

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**
ITA No.2880/M/2015 (AY 2010-2011)

Dhule Palesner Tollway Limited, 10 th Floor, B-Wing, Hincon House, LBS Marg, Vikhroli (W), Mumbai – 400083.	बनाम/ Vs.	Income Tax Officer- 15(1)(4), [erstwhile ITO 10(3)(1)], R.No. 456 & 459, Aayakar Bhavan, MK Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AADCD1212H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sambit Mishra

सुनवाई की तारीख /Date of Hearing : 13.02.2017

घोषणा की तारीख /Date of Pronouncement : 28.02.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 13.5.2015 is against the order of the CIT (A)-24, Mumbai dated 16.2.2016 for the assessment year 2010-2011. In this appeal, assessee raised the following grounds which read as under:-

- "1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming treatment of Rs. 56,19,041/- under the head income from other sources as income received but not credited as per section 198 ignoring the fact that application of section 198 is not valid in this case.*
2. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming the inclusion of dividend income of Rs. 5,03,176/- while computing the capital work in progress, ignoring the fact that dividend income exempt from tax."*

2. Briefly stated relevant facts of the case are that the assessee is engaged in the business of 'civil contractors & running toll plaza'. Assessee filed the return of income declaring the total income of Rs. NIL. Assessment was completed u/s 143(3)(ii) of the Act and the assessed income was determined at Rs. 1,00,57,198/-. In the assessment, AO treated the amount of Rs. 1,00,48,628/- under the head 'income from other sources'. Further, AO also treated the amount of Rs. 5,03,176/-

as dividend income while computing the capital work in progress. Aggrieved, assessee carried the matter in appeal before the first appellate authority.

3. During the first appellate proceedings before the CIT (A), assessee made various submissions. After considering the submissions of the assessee, CIT (A) partly allowed the assessee's appeal by granting part relief on account of addition under the head 'income from other sources' and upheld the decision of the AO in excluding the said amount of Rs. 5,03,176/- while computing the capital work in progress. Aggrieved, assessee filed the present appeal before the Tribunal by raising the above mentioned grounds.

4. During the proceedings before us, none appeared to represent the case of the assessee. Even there is no request letter from the assessee's side seeking adjournment of the case. Further, from the record, we find, in the earlier occasion too, the case was adjourned because of non-representation of the assessee. Therefore, considering the assessee's continuous non-appearance before the Tribunal as well as the nature of the issues involved in the present appeal, we decided to adjudicate this appeal on merits with the help of the Ld DR for the Revenue.

5. Before us, Ld DR for the Revenue heavily relied on the orders of the Revenue Authorities and supported the decision taken by them.

6. We have heard the Ld DR for the Revenue and perused the orders of the orders of the Revenue Authorities as well as the relevant material placed before us. On perusal of the CIT (A)'s order, we find, para 2.3.2 is relevant for the CIT (A)'s decision on the first issue. As well, paras 4 to 4.3 of CIT (A)'s order are relevant for the second issue. Considering the significance and for the sake of completeness of this order, we extract the said paras (para 2.3.2 and 4.3) from the FAA order as under:-

*"2.3.2. I find from the above detail the appellant has not offered income of Rs. 56,19,701/- though as per the invoice it has received Rs. 7,64,14,080/-. To the extent shifting of utilities was completed during the year the subcontractor has raised invoice and in turn the appellant has raised invoice booking to its client NHAJ. Therefore, the appellant should have declared the entire income during the year itself whereas I find the appellant disclosed only Rs. 7,07,95,009/-. I find the appellant had also claimed the entire credit of TDS Rs. 15,28,282/- towards payment of taxes. No reason has been attributed as to why income of Rs. 56,19,071/- got postponed to the subsequent year. According to me, the appellant should have offered this as income during the year itself. Therefore, **the addition of the AO is sustained to the extent of Rs. 56,19,701/-.***

4.3.I am not in agreement with the contention that the dividend income should be included in the capital work in progress. This being an exempted income, the **AO had rightly excluded it from the capital WIP**. This ground of appeal is dismissed."

7. From the above, we find, on both the issues, CIT (A) discussed the matter at length before sustaining the addition to the extent of Rs. 56,19,701/- and upholding the decision of the AO in excluding the dividend income from the capital work-in-progress. Therefore, considering the factual matrix of the case, we are of the opinion, the decision taken by the CIT (A) on both the issues is fair and reasonable and it does not call for any interference. Accordingly, both the grounds raised by the assessee are dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28th February, 2017.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 28.02.2017

व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**