

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2287/Bang/2016  
(Asst. Year – 2012-13)

M/s MCML ECI Joint Venture,  
C-9, Industrial Estate,  
Yelahanka,  
Bengaluru.

. Appellant

Vs.

The Commissioner of Income-tax  
(Appeals),  
Bengaluru

. Respondent

Appellant by : Shri K.R Vasudevan, Advocate  
Respondent by : Shri C.H Sundar Rao, CIT

Date of Hearing : 21-2-2018  
Date of Pronouncement : 28-2-2018

**ORDER**

**PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Commissioner of Income-tax (Appeals) -6, Bangalore dated 9/9/2016 for asst. year 2012-13.

2. Briefly stated, the facts of the case, relevant for disposal of this appeal, are as under:-

2.1 The assessee, a joint venture formed by MCML System Pvt. Ltd., and ECI Engineering & Construction Co. Ltd., engaged in business as contractors, filed its return of income for asst. year 2012-13 on 27/9/2012 for asst. year 2012-13 declaring NIL income. The return was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was concluded u/s 143(3) of the Act vide order dated 25/3/2015 wherein the assessee's income was determined at Rs.11,06,46,881/-, in view of disallowance u/s 40(a)(ia) of the Act of a like amount by the Assessing Officer (AO) for failure on the part of assessee to deduct tax at source on payments made as warranted by the provisions of sec. 194C of the Act.

2.2 Aggrieved by the order of assessment dated 25/3/2015, for asst. year 2012-13, the assessee filed an appeal before the CIT(A)-6, Bangalore, which was dismissed.

3.1 Aggrieved by the order of the CIT(A)-6, Bangalore dated 9/9/2016, the assessee has preferred this appeal before the Tribunal wherein it has raised the following grounds:-

*“1. For that the order of the learned Commissioner of Income Tax (Appeals) CIT[A] is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity.*

*2. The learned CIT (A) as well as the assessing officer ought to have considered that the provisions of sec 194 C*

*cannot be applied in case of assessee, as there is no contractual obligation between the assessee (Joint Venture) and its constituents, ignoring the Joint venture agreement between them and hence Sec 194C is not applicable.*

*3. The assessee was only a special purpose vehicle (SPV) formed for execution of works contract with RVNL. The JV partners in turn sub-divided the works to be executed, to McML SYSTEMS PVT LTD (McML) & ECI Constructions, for their part of works as per the supplementary JV agreement for supply and execution of contract bearing on same terms and conditions which RVNL imposed on JV. So JV will be passing on all income and expenses to McML without any adding any profit element in its transactions as well as to ECI. Every bill raised by McML or ECI on JV will be in turn be raised on R VNL wit/tout profit element is added and actual proceeds from R VNL on each bill will be passed on to respective JV partners, to McML or ECI by the assessee. Since the JV is acting as SPV, it is only an entity which passes on the all proceeds to the McML or ECI and eventually, there is no contract involved, being a BACK TO BACK division of works. The Learned CIT (A) have not considered/ totally ignored the whole modus-operandi of the assessee explained during appellate*

*proceedings and about non- application of provisions of sec 194C but confirmed the addition of Rs 11,06,46,881/- made by the Assessing Officer by applying the provision of sec 40(a)(ia) of the Act.*

*4. CIT (A) as well as Assessing officer just relied on the wording of "Sub contracting Charges" under the schedule to P&L account, not considering the substance of relationship as well as the agreement between the JV and its constituents.*

*5. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the amounts were paid during the previous year under consideration and, therefore, the provisions of Sec.40(a)(ia) of the LT. Act are not applicable.*

*6. Any other ground that may be urged at the time of hearing."*

3.2 At the outset, the Id AR for the assessee submitted that before the Id CIT(A), the assessee had raised 4 grounds of appeal and one additional ground which are extracted at pages 2 and 3 of the impugned order. According to the Id AR a reading of the impugned order clearly evidences that after extracting the grounds and additional grounds raised, the Id CIT(A) proceeded to dismiss the assessee's appeal in terms of the additional grounds raised, without

adjudicating the grounds of appeal at S.Nos. 1 to 4 raised by the assessee. It was prayed that on this short point alone, the matter be restored to the file of the Id CIT(A) for adjudicating the grounds 1 to 4 raised by the assessee.

3.3 The Id DR for Revenue, on his part, also fairly conceded that the grounds S.No. 1 to 4 of assessee's appeal having not been adjudicated by the Id CIT(A), the same may be restored to her file for adjudication.

3.4 We have heard the parties and perused and carefully considered the material on record. As submitted by the counsels on both sides it is clearly evident from a reading of the impugned order that the Id CIT(A) has disposed off the assessee's appeal after adjudicating only the additional ground raised and without addressing/adjudicating the grounds at S.Nos. 1 to 4 listed out at page 2-3 of the impugned order and which we now extract hereunder:-

*“1. The order passed by the learned Assessing Officer is not acceptable as it is against the facts of the case and provisions of the Income Tax Act, 1961.*

*2. The Id, Assessing Officer erred in facts as well as in law to conclude that provisions of Sec. 194 C as also Sec. 40(a)(ia) are applicable, without appreciating the fact that there is no contractual obligation between JV and JV partners.*

*3. The Id. Assessing Officer ought to have appreciated the fact that the appellant is only and Special Purpose Vehicle (SPV) formed by JV PARTNERS to enable them to obtain the contract and that the work is also divided in between them in terms of the JV agreement and in the process of allotment of work in between JV partners, no element of sub-contract was involved.*

*4. Without prejudice to the above grounds, the Id. Assessing Officer ignored our submissions with regard to second proviso to Section 40(a)(ia) of the IT Act 1961 that the payees (JV PARTNERS) have paid tax on the their respective incomes and hence disallowance u/s. 40(a)(ia) is contrary to the provisions."*

In view of the fact that the aforesaid grounds (Supra) have not been adjudicated by the Id CIT(A) in the impugned order, we restore these grounds to the file of the Id CIT(A) for consideration and adjudication after affording the assessee adequate opportunity of being heard in the matter and to file details/submissions which shall be duly considered. We hold and direct accordingly .

4. Since we have restored the grounds raised by assessee before the Id CIT(A) back to her file for adjudication, we do not deem it

proper to adjudicate on the merits of the grounds Nos. 1 to 6 raised before us (Supra) at this juncture.

5. In the result, the assessee's appeal for asst. year 2012-13 is partly allowed for statistical purposes.

Order pronounced in the open court on **28th February, 2018.**

**Sd/-**  
**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Bangalore

Dated : 28/2/2018

Vms

Copy to :1. The Assessee  
2. The Revenue  
3.The CIT concerned.  
4.The CIT(A) concerned.  
5.DR  
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore.