

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and S S Godara JM]

ITA No. 2826/Ahd/2014
Assessment year: 2011-12

The Income-tax Officer**Appellant**
*Ward 9 (2),
Ahmedabad*

Vs.

M/s. JMC Taher Ali (JV)**Respondent**
*A-204, Shapath-IV,
Opp. Karnavati Club,
SG Road, Ahmedabad
[PAN : AAAAJ 4857 H]*

ITA No. 2827/Ahd/2014
Assessment year: 2011-12

The Income-tax Officer**Appellant**
*Ward 9 (2),
Ahmedabad*

Vs.

M/s. JMC ATEPL (JV)**Respondent**
*A-204, Shapath-IV,
Opp. Karnavati Club,
SG Road, Ahmedabad
[PAN : AAAAJ 7845 D]*

Appearances by:

VK Singh *for the appellant*

MK Patel *for the respondent*

Date of concluding the hearing : 25.09.2017

Date of pronouncing the order : 26.09.2017

O R D E R

Per Pramod Kumar, AM:

1. These two appeals by Revenue in respect of two different assesseees are directed against separate order of learned Commissioner of Income-tax (Appeals)-XV, Ahmedabad, both dated 10.06.2014, in the matter of assessment under Section 143(3) of the Income-tax Act, 1961 for Assessment Year 2011-12. The issue and ground being similar, these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. Grievance raised by the Revenue in its respective appeals is as follows:-

Assessee: JMC Taherali (JV) : AY 2011-12

“Whether the Commissioner of Income-tax (Appeals) erred in law and on facts in deleting the addition made by the AO by estimating the net profit at Rs.2,32,93,800/- being 11.59% of gross receipts against the returned income of Rs.Nil.

Assessee: JMC Taherali (JV) : AY 2011-12

“Whether the Commissioner of Income-tax (Appeals) erred in law and on facts in deleting the addition made by the AO by estimating the net profit at Rs.4,10,37,000/- being 11.59% of gross receipts against the returned income of Rs.Nil.

3. Learned representatives fairly agree that the above grievance in both assessment years under consideration are covered, in favour of the assessee, by the decision dated 06.09.2017 of the Co-ordinate Bench of this Tribunal in the case of ITO vs. JMC PPPL (JV) in ITA No.2503/Ahd/2012 for the assessment year 2009-10 wherein the Tribunal has, *inter alia*, observed as follows:-

“8. We have carefully considered the rival submissions. The basic question for our consideration is whether the income can be said to have accrued in the hands of AOP when the contract has been awarded to a consortium/joint-venture and whether such a consortium formed for the purposes of obtaining the contract constitutes an AOP or not. It is the case of the AO that consortium/joint-venture in the instant case constitutes an AOP and thus a separate entity for incidence of taxation. The assessee, on the other hand, claims that the joint-venture agreement has been merely entered for the purposes of bidding for the project for which the tender was invited by the principal i.e. Bhopal Municipal Corporation. It is the case of the assessee that by virtue of supplementary agreement dated 08/02/2008 between JMC and PPPL (other joint-venture member) their correct relationship has been defined. It was also pleaded that from supplementary deed between constituents, it can be clearly inferred that the main joint-venture agreement dated 27/04/2007 for bidding purposes is only a symbolic document and does not represent an AOP or partnership between assessee and PPPL. The main joint-venture agreement is only a work sharing agreement to meet contractual agreement with a principal only.

9. In the light of aforesaid plea of the assessee, we observe that various clauses of the SA (supplementary agreement) are suggestive of the fact that it is the constituent-JMC indeed who is solely responsible for execution of the entire project. It is the JMC who is under obligation to bring in all resources, finances and all other services required for the execution of the project in exclusion to the other so-called partner of the joint venture. Noticeably, it is also specified by way of clause-4 of the SA that JMC shall be solely responsible for all the losses and profits. Thus, as mutually understood, one of the constituents alone has domain over the financial rewards and risks associated to the JV. The other partner of JV stands identified of all

contractual obligations by virtue of this SA. The bank guarantee is to be provided by JMC alone. The SA further provides that the joint bank account shall be operated by JMC alone and all decisions pertaining to the joint-venture shall be taken by one constituent, i.e. JMC only. JMC shall be further responsible for compliance of all statutory requirements without any overlapping of responsibility. Under these circumstances, we find that it is one of the members, namely, JMC Project (India) Ltd. which essentially bears the risk of scope of work and enjoys control over the project. This being so, in view of (he recent CBDT Circular No.7/2016 dated 07/03/2016, the assessee herein has rightly not been treated as an AOP for taxation purposes. We find that the CIT(A) has rightly held that income from the contract awarded by the principal cannot be said to have been accrued in the hands of the appellant AOP notwithstanding JV document executed for bidding and thus the appellant herein is not liable for income estimated on the contract awarded. We find no infirmity in the conclusion drawn by the CIT(A).

10. However, in the same vain, a liberty is granted to AO to call for necessary records from the Assessee-AOP herein to satisfy itself that the contract receipts in question and income thereon has suffered taxation in the hands of its constituent namely JMC Projects (India) Ltd., if so considered expedient, to ensure that contract receipts have been assessed in the hands of its member. Once, it is found that contract receipts have been assessed in the hands of constituent, the assessment of same receipts in the hands of AOP will cease to exist.”

4. We see no reason to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, we see no reasons to interfere in the conclusions arrived at by the Id. CIT(A). The order of the CIT(A) is thus upheld and accordingly dismiss the appeals of the Revenue.

5. In the result, both the appeals filed by the Assessing Officer are dismissed. Pronounced in the open court today on the 26th day of September, 2017.

Sd/-

Sd/-

S S Godara
(Judicial Member)

Pramod Kumar
(Accountant Member)

Ahmedabad, the 26th day of September, 2017

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad#