component on investments made in NCDs. Reliance was placed on various judicial precedents to contend that interest earned on surplus or

invested funds was assessable under the head “Income from Other Sources” and not as business income.

10. The Id. AR further contended that the AO had never issued any specific show-cause notice proposing to treat the income of the Assessee as business income and that the AO had also not rejected the books of account in the final assessment order. It was argued that the Departmental Representative could not travel beyond the findings recorded in the assessment order. The Id. AR also pointed out that Schedule PTI was required to be filled by the investors receiving pass-through income and not by the AIF itself, and therefore the observations of the AO in this regard were factually incorrect. It was further submitted that in earlier as well as subsequent assessment years, exemption under section 10(23FBA) had been consistently allowed to the Assessee and, therefore, the AO could not arbitrarily alter the characterisation of income without assigning reasons. The Assessee also emphasized that it had not undertaken derivative trading, futures or options transactions, and that its investment objective was merely to generate stable returns for investors. The Id. AR submitted that acceptance of the AO’s interpretation would render the beneficial provisions granting pass-through status to Category II AIFs otiose. The various factual and legal errors committed by the AO in treating the Assessee as a VCF, applying repealed VCF Regulations, questioning investments without calling for details, and misreading Form 64D and Schedule PTI requirements were extensively highlighted. Lastly, it was contended that the Assessee was a determinate and non-discretionary trust whose beneficiaries and their respective shares were ascertainable from the trust deed and contribution agreements, and therefore the income was taxable only in the hands of the beneficiaries and not in the hands of the trust itself. Reliance was placed on the decisions in CIT v. India Advantage Fund-VII and

CIT v. TVS Shriram Growth Fund in support of the proposition that income of a determinate trust is assessable in the hands of the beneficiaries.

11. The Id. DR supported the assessment order and contended that the Assessee had failed to establish its eligibility for exemption under section 10(23FBA). It was argued that the nature of activities carried on by the Assessee, including earning processing fees and other investment-related returns, indicated a profit-oriented commercial activity liable to be assessed as business income. The Id. DR further submitted that the Assessee had not furnished adequate documentary evidence regarding the nature of investments and applicability of the exemption provisions. Reliance was also placed on the fact that Schedule PTI in the return of income was left blank, which according to the Id. DR created doubt regarding the Assessee's claim of pass-through status. The Id. DR accordingly contended that the AO was justified in denying exemption and in treating the income of the Assessee under the head "Profits and Gains of Business or Profession."

12. We heard the parties and perused the material on record. The assessee in the return of income has declared Capital Gains and Income from Other Sources. Since the assessee is a Category II AIF, as per the provisions section 10(23FBA) the assessee claimed the impugned income as exempt. The AO held that the income earned by the assessee would fall thin the business and hence the assessee is not entitled to claim the exemption. Before we proceed further it is important to first have a general understand of Category II AIF and how the income of such fund is treated under the Act. A Category II Alternative Investment Fund (AIF) is a pooled investment vehicle regulated under the SEBI (Alternative Investment Funds) Regulations, 2012, which collects funds from investors and deploys such funds in investments for the

benefit of the contributors. Category II AIFs are those funds which do not fall within Category I or Category III AIFs and are generally prohibited from undertaking leverage or borrowing for making investments, except for limited temporary funding and operational requirements permitted under the Regulations. These funds primarily function as investment vehicles and not as trading or speculative entities. The income of a Category II AIF is computed in accordance with the special provisions contained in Section 115UB of the Act. Category II AIFs enjoy a “pass-through” status for income other than business income. In substance, the income is first computed at the AIF level under the normal provisions of the Act, as if the AIF itself were a separate assessee. Thereafter, the character of the income is retained and such income is allocated to the unit holders in proportion to their respective shares. Income other than “Profits and Gains from Business or Profession” is exempt in the hands of the AIF under Section 10(23FBA), but is taxable directly in the hands of the investors under Section 115UB. The income retains the same nature and character as earned by the AIF i.e. Capital Gains, Interest income, dividend income etc., are taxed in the hands of the investor. Business income, if any, does not enjoy pass-through treatment. Such income is taxed at the AIF level itself, and the same is exempt in the hands of the unit holders under Section 10(23FBB). With regard to income exempt under section 10(23FBA), the AIF is required to issue Form 64C to unit holders and Form 64D to the Income-tax Department, specifying the income allocated to each investor.

13. In this background we now examine the assessee's case here. The primary basis adopted by the Assessing Officer for denying exemption under section 10(23FBA) was the reclassification of the income earned by the

assessee as “business income”. The Assessing Officer while doing so has simply held that the income declared under the head capital gains, interest and processing fee are all to be classified under the head business income. It is relevant to note here that the Assessing Officer has treated the assessee as a Venture Capital fund which is an incorrect factual finding since the assessee is a SEBI registered Category II AIF. The income earned by a Category II AIF is classified as “Profits and Gains from Business or Profession” when the nature of the activities carried on by the fund demonstrates a systematic and organized commercial venture undertaken with the dominant intention of earning trading profits rather than making investments. The determination of such characterization depends upon the cumulative effect of various judicially recognised tests, including the frequency and volume of transactions, holding period of investments, intention at the time of acquisition, treatment of securities in the books of account, deployment of infrastructure for trading operations, and the manner in which the transactions are executed and realized. Where the AIF undertakes repetitive and continuous purchase and sale of securities, engages in structured financing or lending as a regular business activity, or carries out derivative and trading transactions with a profit-making motive akin to a trader rather than an investor, the income may be assessed as business income. However, on a perusal of the assessment order, we find that such recharacterisation has been made without conducting any proper enquiry or applying the settled judicial tests governing distinction between investment income and business income. The Assessing Officer has merely proceeded on presumptions without examining the intention of holding investments, frequency and volume of transactions, treatment in the books of account, source of funds, holding pattern, or the regulatory framework governing the assessee as a Category II AIF. The Id AR in this

regard submitted that the assessee has consistently shown the investments as “investments” in its books and not as stock-in-trade, and it is not in dispute that the assessee is a SEBI registered Category II AIF prohibited from undertaking leverage or trading activities except within the narrow limits permitted under the AIF Regulations. Further, the Id AR argued that the impugned income primarily arose from interest on debt securities, temporary parking of surplus funds in mutual funds, and additional return linked to investments, which by themselves do not automatically assume the character of business income. We further notice that the Assessing Officer's contention is also based on the income declared as processing fee is to be treated as business income. With regard to the said contention we notice as per the submissions that the processing fee received by the assessee was intrinsically connected with the investments made in NCDs and represented an additional return earned on such investments to compensate for the underlying investment risk. We also notice from the material on record that the said receipt formed part of the overall investment yield considered for computing the Internal Rate of Return distributable to investors. Therefore, in our view merely because the receipt was termed as “processing fee”, the same would not partake the character of business income.

14. We further find considerable force in the contention of the assessee that no specific show-cause notice was issued proposing reclassification of the income under the head “Profits and Gains from Business or Profession”. Even otherwise, the Assessing Officer has not rejected the books of account nor brought any material on record to demonstrate that the assessee was carrying on systematic trading or commercial business operations. We further notice

that the observations made in the assessment order are not based on any factual analysis and are not supported by any reasoning. In our considered view, the Assessing Officer proceeded on an erroneous assumption by treating the assessee as a Venture Capital Fund and by applying provisions relating to section 10(23FB) and section 115U, which are admittedly inapplicable to a Category II AIF governed by section 10(23FBA) and section 115UB. We also find no merit in the contention of the Assessing Officer regarding non-furnishing of Schedule PTI in the return of income. As rightly pointed out by the Id AR, Schedule PTI is required to be filled by the investors receiving pass-through income from the investment fund and not by the investment fund itself. The Id AR in this regard placed reliance on the CBDT instructions governing filing of the return of income in support of the said contention. In the absence of any contrary material brought on record by the Revenue, the adverse inference drawn by the Assessing Officer on this issue is factually incorrect and cannot be sustained. Accordingly, the action of the Assessing Officer in re-characterising the income as business income thereby denying the exemption under section 10(23FBA) is not tenable. Therefore we find no infirmity in the order of the Id. CIT(A) holding that the income earned by the assessee could not be reclassified as business income and deleting the exemption denied under section 10(23FBA).

15. From the perusal of the order of the CIT(A) for AY 2022-23, we notice that the CIT(A) for the said year has given relief to the assessee by relying on his own decision for AY 2020-21. We have while deciding the appeal for AY 2020-21 have held that there is no infirmity in the order of the CIT(A) and considering the facts being identical we are of the view that the said view will

:- 17 -:

mutatis mutandis be applicable to AY 2022-23 also. Accordingly we see no reason to interfere with the decision of the CIT(A) for AY 2022-23.

16. In the result, both the appeals of revenue for AYs 2020-21 and 2022-23 are dismissed.

Order pronounced on 01st day of June, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY T. Varkey)

न्यायिक सदस्य/Judicial Member

Sd/-
(पदमावती यस)
(Padmavathy.S)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 01st June, 2026.

M.M.P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF