

**आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"A" BENCH, AHMEDABAD**  
**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT**  
**AND**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

अपील सं./ITA No.632/Ahd/2016  
&अध्यायण वर्ष/Asstt. Year:2011-2012

A.C.I.T, Circle-5(2), Ahmedabad.	Vs.	M/s JP ASD Dholu Joint Venture, 401, Gala Argos, Bhd Harikrupa Tower, Nr.Govt. Ladies Hostel, Ellisbridge, Ahmedbad-380009.  PAN: AAAAJ8746R
--	-----	---

(Applicant)	(Responent)
Revenue by :	Shri S.K. Dev, Sr. D.R
Revenue by :	Shri Tushar P. Hemani, A.R

सुनवाई का ताराख/Date of Hearing : 17/01/2019  
घोषणा का ताराख /Date of Pronouncement: 04/04/2019

**आदेश/O R D E R**

**PER Ms MADHUMITA ROY, JUDICIAL MEMBER:**

The instant appeal filed by the Revenue is against the order dated 16.12.2015 passed by the Learned Commissioner of Income Tax(Appeals), Ahmedabad-5 ( in short "Ld.CIT(A)") arising out of order dated 27.03.2014 passed by the ITO, Ward-9(4), Ahmedabad under section 143(3) of the Income Tax Act, 1961( in short the "the Act") for the Assessment Year 2011-12 whereby and whereunder the "Ld.CIT(A)" has deleted the addition of Rs.2,68,30,874/- made on account of estimation of net profit on the ground that the assessee has not prepared a proper trading, profit and loss account.

2. The assessee an AOP filed its return of income through electronic media declaring total income of Rs.7,50,686/- for the Assessment Year 2011-12 which was processed u/s.143(1) of the Income tax Act 1961. Upon scrutiny a notice dated 01.08.2012 was served upon the assessee followed by a further notice dated 05.08.2013 u/s.142(1) of the Act.

2.1 The brief facts leading to the case is this that assessee a Joint Venture undertaking has been constituted by and under a Joint Venture agreement dated 07.06.2010 entered into three partners namely J.P. Fabricators, Associated Soapstone Distributing Company Pvt. Ltd. and M/s.Dholu Construction & Project Ltd. During the Assessment Proceedings upon verification of profit and loss account, the Ld.AO found it not prepared properly. Whatever receipts were received from the principal has been divided into the members in the ratio of their respective participation share holding upon keeping 5% of the total receipts with the AOP. As per the profit and loss accounts during the year under consideration the assessee has shown contract receipts of Rs.23,13,53,534/- out of which earthwork contract expenses debited in the profit and loss accounts of Rs.23,01,96,765/- has been given to the members of the Joint Venture in the following ratio:

<b>Name of the member</b>	<b>Share</b>	<b>PAN</b>
JP Fabricators, Ahmedabad	34%	AAGCA2491N
Associated Soapstone Distributing Co.Pvt. Ltd.	33%	ABWPM6274B
Dholu Construction & Projects Ltd., Ahmedabad	33%	AABCB5760E

2.3 Out of that 0.50% of the said contract receipts only retained by the JV after deducting various expenses, a net profit of Rs.7,50,685/- has been shown for the year under consideration.

3. The Ld.AO was of the view that the assessee is a separate legal entity constituted through the specific Joint Venture with basic intention to earn profit and prepares method of carrying out work defining clearly the responsibility of each of members in the specified ratio in capital contribution and profit and loss separately. Since entire contract receipts given in the hands of the members of the JV and only meagre percentage of such receipt has been shown as, in fact, earned by the JV, the Ld.AO was of the view to add the entire receipts in the hand of the assessee. According to him since the entire income arising out of order executed by the assessee the tax is payable by the assessee since it is a entity distinct in the eye of law than its partner members.

3.1 However, in the absence of proper trading and P & L A/c the Assessing Officer had estimated the assessee's income as per the material available on record and therefore, made an addition of Rs.2,68,13,874/- with the following observations:

*“...8.1 While finalizing the assessment for A.Y.2008-09 in the case of KNR BPL Join venture on similar issue, the net profit was estimated at 11.59% on the total turnover. Therefore, keeping in mind and facts of the case I hereby estimate the Net Profit @ 11.59 on total turnover of Rs.23,13,53,534/- is worked out at Rs.2,68,13,874/-. After considering the total income of Rs.7,50,688/-. I hereby make an addition of Rs.2,60,63,186/- and the same is added to the total income of the assessee treating the same as undisclosed*

*profit of the AOP. Penalty proceedings u/s.271(1)(c) are initiated for concealing true particulars of income.*

9. *Subject to above remarks and after discussion, the total income of the assessee is determined as under:*

*Total income as per statement of total income Rs.7,50,686/-*

*Add: Additional income estimated as above Rs.2,68,13,872/-*

*i.e. Rs.2,68,13,870/-..."*

4. In the appellate proceeding the Ld.CIT(A) deleted such addition, hence the instant appeal before us.

5. At the time of hearing of the instant appeal, the Ld.counsel appearing for the assessee submitted before us that the Ld.AO has made GP/NP addition without rejecting the books of accounts u/s.145 of the Act which is not permissible in the eye of law and on that score only the entire addition is bad in law and liable to be deleted. Further that assessee's case is squarely covered by the CBDT's circular no.7/2016 dated 04.03.2016 wherein it has been clarified that the consortium agreement entered into for EPC/Turnkey contracts are not to be treated as AOP. Further that where a JV is formed merely to procure contracts, the entire work is carried out by the JV members then the sum received from the contractee is to be taxed not in the hands of the JV but in the hands of JV members. It is merely a case diversion of income by overriding title and hence, the underlying sum cannot be taxed as income in the hands of the assessee. In support of his argument the Ld.AR, relied upon the judgment passed in the matter of DCIT vs M/s. ICRCL-KBL-MEIL(JV) copy

whereof has also been handed over to us, Ultimately he relied upon the order passed by the Ld.CIT(A).

It was further argued that there is no mistake committed neither any material defect has been detected by the Ld.AO. The Revenue is required to prove his onus that the entire books of accounts maintained by the assessee is not correct or incomplete or the method of accounting adopted by the assessee is such that true profits cannot be reduced therefrom. Only upon pointing out the specific defect in the books of accounts the same can be rejected u/s.145 of the Act. He has also relied upon the judgment passed by the Honøble tribunal of Delhi in the matter of Geoconsult ZT GmbH [2008] 172 Taxman 396.

6. On the contrary the Ld.D.R vehemently opposed the submission made by the Ld.A.R.

7. We have heard the rival contentions and perused the relevant materials available on records. The judgment relied upon by the assessee as well as circular issued by the CBDT. It appears from the record that there was no accrual of income in the hands of the JV in terms of the joint venture agreement dated 07.06.2010 entered into by three partners as mentioned above. The JV retained 0.50% of contract receipts and the balance amount was given to the members in the ratio mentioned in the said agreement. In fact the contracts awarded and received by the JV have been passed to the constituent members to carry out the contract and they have booked contract receipts in their books of accounts and the same was also offered for taxation. Therefore, taxing the entire receipts in the hands of the JV will be nothing but a case of double taxation. The formation of JV was made only to secure the contract and the scope of each constituent of JV was distinctly outlined. Neither any material

6

was brought on record by the Revenue to doubt the genuineness of the agreement dated 07.06.2010.

In the view of the matter the Ld.CIT(A) has rightly deleted the addition made by the Ld.AO by estimating net profit at the rate of 11.59% of the total turn over. Since no infirmity has found in the order impugned, we are of the considered view to confirm the same. Hence the Revenue's appeal is dismissed.

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

**Order pronounced in the Court on 04/04/2019 at Ahmedabad.**

**-Sd-  
(PRAMOD KUMAR)  
VICE PRESIDENT**

(True Copy)

**-Sd-  
(Ms MADHUMITA ROY)  
JUDICIAL MEMBER**

Ahmedabad; Dated 04/04/2019  
*Manish*