

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

	ITA No.852/Hyd/2015		
	Assessment Year: 2011-12		
ITO, Ward-14(2), Hyderabad.	Vs.	Hindustan Ratna (JV), Hyderabad. PAN: AAEFH 0901 P	
(Appellant)		(Respondent)	
	Assessee by:	Sri P. Vinod	
	Revenue by:	Sri D. Srinivas, DR	
	Date of hearing:	14.11.2018	
	Date of pronouncement:	29.11.2018	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is Revenue's appeal for the Assessment Year 2011-12 against the order of the CIT(A)-4, Hyderabad dated 13.03.2015. The Revenue has raised the following grounds of appeal:

- “1. Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in deleting the disallowance.
2. The Ld. CIT(A) has failed to note that the objective of forming the assessee JV is not merely for the purpose of obtaining the contract but also to execute the project work.
3. Whether the Ld. CIT(A) is correct in law in holding that there is no contract-subcontract relationship between the assessee and its constituents so as to attract the provisions of section 194.C on the sub-contract payments or to invoke section 40(a)(ia) of the I.T. Act, 1961.”

2. Brief facts of the case are that the assessee, an AOP and engaged in 'contract works', filed its return of income for the A.Y. 2011-12 electronically on 30.09.3011 admitting income of Rs. 38,96,888/-. During the proceedings u/s 143(3) of the Act, the A.O. noticed that the assessee has debited a sum of Rs. 47,61,35,751/- as payment towards sub-contracts which were given on back-to-back basis to the JV partners. Assessee was required to furnish the details of TDS made and remitted to Government Account. Assessee furnished the details as per which the TDS was effected only on Rs. 17,80,48,272/- and the balance of Rs. 29,80,87,479/- had not suffered TDS. When the assessee was asked to show cause as to why the disallowance u/s 40(a)(ia) shall not be made on the balance of Rs. 29,80,87,479/-, the assessee submitted that the Joint Venture (JV) and its constituent members do not have a contractor and sub-contractor relationship between them and hence, there is no liability on the JV to deduct tax at source under section 194C of the Act. The Assessing Officer, however, was not convinced with the assessee's contention and held that the assessee is liable to make TDS. Therefore, invoking the provisions of section 194C of the Act, A.O. disallowed the said sum u/s 40(a)(ia) of the Act and brought it to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A), who allowed the same by following the decision of the ITAT in the assessee's own case for the A.Ys 2009-10 and 2010-11 in ITA No.372/Hyd/2013, dated 18.12.2013. Against the relief granted by the CIT(A), Revenue is in appeal before us.

4. Learned Departmental Representative supported the orders of the authorities below while the Learned Counsel for the Assessee supported the order of the CIT(A) and also field copy of the decision of

the ITAT in the assessee's own case for the A.Y. 2010-11. He has also filed a copy of the Department of Company Affairs, Circular No.1-81 (20-1-81-CL-V) dated 14.09.1981 wherein it was clarified that the companies can enter into partnership with an individual person or with another company irrespective of nationality and residence. Therefore, according to him, the JV is a partnership firm and as held by the coordinate Bench, the direct payment made to the constituent members is not liable for TDS.

5. Having regard to the rival contentions and the material on record, we find that the similar issue had arisen in the assessee's own case in the earlier assessment years and this Tribunal has held that there is no contractor and sub-contractor relationship between the assessee and its constituent members of JV and therefore, we see no reason to interfere with the order of the CIT(A), which is an order passed by following the decision of the ITAT.

6. In the result, Revenue's appeal is dismissed.

Pronounced in the open Court on 29th November, 2018.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 29th November, 2018

OKK

Copy to:-

1)	M/s. Hindustan Ratna (JV), Plot No.39, 8-2-293/A4/A4, B.N. Reddy Colony, Road No.14, Banjara Hills Hyderabad-500034.
2)	The Income Tax Officer, Ward-14(2), 6 th Floor, 'C' Block, Room No.634, IT Towers, AC Guards, Hyderabad.
3)	The CIT(A)-4, Hyderabad
4)	The Pr. CIT-4, Hyderabad
5)	The DR, ITAT, Hyderabad
6)	Guard File