

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER  
AND  
SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1344(Bang)/2013  
(Assessment year : 2009-10)**

Madhava Hytech ECCI (JV)  
No.19, 8<sup>th</sup> A cross, Pampa Layout  
Hebbal, Kempapura,  
Bangalore-560 024

**PAN No.AABAM2734P**

Appellant

**Vs**

The Asst. Commissioner of Income-tax  
Cirlice-6(1), Bangalore

Respondent

**And  
& 1345(Bang) 2013  
(Assessment years : 2009-10)**

Madhava Hytech Brahmaputhra(JV)  
No.19, 8<sup>th</sup> A cross, Pampa Layout  
Hebbal, Kempapura,  
Bangalore-560 024

**PAN No.AABAM21857B**

Appellant

**Vs**

The Asst. Commissioner of Income-tax  
Cirlice-6(1), Bangalore

Respondent

**Assessee rep. by : Shri C.P. Ramaswamy, CA  
Revenue rep. by : Smt. Praveena, Addl.CIT**

**Date of hearing : 10-03-2016  
Date of pronouncement : 18-03-2016**

**ORDER**

**PER SHRI NARENDRA KUMAR CHOUDHRY, JM:**

These are two appeals preferred against the orders passed by learned CIT(A)-III, dated 26-07-2013 in ITA No.423/C-6(1)/CIT(A)-III, Bangalore - 11-12 and ITA No.424/C-6(1)/CIT(A)-III, Bangalore.

**B.** In both the appeals the issues are common, therefore the same are taken up for disposal by a Composite Order.

**B.1** The assessee in its appeal raised the following grounds;

*“1 The order of the CIT(A) insofar as the it is prejudicial to the interests of assessee, is against law, weight of evidence and probabilities of the case.*

*2. The ld.CIT(A) grossly erred in dismissing the appeal as she failed to appreciate that the provisions of sec.194C would be applicable only in the case of a payer and not in the case of this assessee/payee.*

*3. The ld.CIT(A) ought to have recognized the position that internal agreements between JV partners would not fall within the mischief of provisions for TDS. Consequently, she ignored the reconciliation statements filed with regard to the mobilization advance and confirmed the addition of such advance u/s 40(a)(ia). She ought to have deleted the addition.*

*4. The ld./CIT(A) ought to have applied the provisions of sec.199(3) r/w rule 37BA and with principles of accrual of income as per AS-9 before upholding the conclusion of the AO that mobilization advance would also become income of the year of receipt. Consequently, she erred in confirming the addition of Rs.1,47,72,785/-.*

*5. The ld.CIT(A) failed to appreciate that mobilization advance was ultimately adjusted on completion of the project for which such advance was received and declared as income in the year of adjustment on accrual basis. Consequently, she erred in confirming the addition.*

*6. For the above grounds and such other grounds that may be urged at the time of hearing the assessee prays that the appeal be allowed.*

*7. The assessee craves leave to add, to amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary”.*

**B.2** In the second appeal in ITA No.1345(B)/2013 the assessee has raised almost the same grounds except the addition to the tune of Rs.1,07,51,630/- in ground no.4.

**B.3** The Ld AR of the assessee contended that the Appellant Madhava Hytech ECCI (JV) had no income in the financial year under question as the same reflects from the Profit & loss balance A/c sheet. It was further argued that the amounts involved in the instant cases were in the nature of mobilization of advance only. But the learned AO, considered the same as income and added the same to the total income and the said orders of the AO were also being confirmed by the learned CIT(A).

Its is also submitted by the Ld AR that actual turnover of the Appellant (Madhava Hytech Brahmaputhra(JV) ) was Rs. 428,09,363 after adjusting Mobilization Advance of Rs. 143,57,850/-.

- 1. FIRST GROUND** raised by the assessee raises the question that the order of the CIT(A) not only prejudicial to the interest of revenue but also against the law, weight of evidence and probabilities of the case. Adjudication of this ground goes to the root of the case and shall be the outcome of the subsequent grounds.
- 2. GROUND NO.2**, the assessee argued that the learned CIT (A) failed to appreciate that the provisions of sec.194C would be applicable only in the case of payer and not in case of payee.

We have given thoughtful consideration to the ground no.2 raised by the assessee and analyzed the sec.194C which reflects that the same is not applicable to the payee as individual, as the amount has been received by the assessee from the BBMP and further transferred to its sister concern for execution of work, therefore the assessee was not supposed to deduct TDS.

- 3. GROUND NO.3**, vide this ground the assessee mainly urged that mobilization advance cannot be treated as income of the year of receipt. It is argued by the learned AR that mobilization advance was ultimately adjusted on completion of project for which such advance was received and to be declared as income in the year of adjustment on accrual basis, but the authorities below erred in confirming the addition. The learned AR also drawn our attention to the relevant documents filed in paper book.

On the other hand, the learned DR objected on the submissions of the learned AR and relied upon the CIT (A)'s order.

We have given our thoughtful consideration to the arguments advanced by the parties as well as facts and circumstances of the case and specially orders passed by the authorities below , the amount which is treated and added by the learned AO and confirmed by the learned CIT(A) as income is untenable because the said amount was only mobilization advance and from

the documents it clearly reflects that the same was adjusted at the final settlement of the bills. We are of the opinion, that the orders passed by the learned CIT(A) are contrary to the law therefore, the same are set aside and additions are deleted .

**4-5.** **GROUND no. 4 and 5** are formal in nature hence does not require adjudication, however **GROUND no.1** stands allowed as adjudicated on the aforesaid conclusions .

**6.** The learned AR is directed to pass the Assessment Order afresh, while considering the amounts involved as mobilization advances only.

Consequently, **both the appeals are inter-linked and hence allowed.**

Order pronounced in the open court on 18-03-2016.

**Sd/-**  
**(BOMMARAJU RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDRA KUMAR CHOUDHURY)**  
**JUDICIAL MEMBER**

Bangalore:

D a t e d : 18-03-2016

**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order, AR, ITAT, Bangalore