

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI SANDEEP GOSAIN, JM**

**ITA No.4280/Mum/2014**  
**(Assessment Year: 2007-08)**  
**ITA No.4281/Mum/2014**  
**(Assessment Year: 2007-08)**  
**ITA No.4282/Mum/2014**  
**(Assessment Year: 2008-09)**  
**ITA No.4283/Mum/2014**  
**(Assessment Year :2008-09)**

M/s. Satellite Developers Ltd., 7 <sup>th</sup> Floor, S-14, Solitaire Corporate Park, Andheri Ghatkopar Link Road Andheri (E), Mumbai – 400 093	Vs.	Asst. CIT (TDS) 3(2) K.G. Mittal Ayurvedic Hospital Building Charni Road (W) Mumbai – 400 002
<b>PAN/GIR No. AADCS0420Q</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri V.C.Shah
Revenue by	Ms. Arju Garodia
<b>Date of Hearing</b>	<b>10/11/2017</b>
<b>Date of Pronouncement</b>	<b>15/11/2017</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the appeals filed by assessee against the order of CIT(A)-14, Mumbai dated 13/12/2013, 16/12/2013 & 18/12/2013 for A.Y. 2007-08 and 2008-09 in the matter of order passed u/s.201(1) and 201(1A) of the IT Act.

2. The following common grounds have been taken by the assessee:-

1. a) *On the facts and circumstances of the case and in law the learned CIT(A) erred in deciding the appeal ex-party without considering properly the statement of facts, facts given in the assessment order, facts pointed out by the your appellant during the hearing before the assessing officer, without*

*affording an opportunity to explain by turning down the request for adjournment.*

*b) The learned CIT(A) erred in deciding the appeal by erroneously observing that tax was deductible as per provisions of section 194J and not section 194C of I.T. Act without considering the fact that your appellant had properly deducted the tax as required under the law and had paid the same in time.*

3. There is a marginal delay in filing the appeals. After going through the reasons for delay and the affidavit filed in support of it, we are convinced that there was a reasonable cause for a small delay. In the substantial interest of justice, we condone the delay and appeals are being heard for adjudicating on merit.

4. At the outset it was contended by learned AR that CIT(A) has passed an *ex-parte* order without giving opportunity to the assessee. An affidavit was also filed in support of the contention that assessee visited Income Tax Department to get the appeal fixed at earliest date. However, the appeals were not fixed as per the request and it was stated that notice will come as and when turn of the assessee will come. Finally appeals were fixed for hearing before the CIT(A) on 21/10/2013, on that day a request was made to adjourn the appeals as the quantum appeals were pending. However, the request for adjournment was turned down and no opportunity was given to explain on the plea that there was no Power of Attorney.

5. We have considered rival contentions and found from record that the assessee company is engaged primarily in the business of real estate development. During the year the assessee company had given a works

contract to M/s.Bonsai Modellers for making 1 model of proposed building of Morarka Project for the purpose of Marketing. The assessee company had made payment of Rs.10,79,571/- for the making of tower model.

6. The AO treated the payment as Professional Fee. The assessee company has already deducted tax at 2% u/s.194C and also the works contract tax at 4%. As per assessee, the nature of payment was covered within the provisions of section 194C, this being not a professional work, Provisions of Section 194J are not attracted. The job assigned is not "legal, medical, engineering or architectural professional or of technical services" as defined in section 194J. Thus, the payment being not to a professional but for a job work contractor, the provisions of section 194C would apply. However, without going much on the nature of payment and the rate of tax to be deducted at source on such payment, we set aside the *ex parte* order passed by CIT(A) and restore the matter back to the file of CIT(A) for deciding on merit after giving due opportunity to the assessee.

**7. In the result, appeals filed by the assessee are allowed for statistical purposes.**

Order pronounced in the open court on this 15/11/2017

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15/11/2017  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai