

GAHC030001642025



**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

(AIZAWL BENCH)

WP(C) 27/2025

**1.** Jennyfar Lalzarliani Hrahsel,  
D/o Lalhmingthanga,  
Resident of Target Bazar Lunglei,  
Chanmari, Lunglei S.O. 796701,  
Mizoram, India.

**...Petitioner**

**-VERSUS-**

**1.** Union of India,  
Through the Secretary, Ministry of  
Finance, Department of Revenue,  
Government of India,  
Having its office at Central Secretariat,  
North Block, New Delhi-110001.

**2.** Principal Chief Commissioner of  
Income Tax, Shillong, having his office at  
Aayakar Bhawan, Mahatma Gandhi Road,  
Shillong, Meghalaya, Pin Code: 793001.

**3.** National Faceless Assessment Centre,  
Income Tax Department, 2<sup>nd</sup> floor, E-Ramp,  
Jawaharlal Nehru Stadium, New Delhi-110003.

**4.** Deputy Commissioner of Income Tax, Circle

Silchar having his office at Aayakar Bhawan, PWD Road, Silchar, Assam, Pin Code: 788001.

**5.** Income Tax Officer, W-1 Silchar, Income Tax Office, CR Building, Circuit House Road, Silchar, Assam, Pin-788001.

**6.** State of Mizoram, through Finance Secretary, Old Secretariat Building-I, Treasury Square, Aizawl, Mizoram-796001.

**...Respondents**

Advocate for the petitioner : Mr. Vinay Kumar Shraff, Advocate

Advocate for the respondent : Ms. Zairemsangpuii, CGC, No.1

Advocate for the respondent : Mr. S Chetia, SC, Income Tax, Nos.2 to 5

**:::BEFORE:::**

**HON'BLE MR. JUSTICE NELSON SAILO**

Date on which judgment is reserved : 01.04.2026

Date of pronouncement of judgment : 24.04.2026

Whether the pronouncement is of the operative part of the judgment ? : No

Whether the full judgment has been pronounced? : Yes

**JUDGMENT & ORDER (CAV)**

Heard Mr. Vinay Kumar Shraff, learned counsel for the petitioner. Also heard Ms. Zairemsangpuii, learned CGC appearing for respondent No. 1 as

well as Mr. S Chetia, learned Standing Counsel, Income Tax Department appearing for respondent Nos. 2 to 5.

**[2.]** The petitioner has filed the instant writ petition under Article 226 of the Constitution of India being aggrieved with the Assessment Order dated 19.03.2024 (Annexure-T) passed by the Assessing Officer under Section 143(3) read with Section 144(B) of the Income Tax Act, 1961 (hereinafter referred to as the "Income Tax Act") by which an addition of Rs.29,00,85,052/- was made under Section 69A of the Income Tax, Act while disallowing exemption under Section 10(26) of the Income Tax, Act for an amount of Rs.2,89,56,255/-. The petitioner is further aggrieved with the order dated 30.12.2024 (Annexure-FF) passed by the Principal Commissioner, Income Tax, Shillong under Section 264 of the Income Tax, Act by which the Assessment Order passed under Section 143(3) of the Income Tax, Act by the Assessing Officer, vide Order dated 19.03.2024 has been confirmed.

**[3.]** It is the case of the petitioner that she is a proprietor of M/s LZ Traders and a resident of Target Bazar, Lunglei, Chanmari in the State of Mizoram and she being a member of Mizo Tribe and being a Tribal, she is not required to pay income tax by virtue of exemption granted under Section 10(26) of the Income Tax, Act and the Notification No. TAD/R/35/50.109 dated 23.02.1951 issued by the Government of Assam and the North Eastern Reorganisation (Adaptation of Laws and Union subjects) Order, 1974, so far as her income derived or accrued within the State of Mizoram is concerned. The petitioner also contends that the Tax Exemption Certificate has been issued to her by the Sub-Deputy Commissioner, Lunglei.

**[4.]** The petitioner contends that she had filed her Income Tax return for the Assessment Year 2022-2023 in Form ITR-3 on 26.07.2022 declaring her total income as **nil** and claimed a refund of Rs.46,180/-. She received an intimation under Section 143(1) of the Income Tax, Act, vide Document Identification No. CPC/2223/A3/291023086 dated 17.08.2022, wherein she was allowed a refund of Rs.47,330/- for the assessment year 2022-2023. The said amount includes Rs.46,176/- as refund and Rs.1,153/- as interest for the said Assessment Year.

**[5.]** The petitioner thereafter received a notice for intimation for completion of assessment in accordance with the procedure of Section 144(B) of the Income Tax, Act bearing DIN:ITBA/AST/S/61/2023-24/1053491026(1), which was issued by the respondent No. 3 dated 02.06.2023. The notice stated that the petitioner's case for Assessment Year 2022-2023 was selected for the purpose of faceless assessment/re-assessment. The case was assigned to the Assessment Unit for completion of assessment in faceless manner in accordance with the procedure laid down in Section 144(B) of the Income Tax Act. The petitioner also received a notice under Section 143(2) bearing DIN:ITBA/AST/S143(2)/2023-24/1053503109(1) issued by the respondent No. 3 dated 02.06.2023, wherein she was asked to submit any evidence, on which she wish to rely in support of her return of the income electronically in e-Proceedings facility through her account in e-Filing website on or before 17.06.2023.

**[6.]** The petitioner also received a notice under Section 142(1) of the Income Tax, Act bearing DIN:ITBA/AST/F/142(1)/2023-24/1056997322(1)

which was issued by the respondent No. 3 on 12.10.2023 asking the petitioner to furnish an explanation in brief regarding the nature of business activities, complete set of audit report with annexures and schedules, computation of income for Assessment Year 2022-2023, documentary evidence of exemption under Section 10(26) of the Income Tax, Act, Scheduled Tribe certificate, ID Proof, source of income, GSTR return turnover for Financial Year 2021-2022, details of all Bank Accounts and Bank statement for Assessment Year 2022-2023, etc amongst others on or before 24.10.2023. Thereafter, a reminder was issued to her by the respondent No. 3 on 26.10.2023 to furnish details and information on or before 02.11.2023.

**[7.]** The petitioner then filed her reply on 01.11.2023 stating that she belongs to a Scheduled Tribe and her income was exempted under Section 10(26) of the Income Tax, Act, as she is residing in the 6<sup>th</sup> Schedule area. The petitioner also stated that she had limited knowledge about the statutory compliance and documentary procedures and having received the notice on 01.11.2023, she requested an extension of 15 (fifteen) days time to respond to the notice properly. In response, the petitioner received a letter dated 07.11.2023 from the respondent No. 3 directing her to furnish reply to the previous notices within 5 (five) days of receiving the letter, failing which, an *ex-parte* assessment order would be passed under Section 144 of the Income Tax, Act. The petitioner then filed a reply on 05.02.2024 to the notices issued under Section 142(1) of the Income Tax, Act stating that despite having engaging a Tax Consultant in Mizoram for compliance of the notices, she realised that the notices had not been replied on her behalf and therefore, requested for an extension of 30 (thirty) days time to submit a detailed reply.

**[8.]** In response to the above letter, the petitioner received a notice under Section 142(1) of the Income Tax, Act dated 15.02.2024 issued by the respondent No. 3, wherein her request for adjournment was rejected on account of being barred by time. The petitioner was therefore, asked to submit details, as per the earlier notice under Section 142(1) of the Income Tax, Act with documentary evidence on or before 18.02.2024, as a last opportunity and failing which, assessment would be finalised as per the Income Tax, Act. The petitioner submitted her reply stating that while filing the Income Tax Return for the Assessment Year 2022-2023, an error had been committed by reporting an exempt of income of Rs.2,89,56,255/- instead of Rs.28,95,625/- and thereby, resulting in an excess declaration of Rs.2,60,60,630/-. The petitioner also stated that her sister operates a firm under the name M/s LZ Agency and both, she and her sister use the same Bank account for depositing cash collected from sales. Consequently, the Bank reported cash deposit of Rs.3309.78 lakhs, which exceeded the sales declared under GST. Acknowledging the inadvertent error, the petitioner expressed her intent to consult tax professionals for compliance of the notice issued by the Income Tax Department. The petitioner also requested that she be allowed reassessment of the return and submission of requisite documents and information as was sought under Section 142(1). In her reply, the petitioner annexed the Bank statements, balance sheet/statement of affairs along with detailed schedules, details of business and place of business, details of her exemption under Section 10(26) of the Income Tax, Act, copy of the Scheduled Tribe certificate, ID proof, etc amongst others.

**[9.]** Thereafter, the petitioner received a show-cause notice dated

01.03.2024 issued by the respondent No. 3 alleging that although she claimed exemption of Rs.2,89,56,255/- under Section 10(26) of the Income Tax, Act, but she did not provide sufficient evidence to prove that the income was generated from Mizoram. The authority requested sales ledgers and bills/invoices to verify the source of income, which the petitioner did not provide. The show-cause notice also alleged that the petitioner declared a total income of Rs. Nil in her return of income, yet the Tax Authorities noted a significantly higher turnover in the GSTR-9C return. Further, it was alleged that the total credit entries in her 3 (three) Bank Accounts, including cash deposits amounting to Rs.29,00,85,052/- while the return of her income showed total sales as Rs. 0. The respondent authorities therefore questioned, as to why this amount should not be treated unexplained income. Further, the petitioner made cash deposit of Rs.23,10,84,723/- in her Bank account, but did not furnish the cash book and source of cash deposits with documentary evidence. Therefore, it was proposed that the amount should be treated as unexplained money/credits within the meaning of the Income Tax, Act. Also, according to Form-26AS, the petitioner carried out work with Manish Kumar Zunzunwala, but no income from this work was reported in the return of income. Therefore, a complete detail of the work with documentary evidence was asked for to understand the discrepancy. Lastly, it was alleged that the petitioner declared Rs.2,70,08,991/- as other income, but did not provide the source of this income with details of persons from whom the income was received, such as PAN, address, ledger account and contra conformation account. The petitioner was therefore, asked to submit her reply to the show-cause notice by 06.03.2024.

**[10.]** The petitioner in response sought for extension of time of 15 (fifteen) days to gather necessary information through her letter dated 05.03.2024. The petitioner then submitted her reply on 08.03.2024, wherein she reiterated what she had earlier stated in her reply submitted on 18.02.2024. Thereafter, the petitioner received the impugned Assessment Order passed by the respondent No. 3 under Section 143(3) read with Section 144(B) of the Income Tax, Act dated 19.03.2024, by which the exemption claimed by her under Section 10(26) of the Income Tax, Act was not allowed. Additionally, she received a computation sheet by which, she was held to be liable to pay a sum of Rs.28,05,63,777/-. She further received a notice for penalty under Section 274 read with Section 271AAC(1) of the Income Tax, Act dated 19.03.2024, asking her to show-cause on or before 29.03.2024, as to why an order imposing a penalty should not be passed and failing which, an order shall be passed without waiting for her explanation. She also received a notice of demand under Section 156 of the Income Tax, Act dated 19.03.2024 passed by the respondent No. 3 asking her to pay, the computed amount for the Assessment Year 2022-2023 amounting to Rs.28,05,63,777/- within 30 (thirty) days of service of notice, failing which, she would be required to pay simple interest and also a penalty. Further, if the amount remained unpaid, recovery proceedings would be initiated under Sections 222 to 227, 229 & 232 of the Income Tax, Act. The petitioner was also informed that she has an option to file an appeal with the National Faceless Appeal Centre (NFAC) in Form-35 within 30 (thirty) days of receiving the notice.

**[11.]** The petitioner then submitted her reply to the show-cause notice dated 19.03.2024 issued under Section 271AAC(1) on 03.04.2024 explaining

that she has the benefit of an exemption of Income Tax under Section 10(26) of the Income Tax, Act and that she had already responded and submitted all the necessary documents regarding her business income and other income in the assessment proceeding under Section 143(3) of the Income Tax, Act through notice dated 05.03.2024. She therefore, requested acceptance of her response.

**[12.]** The petitioner then received the show-cause notice for penalty under Section 271AAC(1) of the Income Tax, Act dated 17.05.2024 issued by the respondent No. 3 and recovery notice dated 22.05.2024 issued by the respondent No. 4 with a reminder dated 03.06.2024. The petitioner then submitted an application for revision under Section 264 of the Income Tax, Act before the Principal Commissioner of Income Tax, Shillong on 09.06.2024 (Annexure-BB). The petitioner then received a notice for hearing in respect of the revision proceedings dated 12.09.2024, wherein it was stated that hearing was fixed on 27.09.2024 at 11:30 am. She was asked to attend in person or through an authorised representative to submit a representation with supporting documents. It was also stated that if the petitioner wanted to conclude the revisional proceedings on the basis of her written submissions, then no personal attendance was required.

**[13.]** The petitioner then submitted her response to the notice for hearing on 25.09.2024 stating that she had no knowledge of taxation laws and she reiterated what she had submitted in her revision petition and that she had no additional facts and figures to present. She, thus requested that she be exempted from the tax and penalty that was imposed on her.

**[14.]** The revisional authority thereafter passed the impugned order dated 30.12.2024 under Section 264 of the Income Tax, Act declining to interfere with the assessment order dated 19.06.2024 passed by the Assessment Officer under Section 143(3) read with Section 144(B) of the Income Tax, Act. Aggrieved, the petitioner is before this Court through the instant writ petition.

**[15.]** Mr. Vinay Kumar Shraff, learned counsel for the petitioner submits that the petitioner has a sister, namely, Lalneihthangi, who holds PAN No. AEHPL6187N and conducts business under the name of M/s LZ Agency located at Chanmari-III, Lunglei with GSTIZN15AEHPL6187N1ZV. That the petitioner and her sister engage themselves in trading the same categories of goods and due to limited banking resources in rural tribal areas, the petitioner's sister also uses the petitioner's Bank account to deposit cash collected from her sales and the same has resulted in a significant increase in the petitioner's Bank turnover. He submits that the petitioner purchased goods from reputed suppliers which are duly reflected in her GSTIN portal. She utilised input tax credit amounting to Rs.8,20,20,739/- and paid Central Goods and Services Tax (CGST) of Rs.1,11,65,904/-, State Goods and Services Tax (SGST) of Rs.1,11,67,356/- and CESS amounting to Rs.5,37,96,063/- as reflected in the reconciliation statement in Form GSTR-9C. He submits that the business turnover of the petitioner derived from her proprietorship of LZ Traders based in the State of Mizoram for the period from 01.04.2021 to 31.03.2022 was duly reported under GST. The turnover amounted to Rs.16,58,55,746.81/- while the taxes reported in the GST returns were CGST of Rs.1,11,67,355.39, SGST of Rs.1,11,67,355.39 and CESS of Rs.5,73,02,705/- Accordingly, the total sales receipts inclusive of taxes

amounted to Rs.24,54,93,163/-.

**[16.]** Mr. Vinay Kumar Shraff, learned counsel for the petitioner submits that the primary Bank Account of their business is maintained with the Mizoram Rural Bank, Lunglei Branch under CC Account No. 0000097000208408. The business turnover of the petitioner alongwith that of her sister under M/s LZ Agency was deposited into this account. The gross turnover of M/s LZ Agency was Rs.12,88,39,561/- for Financial Year 2021-2022 and adding the same with the turnover with the petitioner's business, the same comes to a total amount of Rs.37,43,32,725/-. The learned counsel submits that the respondent authorities never visited the petitioner's business premises nor physically examined the books of account and that they have assumed that all the income have accrued outside the State of Mizoram without any investigation or an *iota* of evidence to corroborate such an assumption. The notion that such a substantial sum was generated outside Mizoram and transported for deposit in the Rural Bank Branch on a daily basis is highly improbable, as any income earned outside the State could have been conveniently deposited in any branch closer to the place of earning.

**[17.]** The learned counsel submits that all goods were procured by the petitioner from reputed corporate entities and multinational companies such as ITC, Johnson & Johnson, Adani Wilmar Limited and were delivered in Lunglei. He submits that it is highly improbable that the goods purchased and delivered to Lunglei would be transported back outside the State of Mizoram, as this would incur significant transportation costs and therefore financially unviable. He submits that all cash deposits made into the same Bank account

were duly reported in the petitioner's Annual Tax Statement (Form-26AS) for all previous financial years and no disputes were ever raised in this regard. That the absence of any objection in the previous financial years indicates an implicit acknowledgement by the Income Tax Authority about the legitimacy of the transactions. The petitioner, infact, filed her income tax return for the immediate previous Assessment Year 2021-2022 on 29.03.2022 and she had received intimation order under Section 143(1) of the Income Tax, Act and she was granted a refund of Rs.1,10,320/-. The same has attended finality and is not in dispute, despite a cash deposit of Rs.39.04 crore. However, the Department has taken a different view for the immediate succeeding Assessment Year 2022-2023. The learned counsel therefore submits that both the orders passed under Section 264 and under Section 143(3) of the Income Tax, Act suffers from legal infirmities as they are non-speaking, arbitrary and unreasonable. He submits that rejection is based solely on the alleged failure of the petitioner to produce additional documentary evidence, such as details of purchase and sale transactions of FMCG products, names and addresses of parties, copies of bills/invoices, ledger accounts and cross-confirmations from parties to whom sales were made. The learned counsel submits that it is a well established principle that an adverse order must be based on cogent reasoning and a proper evaluation of the available materials which is otherwise conspicuously absent in the impugned orders. The absence of a reasoned order amounts to violation of the principles of natural justice, as the petitioner has been denied a fair opportunity to understand the basis of rejection and to effectively respond to the same.

**[18.]** The learned counsel submits that the assessment cannot be based

on mere assumptions and presumptions and in fact it is an established principle of law that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Therefore, in the absence of examining the books of accounts and visiting the business premises physically, the respondent authorities have committed error in coming to a conclusion that the petitioner does not maintain books of accounts. He submits that considering the fact that the entire assessment was conducted in a faceless manner, it was not possible to upload the books of accounts on the Income Tax portal due to file size limitations, which was a technical constraint beyond the petitioner's control. Further, the addition, under Section 69(A) of the Income Tax, Act is wholly without jurisdiction, liable to be set aside, since the said provision is a deeming provision and cannot be applied merely on the basis of suspicion. The learned counsel submits that when the petitioner is clearly entitled to exemption under Section 10(26) of the Income Tax, Act, the impugned orders issued by the respondent authorities are in clear violation of Article 265 of the Constitution of India and therefore under the facts and circumstances, the impugned orders are liable to be set aside and quashed.

**[19.]** The learned counsel in support of his submissions has relied upon the following authorities:-

*1. Dhirajlal Girdharilal vs. Commissioner of Income Tax, Bombay, (1954) 2 SCC 557.*

*2. Commissioner of Income Tax (Central), Calcutta vs. Daulat Ram Rawatmull, (1964) 53 ITR 574 (SC).*

3. *Lalchand Bhagat Ambica Ram vs. Commissioner of Income Tax, Bihar and Orissa, 1959 AIR SC 1295.*

4. *Union of India & Ors. vs. Garware Nylons Limited & Ors., (1996) 10 SCC 413.*

5. *K.P. Varghese vs. Income Tax Officer, Ernakulam & Anr., (1981) 4 SCC 173.*

6. *Raza Textiles Limited vs. Income Tax Officer, Rampur, (1973) 1 SCC 633.*

7. *Director of Income Tax (Exemption) vs. Raunaq Education Foundation, reported in (2007) 164 Taxman 266 (Delhi).*

8. *ITA No. 49/1999 dated 29.01.2016 (The Commissioner of Income Tax (Central), Ludhiana vs. Shri Jawahar Lal Oswal & Ors.).*

9. *Principal Commissioner of Income Tax, Central-1 vs. Adamine Construction (P.) Limited, (2018) 99 Taxman 45 (SC).*

10. *Sumati Dayal vs. Commissioner of Income Tax, (1995) 80 Taxman 89 (SC).*

11. *Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Anr., (2006) 3 SCC 1.*

12. *M/S John Oakey & Mohan Limited vs. The Commissioner Commercial Taxes, U.P. Lucknow, 2024 AHC 22818.*

13. *Commissioner of Income Tax, Hisar vs. Market Committee, Sirsa,*

*(2012) 25 Taxmann.com 384 (Punjab & Haryana).*

14. *Pannalal Binjraj (Firm) & Anr. vs. Union of India & Ors., (1956) 2 SCC 865.*

15. *D.N. Singh vs. Commissioner of Income Tax, Central, (2023) 150 Taxmann.com 301 (SC).*

16. *M. Siddiq (Dead) through Legal Representatives (Ram Janmabhumi Temple Case) vs. Mahant Suresh Das & Ors., (2020) 1 SCC 1 (SC).*

17. *Madhusudan Reddy Pasham vs. ACIT, (2025) 181 Taxmann.com 537 (Hyderabad-Trib.)*

18. *CIT Patiala vs. Sri Piara Singh, (1980) 124 ITR 40.*

19. *Commissioner of Income Tax vs. Anil M. Gehi, reported in (2006) 284 ITR 338.*

20. *Sharp Tools vs. Principal Commissioner of Income Tax, (2020) 113 Taxmann.com 63 (Madras).*

21. *WP No. 1843/2018 dated 26.09.2018 in Mr. Pallavarajha vs. Principal Commissioner of Income Tax VI.*

22. *Orissa Rural Housing Development Corporation Limited vs. Assistant Commissioner of Income Tax, Circle-1(1), (2012) 17 Taxmann.com 186 (Orissa).*

23. *Aparna Ashram vs. Director of Income Tax, (2002) 124 Taxman 436 (Delhi).*

24. *Sajan Kumar Bhawsinka vs. Commissioner of Income Tax, Orissa & Anr.*, (1999) 9 SCC 132.

25. *Smti. Rekha Bharat Chheda vs. Assistant Commissioner of Income Tax, Circle-23(3), Mumbai*, (2007) 107 ITD 245 (Mumbai).

26. *C.H. Aboobacker Haji vs. Income Tax Officer, Ward-2(1), Kannur*, (2008) 111 ITD 224 (Cochin).

27. *Commissioner of Income Tax vs. Smt. Godavaridevi Saraf*, (1978) 113 ITR 589 (Bombay).

28. *Saci Allied Products Ltd. U.P. vs Commissioner of Central Excise, Meerut*, (2005) 7 SCC 159.

29. *Independent News Service (P.) Ltd. vs. Assessing Officer*, reported in (2025) 176 Taxmann.com 245 (Delhi).

30. *Dattatraya Gopal Shette vs. Commissioner of Income Tax, Poona Range, Poona*, (1984) 150 ITR 460.

31. *Commissioner of Income Tax vs. P. Mohanakala*, (2007) 6 SCC 21.

32. *Diwakaer Tripathi vs. Principal Commissioner of Income Tax*, (2023) 154 Taxmann.com 634 (Bombay).

33. *Commissioner of Income Tax, Coimbatore vs. M/s. Lakshmi Machine Works*, (2007) 290 ITR 667 (SC).

**[20.]** Ms. Zairemsangpuii, learned CGC appearing for respondent No.1 submits that the petitioner has not claimed any relief from the respondent No.1 and therefore, the respondent No.1 has nothing to say in the matter.

**[21.]** Mr. S Chetia, learned Standing Counsel, Income Tax Department appearing for respondent Nos. 2 to 5 by referring to the affidavit-in-opposition filed by the said respondents, submits that during the pendency of the writ petition, the PAN jurisdiction of the writ petitioner has been transferred from the range under the Principal Commissioner of Income Tax, Shillong to the range under the Principal Commissioner of Income Tax, Central-1, Guwahati and therefore, the present affidavit of the respondents is filed with the approval of the jurisdictional Principal Commissioner of Income Tax.

**[22.]** The learned Standing Counsel further submits that although the petitioner claims income tax exemption under Section 10(26) of the Income Tax Act, the said provision however does not provide a blanket exemption. In order to avail such exemption, the assessee has to fulfill certain conditions laid down in the said provision. The assessee must show that he or she resides within the States and area specified and the income has accrued from any source within the scheduled areas or such income by way of dividends/interests on securities have arisen from any of the scheduled areas. Therefore, the onus to prove the eligibility for exemption under Section 10(26) of the Income Tax Act lies with the assessee and without establishing or fulfilling any such conditions, the assessee is not entitled to get the benefit of exemption under the said provision. That the tax exemption certificate dated 05.11.2019 given by the Sub-Deputy Commissioner to the petitioner is not blanket in nature and is subject to the condition that the income accrued within the State of Mizoram. Further, in terms of Section 44AA and 44AB of the Income Tax Act, the petitioner is liable to get her statement of accounts duly audited to file her income tax returns since the turnover of the business of the petitioner surpasses the threshold limit. That unawareness of statutory

provision cannot be the ground for non-compliance with statutory provisions, particularly when the petitioner herself is otherwise aware of the fact that a refund can be claimed by filing return. That even if an income is liable to be treated as exempted, the liability to disclose the income by way of filing return may not be dispensed with and the assessee is not at liberty to conveniently file return only for the purpose of claiming refunds.

**[23.]** Learned standing counsel further submits that the petitioner has at least confessed that a single bank account is maintained by herself and her sister having different PAN for the two separate business activities, which creates confusion in apportioning the source of destination of a particular deposit of two separate business maintained through a single bank account. He submits that the documents attached by the petitioner in the course of subsequent proceeding were not sufficient to identify the source of such deposits of a particular business. The documents attached by the petitioner were found by the assessing officer as insufficient to ascertain the source of income, let alone the arrear from where the deposit which form the assessment of income under Section 69A was sourced. He submits that in absence of any cogent material to show that the income accrued by the petitioner is from within the State of Mizoram, the petitioner is not entitled to claim benefit under Section 10(26) of the Income Tax Act, especially when the bank account of the petitioner has been utilized by multiple person having distinct, different and separate business.

**[24.]** The learned Standing Counsel submits that the petitioner during the assessment proceeding, failed to produce any documents to co-relate the fact that the amounts deposited into the bank account were business receipts of the petitioner accrued within the State of Mizoram. It is the bounden duty

of the petitioner to submit all such documents and records to the satisfaction of the assessing authority in order to justify her claim of exemption under Section 10(26) of the Income Tax Act. Learned Standing Counsel submits that each financial year is considered to be unique period for the purpose of proceeding under the Income Tax Act and it is not directly dependent on the views of another financial year. That it is not binding upon any authority appointed under the Income Tax Act to mandatorily accept the action taken in any financial year while making conclusion for any subsequent financial year.

**[25.]** The learned Standing Counsel lastly submits that sufficient opportunities were granted to the petitioner to substantiate her claim by furnishing reliable documents, but she failed to do so. Therefore, it is not correct to say that she was not given enough opportunity to substantiate her claim for exemption under Section 10(26) of the Income Tax Act. The learned Standing Counsel thus submits that under the facts and circumstances, there is no merit in the writ petition and therefore, the same should be dismissed.

**[26.]** Mr. S Chetia, learned Standing Counsel, Income Tax Department in support of his submissions has relied upon the following authorities:-

*(i) Chuhrmal Takarmal Mohnani vs. Commissioner of Income Tax, M.P., Bhopal, AIR 1988 SC 1384;*

*(ii) Commissioner of Income Tax vs. P. Mohanakala, 2007 AIR SCW 3638;*

*(iii) Kesari Nandan Mobile vs. Assistant Commissioner of State Tax-(2), Enforcement Division-5, 2025 (101) G.S.T.L 177 (S.C); and*

*(iv) Shri Dinesh Singh Chouhan vs. The Income Tax Officer, Ward Jagdalpur, 2024 CGHC 35770-DB.*

**[27.]** I have heard the submissions made by the learned counsel for the

rival parties and have perused the materials available on record.

**[28.]** The primary grievance of the petitioner is that she being a Scheduled Tribe and residing within the scheduled area, her income is not liable to be taxed in view of the exemption provided under Section 10(26) of the Income Tax Act. Section 10(26) of the Income Tax Act may be abstracted hereunder for ready perusal:-

*“In the case of a member of a Scheduled Tribe as defined in clause (25) of Article 366 of the Constitution, residing in any area specified in Part-I or Part-II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the [States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura] or in the areas covered by Notification No.TAD/R/35/50/109, dated the 23<sup>rd</sup> February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 [as it stood immediately before the commencement of the North-Eastern Areas (Reorganization) Act, 1971 (81 of 1971)][ or in the Ladakh region of the State of Jammu and Kashmir], any income which accrues or arises to him, - (a) from any source in the areas, [or States aforesaid], or (b) by way of dividend or interest on securities.”*

**[29.]** From the above abstract, it may be seen that a member of a Scheduled Tribe as provided by the Constitution who is residing in any area specified in the Sixth Schedule of the Constitution or areas covered by the Notification dated 22.02.1951 by the Governor of Assam, is exempted from paying income tax. In other words, the income accrued to a Scheduled Tribe residing in a scheduled area shall not be taken into account in computing the total income of a previous year of any person. According to the petitioner, she

being a Scheduled Tribe and residing within the scheduled area is not liable to pay income tax on her income derived from her business within the State of Mizoram. That she is the proprietor of M/s LZ Traders and is engaged in retail and wholesale distribution business of FMCG products, which she has procured from reputed corporate entities and multinational companies such as ITC, Johnson and Johnson and Adani Wilmer Ltd. Such goods have been delivered at Lunglei and her income is earned from sale and distribution of such goods.

**[30.]** The further contention of the petitioner is that her sister Lalneihthengi also operates a firm in the name and style M/s LZ Agency and that both she and her sister operate the same bank account for depositing cash collected from sales. The petitioner also contends that after receiving notice from the Income Tax Department under Section 142(1) of the Income Tax Act, requiring her to furnish certain details, information and documents etc., she did not have sufficient time to react and in fact as she was not conversant with income tax and statutory compliance thereof, she sought assistance of professionals, but later came to know that her response to the notice had not been submitted. She therefore, engaged a tax consultant and sought for further extension of time for submitting her reply to the notice. However, the assessing officer vide the impugned assessment order dated 19.03.2024 while disallowing the tax exemption under Section 10(26) of the Income Tax Act amounting to Rs.2,89,56,255/-, also decided to initiate penalty proceeding under Section 271AAC(1) of the Income Tax Act while adding Rs.29,0085,052/- under Section 69A of the Income Tax Act.

**[31.]** A perusal of the impugned order would go to show that the petitioner as an assessee had filed original return of income on 26.07.2022

declaring her total income at Rs.0/- (zero). That her case was selected under CAS for complete scrutiny due to large cash deposit in bank, turn over shown in ITR was substantially lower than turnover shown in GSTR-9C and due to claim of large exempted income. The large cash deposit in the bank account of the petitioner in rural bank at Lunglei, according to her was on account of joint operation with her sister, who was also into similar business. Further, the claim for exemption of Rs.2,89,56,255/- was on account of a mistake and that the same should have to be rectified as Rs.28,95,625/-. For the error, the same, has resulted into excess declaration of Rs.2,60,60,630/-. The contention of the petitioner that she is liable to be exempted under Section 10(26) of the Income Tax Act was found to be not tenable due to lack of credible evidence.

**[32.]** The petitioner on the other hand contends that in view of the exemption provided under Section 10(26) of the Income Tax Act, she is not required to get her account audited or maintain books of accounts. However, the petitioner at the same time stands that she does maintain the books of accounts and it is for that reason that the data for profit and loss could be derived. The petitioner also maintains that since the entire records of business could not be uploaded on the income tax portal due to file size limitations, the income tax authorities ought to have deputed some officials to visit the place of business of the petitioner in respect of conducting the entire assessment in a phase less manner. Further, section 69A of the Income Tax Act being a deeming provision, same cannot be applied on mere suspicion.

**[33.]** Section 69A of the Income Tax Act may be abstracted below for ready reference:-

*“69A. Unexplained money, etc.- Where in any financial year the assessee is*

*found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer], satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

**[34.]** From the above extract, it may be seen that Section 69A of the Income Tax Act can be invoked only when certain conditions are cumulatively specified namely, (a) the assessee is found to be the owner of money bullion, jewellery or other valuable articles; (b) such assistance are not recorded in the assessee's books of accounts, if any are maintained; (c) and the assessee either fails to offer an explanation regarding the nature and source of acquisitions of the said assets or; (d) furnishing an explanation which in the opinion of the assessing officer is not satisfactory. The projection made by the petitioner is that since the petitioner has furnished her profit and loss accounts and balance sheets which cannot be possible to be prepared in the absence of books of accounts, the finding of the respondent authorities that the petitioner did not maintain books of accounts is only erroneous.

**[35.]** In the case of *Union of India & Ors. vs. Garware Nylong Ltd. & Ors.*(supra), the issue involved as to whether "Nylon Twine" can be considered as "Nylon Yarn" so that has to be covered by item 18 of the 1<sup>st</sup> schedule to the Central Excise and Salt Act, 1944 as it stood prior to the amendment of 1977. The Apex Court in the given facts and circumstances of

that case concurred with the conclusions reached by the High Court and found that same to be justified in law. The Apex Court held that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. There should be material may be either oral or documentary. It is for the taxing authorities to lay evidence in that behalf even before the 1<sup>st</sup> adjudicating authority.

**[36.]** In the present case, the petitioner by furnishing relevant documents feasible for submission in a faceless online assessment and in the revision proceedings under Section 264 of the Income Tax Act conducted at Shillong appears to have shown that there were materials to justify her claim for exemption. Therefore, if there was any doubt on the part of the respondent authorities as regards to the source of income of the petitioner, they could have sought for further materials/documents by visiting the place of business of the petitioner. The Apex Court in *Pannalal Binjraj (Firm)* (supra), observed that a humane and considerate administration of the relevant provisions of the Income Tax Act would go a long way in allaying the apprehensions of the assesseees and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with "an evil eye and unequal hand". The Apex Court further observed that to minimize the inconvenience caused to the assesseees, the tax officials can even proceed to their respective residence or place of business in order to examine the accounts and evidence.

**[37.]** In the present case as well, before concluding that the assessee was not maintaining books of accounts or conducting business from Mizoram, the respondent authorities concerned ought to have adopted a humane and

pragmatic approach considering the distance where the business was being carried out and the impracticality to bring voluminous records to Shillong which the petitioner claims to include 12574 purchase invoices and 985 sale invoices containing details and dress of the parties to verify the fact as to whether she is carrying on business operation from Lunglei.

**[38.]** Further, it may be seen that under Section 264 of the Income Tax Act, the power of revision lies upon the authority specified in the said section. The revisional authority may either of his own motion or on an application by the assessee for revision, call for the records of any proceeding under the Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made and subject to the provision of this Act, may pass such order thereon, not being an order prejudicial to the assessee as he thinks fit.

**[39.]** In the case of *Orissa Rural Housing Development Corporation Ltd. vs. Assistant Commissioner of Income Tax, Circle-1(1)* (supra), a Division Bench of the Orissa High Court in the given facts of that case held that Section 264 of the Income Tax Act is an alternative remedy available to the petitioner and the assessee who does not want to avail remedy by way of appeal. The remedy available under Section 264 of the Income Tax Act, therefore, is an alternative remedy and not an additional remedy and the assessee is not permitted to pursue both the remedies either simultaneously or one after another.

**[40]** This Court while agreeing with the said view of the Division Bench, finds it necessary to stress the fact that since the remedy provided under Section 264 of the Income Tax Act is an alternative remedy, it would be necessary for the revisional authority to not only call for the records of any

proceeding under the Act where orders have been passed, but to also enquire or cause an enquiry and thereafter, pass any such order as found to be fit and proper which however should not be prejudicial to the assessee.

**[41.]** Coming back to the present case, the manner in which the application for revision has been considered by the revisional authority, in the considered view of this Court appears to be short of what has been prescribed by Section 264 of the Income Tax Act. Uploading of documents and conducting of the proceeding in a faceless manner without an enquiry or causing an enquiry in the considered view of this Court would amount to lack of humane approach as observed and held by the Apex Court in *Pannalal Binjraj (Firm) vs. Union of India* (supra).

**[42.]** Thus, upon due consideration, this Court finds the impugned order dated 30.12.2024 to be not sustainable and accordingly, the same is set aside. The matter is remanded back to the revisional authority who shall reconsider the revision filed by the petitioner afresh by giving the petitioner due opportunity to project and present her case.

**[43.]** It is also provided that in case the petitioner is not able to produce the records on account of the same being voluminous or because of logistical impediments, the petitioner may submit an application seeking for such verification(s) as may be required at the place of her business by the respondent authorities. In the event of filing such an application, the revisional authority shall consider the same and pass appropriate orders. The revision proceedings shall be conducted expeditiously and at any rate, the same be completed within a period of two months from the date of receipt of a certified copy of this order. The order of the Assessing Officer dated 19.03.2024 impugned by the petitioner shall abide by the order to be passed

by the revisional authority.

**[44.]** With the above observations and directions, the writ petition stands disposed of. No cost.

**J U D G E**

**Comparing Assistant**