आयकर अपील य अ धकरण, अहमदाबाद यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''C' 'BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	2621/Ahd/2011	2008-09	M/s Backbone Projects Ltd. Backbone Construction P. Ltd. (JV) A-9, Kumud Apartment Stadium Cross Road, Navarangpura, Ahmedabad-09 PAN No. AAH FB9 131 E	ITO, Ward- 9 (2) Ahmedabad
2.	1486/Ahd/2013	2009-10	ITO, Ward- 9 (2), Ahmedabad	M/s Backbone Projects Ltd. Backbone Construction P. Ltd. (JV) A-9, Kumud Apartment Stadium Five Roads, Navarangpura, Ahmedabad-09 PAN No. AAH FB9 131 E
3.	2283/Ahd/2016	2010-11	ITO, Ward- 5(2)(2) Ahmedabad-300009	M/s Backbone Projects Ltd. Backbone Construction P. Ltd. (JV) A-9, Kumud Apartment Stadium Five Roads, Navarangpura, Ahmedabad-09 PAN No. AAH FB9 131 E
4.	608/Ahd/2011	2007-08	M/s. KNR BPL Joint Venture, A/9,	ITO, Ward-9(2), Ahmedabad

			Kumud Apartment, Stadium Cross Road, Navrangpura, Ahmedabad PAN- AAA AK5 212 F	
5.	2518/Ahd/2011	2008-09	M/s. KNR BPL Joint Venture, A/9, Kumud Apartment, Stadium Cross Road, Navrangpura, Ahmedabad PAN- AAA AK5 212 F	ITO, Ward-9(2), Ahmedabad
6.	1485/Ahd/2013	2009-10	ITO, Ward-9(2), Ahmedabad	M/s. KNR BPL Joint Venture, A/9, Kumud Apartment, Stadium Five Roads, Navrangpura, Ahmedabad PAN- AAA AK5 212 F

Assessee by :	Shri M. K. Patel, AR
Revenue by :	Shri O.P. Sharma CIT DR & Shri G. C. Daxini Sr. DR

सुनवाई क□ तारी□ख/Date of Hearing : 26.03.2019
घोषणा क□ तारी□ख /Date of Pronouncement : 25.04.2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is two sets of appeals containing total six appeals. In one set of appeals, assessee viz. M/s.Backnbone Projects Ltd., is in appeal for the

Asstt.Year 2008-09 whereas Revenue is in appeal for the Asstt.Years years 2009-10 and 2010-11. In the second set of appeals, the assessee viz. M/s.KNR BPL Joint Venture is appeal for the Asstt.Years 2007-08 and 2008-09, while Revenue is in appeal for the Asstt.Year 2009-10. These appeals are against the separate orders of the ld.CIT(A) for the respective assessment years mentioned hereinabove. Since issues raised in the grounds of appeals are common and/or interconnected, therefore, we have clubbed them together for the sake of convenience and adjudication by this consolidated order.

We are taking the appeal bearing no. 2621/AHD/2011for the AY 2008-09 filed by the assessee as the lead case for the adjudication.

The assessee has raised the following grounds of appeal:

ñ*(1) That on facts and in law the learned CIT (Appeals) has grievously erred in holding that income is chargeable to tax in hands of assessee.*

(2) That on facts and in law, it ought to have been held that the assessee is not taxable and income really belongs to members of assessee JV.
(3) That the facts and in law, the learned CIT (A) has grievously erred in confirming the rejection of books of accounts u/s. 145 of the Act.

(4) That the learned CIT (A) has grievously erred in confirming the net profit rate at 11.59%.

(5) That learned CIT (A) has grievously erred in not giving directions for adjustment of taxes paid by members of appellant JV against the demand of appellant JV.

(6) That on facts and in law the learned CIT (A) has grievously erred in holding that charging of interest u/s. 234A, 234B and 234C of the Act is consequential instead of deleting it, as prayed for.

*(7) The appellant craves leave to add, alter, and amend any ground of appeal.*ò

2. The interconnected issue raised by the assessee is that the Ld. CIT-A erred in estimating the income of the JV by rejecting the books of accounts though the same has been taxed in the hands of the members.

3. The facts of the case are that the assessee in the present case is joint-venture acting in the capacity of Association of Persons (for short AOP). The AOP came into existence as on 5th February 2007. The AOP was created by two companies namely Backbone projects ltd (in short BPL) and Backbone Construction Pvt ltd. (in short BCPL) for the purpose to undertake the contracts from the Government and other parties. The joint venture had a separate PAN and the bank account.

3.1 The assessee in the year under consideration has executed the contract worth of Rs. 87,82,34,036/- only. The same was shown as income of the assessee in its books of accounts. The assessee has further claimed an expense of equal amount of Rs. 87,82,34,036/- against the aforesaid contract income which was paid to BPL. Accordingly the gross receipts of Rs. 87,82,34,036/- was shown by BPL in its books of accounts. As such there was no income in the hands of the assessee. Accordingly, the assessee filed its return of income at NIL. Thus the assessee claimed the entire amount of TDS as a refund from The Income Tax Department.

3.2 The assessee during the assessment before the AO made its submission as detailed under:

i. The members of the joint-venture have furnished the requisite bank guarantee to carry out the project.

ii. All the resources such as money, materials, human resources, and machinery were provided by the members of the joint-venture to execute the project.

iii. There was no role of the joint-venture in the execution of the project except the allotment of the project in its name. The role of the joint-venture was of the trustee on behalf of the members of the joint venture.

iv. The income of the joint venture has already been taxed in the hands of its members in the assessment framed under section 143(3) of the Act.

3.3 Thus the further addition of the income in the hands of the joint venture as AOP will lead to the double addition of the same income.

3.4 However, the AO was dissatisfied with the submission of the assessee. As per the AO, the income has generated in the hands of the Association of persons. Therefore at the first instance, it should have been charged to tax in the hands of AOP as per the provisions of section 4 of the Act.

3.5 Once a JV has been incorporated comprising of different members, then members lose their identity. As such the JV being legal entity is liable to tax under the Act on the income generated by it.

3.6 The JV raised all the bills and the payment was received by the JV as well as TDS certificate was issued in the name of JV by the party. Therefore the income as discussed above belongs to the assessee, i.e. JV. Therefore the expenses incurred by the members of the JV should have been reimbursed by the JV to the members.

3.7 The AO further noted that the assessee failed to produce the necessary books of accounts. Accordingly, the assessee failed to justify the correctness and completeness of the expenses and the income in its books of accounts. Thus the AO rejected the books of accounts of the assessee under section 145(3) of the Act and estimated the net profit after considering the comparable cases at the average rate of 11.59% of the gross receipts. Thus the AO worked out the profit at Rs. 10,17,87,325/- only and added to the total income of the assessee.

4. The aggrieved assessee preferred an appeal to the Ld.CIT (A). The assessee before the learned CIT (A) submitted that all the books of accounts were duly filed during the assessment proceedings which were also verified on a test check basis. Thus the allegation of the AO that the assessee failed to produce the books of accounts during the assessment proceedings is incorrect. Accordingly, the AO erred in rejecting the books of accounts without pointing out any defect therein.

4.1 The assessee without prejudice to the above also submitted that the members of the JV have already declared the profit in the individual capacity

to the tune of 8.61% of the gross receipts. Therefore if any tax is levied in the hands of the JV, then the same income should be deleted from the hands of the members. Similarly, the credit of the amount of tax paid by the members of the JV should be given to it while determining the tax liability of it.

5. However, the learned CIT (A) disagreed with the submission of the assessee by observing that there was no clause in the agreement dated 5th February 2007 about the distribution of receipts in the hands of the members. As such all the receipts were allocated to BPL only whereas the profit sharing ratio declared in form 3CD is 50% for each member.

The assessee has also shown unsecured loan in its balance sheet as on 31st March 2008 amounting to Rs. 2,05,72,454.00, but there was no detail furnished to justify such an unsecured loan.

The assessee has also admitted in its submission that the income from the project of the JV is for Rs. 7,56,35,505.00 being 8.61% of the total gross receipts of Rs. 87,82,34,036.00 only. Thus income from the project of the JV should have been taxed in the hands of the assessee. Accordingly, the learned CIT (A) rejected the submission of the assessee and confirmed the order of the AO.

6. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us. The learned AR before us filed two paper book, 1st paper book running from pages 1 to 96 and 2nd paper book is running from page no 1 to 168 and submitted that the income generated from the projects allotted in

the name of the JV has already been assessed in the hands of the individual members in the assessment framed under section 143(3) of the Act. Therefore further addition in the hands of the JV for the same income will lead to the double addition which is not permissible under the provisions of law.

6.1. The learned AR in support of his contention drew our attention on page 21 of the 2nd paper book where the allocation of the receipt from the project was given.

6.2 The learned AR also filed the copies of the agreements between the members and the JV which were also filed along with the tender filed with the respective parties to secure the work. The copies of the agreement are placed on pages 92-115 of the IInd paper book.

7. On the other hand, the learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates whether the assessee is liable to tax on the income as disucussed above or the members of the joint-venture in their capacity.

8.1 From the preceding discussion, we note that the assessee as JV has prepared its financial statements, got it accounts audited and filed audit report under form 3CD, and produced the books of accounts during the assessment proceedings. As such the assessee has shown gross income and claimed the

expenses of the equal amount against such gross income, leaving the income at NIL. Thus it is transpired that the assessee has offered its income to tax as evident from the financial statements, income tax return filed by it. In case, the AO feels dissatisfied with the income disclosed by the assessee as JV in its books of accounts; then he was supposed to disallow the expenses or disturb the income as per the provisions of law. As such it cannot be alleged that the assessee as AOP has not offered the income to tax in the given facts and circumstances.

8.2 We also note that all the books of accounts were produced before the AO which was verified by him on a test check basis as evident from his finding in the assessment order. The relevant finding of the AO is extracted below:

> ñé *In response to the notices issued Shri. Dharmendra Solanki, C.A., A.R. of the assessee attended from time to time and furnished the details/evidences as called for. The assessee is engaged in the business of construction of infrastructure project. During the year the assessee has shown total receipts of Rs. 87,82,34,036/- on which* ***"0" (ZERO)*** *net profit has been declared. The assessee had got his accounts audited as per the provisions of Sec. 44AB of the Act and filed the Tax Audit Report during the course of assessment proceedings. During the course of assessment proceedings the assessee was required to produce his books of accounts along with bills and vouchers and same where verified on test check basis. The assessment is finalized subject to the following discussion.*ò

8.3 We further note that there was no resource available with the JV such as money, material, human resources, and machinery, etc. As all these resources were available with the members of the JV which were also used for the

execution of the project. In other words, the assessee was acting merely as the trustee of its members in order to secure the work contracts.

8.4 At this juncture, we also find to refer the important clause mention in the JV which reads as under:

> ***"3. AGREEMENT TO INCOME-TAX:***
> *Since the entire project will be entirely executed by the members of the JV either singly or jointly be agreed upon between the partners the JV will not have any income of its own and therefore the tax liability would be NIL in case of JV. Therefore the JV would apply to income tax department for obtaining the No Deduction tax at Source Certificate. In case there is tax deducted at source in the hands of JV it will file the return and claim the refund of the same and shall be transferred to the account of the Backbone Construction Pvt. Limited (BBC) as agreed upon between the partners."*

8.5 A plain reading of the aforesaid clause reveals that both the members of the joint-venture originally agreed to incorporate the JV only to obtain the contracts. It was also agreed that whatever will be the income of the JV will be allocated to the members.

8.6 In such circumstances, the Hon'ble Delhi High Court has not even treated such arrangement, i.e. forming JV to secure the work as JV as AOP in the case of CIT Vs. Oriental Structural Engineers Pvt. Ltd. reported in 374 ITR 35 wherein it was held as under:

> ***9.*** *In the assessee's case for assessment year 2004-05, this court had the occasion to consider the issue in ITA No. 146/2010 decided on 11.02.2010. The relevant extracts from the said judgment are as reproduced below:*
>
> > *"The Tribunal returned a clear finding of fact indicating that the payments made by the joint venture/assessee to its partners was not excessive and, therefore, Section 40A(2) of the said Act would not come into play. The*

Tribunal held as a fact that the arrangement between the parties was clear that after receipt of the contract from the National Highways Authority of India, the work was to be executed by the joint venture members directly and no effort was to be made by the assessee/joint venture itself in the execution of the contract. It was, therefore, found by the Tribunal that the assessee was created as a joint venture for obtaining works from the National Highways Authority of India without there being any requirement or necessity of the joint venture to carry out any activity itself. In fact, all the activities were to be carried out by the aforesaid two members of the joint venture and for which they were to be remunerated."

10. *At the outset, this court notices that the issue sought to be argued on behalf of the revenue stands covered by a decision of a Division Bench, which made references to several other judgments, including those of the Supreme Court when a "person" is said to exist as an association of persons. In that decision, i.e. Linde AG, Linde Engg. Division v. Dy. DIT [2014] 365 ITR 1/224 Taxman 43 (Mag.)/44 taxmann.com 244 (Delhi), first, the Court considered the definition of Association of Persons (Section 2 (31)) and then analyzed it in the following terms:*

"(31) 'person' includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

Explanation. - For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;"

27. Section 3(42) of the General Clauses Act, 1897 defines a 'person' to include "any company or association or body of individuals, whether incorporated or not".

** ** **"

29. The Supreme Court in the case of G. Murugesan and Brothers v. Commissioner of Income Tax, Madras: (1973) 4 SCC 211 made the following observations:-

For forming an 'Association of Persons', the members of the association must join together for the purpose of producing an income. An 'Association of Persons' can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence volition on the part of the member of the association is an essential ingredient. It is true that even a minor can join an 'Association of Persons' if his lawful guardian gives his consent. In the case of receiving dividends from shares, where there is no question of any management, it is difficult to draw an inference that two more shareholders functioned as an 'Association of Persons' from the mere fact that they jointly own one or more shares, and jointly receive the dividends declared. Those circumstances do not by themselves go to show that they acted as an 'Association of Persons'." (Emphasis Supplied)

** ** **"

34. . . . It is, thus, essential that an Association of Persons has the trappings of a partnership for conducting the joint enterprise which makes it amenable to be treated as a separate taxable entity. A person carrying on business may in the usual course cooperate with others for a common purpose. In many instances, the test of common purpose and common action, if literally applied, may also hold true. However, treating every instance of such cooperation between two or more persons as resulting in an Association of Persons would militate against the purpose of considering an association as a separate tax entity. Whether an arrangement or collaborative exercise between two or more persons results in constituting an Association of Persons as a separate taxable entity would depend on the facts of each case including the nature and the extent of collaboration between them. The Supreme Court in Indira Balkrishna (supra) had also clarified that:- "there is no formula of universal application as to what facts, how many of them and of what nature are necessary to come to a conclusion that there is an association of persons within the meaning of Section 3.

35. It is obvious that unless the facts lead to a conclusion that there is sufficient joint participation for a common enterprise, it would not be appropriate to treat two or more persons as an Association of Persons for the purposes of assessing them as a separate taxable entity. A mere cooperation of one person with another in serving one's business objective would not be sufficient to constitute an Association of Persons merely because the business interests are common. A common enterprise, which is managed through some degree of joint participation, is an essential condition for constituting an Association of Persons.

36. It follows from the above discussions that before an association can be considered as a separate taxable entity (i.e. an Association of Persons), the same must exhibit the following essential features:

(i) must be constituted by two or more persons.

(ii) the constituent members must have come together for a common purpose.

(iii) the association must move by common action and there must be some scheme of common management.

(iv) the cooperation and association amongst the constituent members must not be perfunctory and/or merely in form. The association amongst members must be real and substantial which is sufficient to treat the association as a separate homogenous taxable entity."

** ** **"

47. It is material to note that even, as per the terms of the Contract, the scope of work to be executed by Linde and Samsung was separate and was accordingly specified in the annexures to the Contract. The payments to be made for separate items of work were also specified. The currency in which the payments were to be made was also separately indicated. Thus, insofar as execution of the work was concerned, even OPAL recognised that different items constituting the Contract would be performed independently by Linde and Samsung. The consideration for the work performed was to be made directly to the concerned member of the Consortium in accordance with the work performed by him. Annexure C of the Contract specified the payment schedule i.e. the amount to be paid for the supply of goods and services rendered by both the members of consortium. Linde and Samsung were to be paid on the basis of the separate invoices raised by them respectively. There was no arrangement for sharing of profits and losses between Linde and Samsung. And, each of them would make profits or incur losses based on the price as agreed by them and the costs incurred by them for performance of the contract falling within their independent scope of work.

48. It follows from the above, that Linde and Samsung had joined together to (a) bid for the contract; (b) present a façade of a consortium to OPAL for execution of the contract and accept joint and several liability towards OPAL for due performance of the contract and completion of the project; and (c) put in place a management structure for inter se coordination and execution of the project. However, in all other respects, both Linde and Samsung were independent of each other and were responsible for their own deliverables under the Contract, without reference to each other."

11. *In the present case too, the Court is of opinion that the consistent and concurring opinions of CIT (A) and ITAT were that the JV was formed only to secure the contract,*

in terms of which the scope of each JV partner's task was distinctly outlined. Further, the entire work was split between the two JV partners; they completed the task, through sub-contracts and were responsible for the satisfaction of the NHAI. Therefore, applying the principles of the law declared in Linde AG, Linde Engg Division (supra), it is held that the ITAT did not fall into error of law, in holding that the JV was not an association of persons and liable to be taxed on that basis. The question of law framed is accordingly answered in favour of the assessee and against revenue."

8.7 In the case on hand, the AOP was formed only to secure the work, and after that, there was no involvement of such AOP in the execution of the work. As such the entire work was executed by the members of the JV as agreed between them. Accordingly, the fees from the execution of the project work were shared between the members as per their understanding. Thus the Hon'ble Delhi High Court held that the income from such joint venture would not be subject to tax in the hands of AOP.

8.8. It is also important to note that members of the joint-venture have disclosed the entire income which was originally received by the assessee in their books of accounts and income tax returns. The returns of income of all these members have been subject to the assessment framed under section 143(3) of the Act. Thus it can be inferred that there was no loss to the Revenue on account of the income disclosed by the members of the JV even it is assumed that it belongs to the JV. Furthermore, both the JV and the members are chargeable to tax at the maximum marginal rate.

9. We further note that the CBDT in its circular has clarified that there will not be any tax liability on the income of the JV if the same income has been

offered to tax by the members of the JV subject to certain conditions. The relevant extract of the circular 07/20016 is reproduced as under:

> *"2. The term AOP has not been specifically defined in the Income-tax Act, 1961 (Act'). The issue as to what would constitute an AOP was considered by the Apex Court in some cases. Although certain guidelines were prescribed in this regard, the Court opined that there is no formula of universal application so as to conclusively decide the existence of an AOP and it would rather depend upon the particular facts and circumstances of a case. In the specific context of the EPC contracts/Turnkey projects, there are several contrary ruling of various Courts on what constitutes an AOP.*
>
> *3. The matter has been examined. With a view to avoid tax-disputes and to have consistency in approach while handling these cases, the Board has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP.*
>
> *a. each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work i.e. there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work;*
> *b. each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing.*
> *c. the men and materials used for any area of work are under the risk and control of respective consortium members;*
> *d. the control and management of the consortium is not unified and common management is only for the inter-se coordination between the consortium members for administrative convenience;*
>
> *4. There may be other additional factors also which may justify that consortium is not an AOP and the same shall depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter."*

9.1 On perusal of the above circular, it is revealed that the assessee has complied with all the conditions as specified by the CBDT. Therefore, in our considered view no addition can be made in the hands of the assessee in the

given facts and circumstances on the ground that income was offered to tax by its members and not by the JV.

9.2 We also note that in the identical facts & circumstances this Tribunal in the case of ITO v/s JMC PPPL (JV) in ITA 2503/AHD/2012 vide order dated 6-9-2019 has decided the issue in favor of the assessee. The relevant extract is reproduced as under:

> *"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 is it 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 caluse-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 along. 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 the 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."

9.3 After considering the facts in totality as discussed above, we are of the view that there cannot be any addition in the hands of the assessee for the income as discussed above in the given facts and circumstances. Thus the ground of appeal of the assessee is allowed.

In the result, the appeal of the assessee is allowed.

Coming to the ITA Nos. 1486/AHD/2013, and 2283/AHD/2016, the appeals filed by the Revenue

10. At the outset, we note that issue raised by the Revenue is identical to the issue raised by the assessee ITA No. 2621/AHD/2011 which has been decided in favor of the assessee and against the Revenue by us vide paragraph nos. 16

to 25 of this order. As such both the learned DR and the AR before us agreed that whatever will be the view in ITA No. 2621/AHD/2011 would also be applied for the years under consideration. As the issue is identical as discussed above and nothing contrary has been pointed out to the facts as discussed in ITA No. 2621/AHD/2011 by the learned DR, we decide the impugned issue in favor of the assessee and against the Revenue. Hence the grounds of appeal of the Revenue are dismissed.

In the result, both the appeals of the Revenue are dismissed.

Now coming to the ITA numbers 608/AHD/2011, 1485/AHD/2013, and 2518/AHD/2011

11. At the outset, we note that issues raised by the assessee and the Revenue are identical to the issue raised by the assessee ITA No. 2621/AHD/2011 except the amount involved in the dispute which has been decided in favor of the assessee and against the Revenue by us vide paragraph No. 16 to 25 of this order. As such both the learned DR and the AR before us agreed that whatever will be the view in ITA No. 2621/AHD/2011 would also be applied for the years under consideration. As the issue is identical and nothing contrary has been pointed out to the facts discussed in ITA No. 2621/AHD/2011 by the learned DR, we decide the impugned issue in favor of the assessee and against the Revenue. Hence the grounds of appeal of the Revenue are dismissed, and the grounds of appeal of the assessee are allowed.

In the result, both the appeals of the assesse are allowed, and the appeal of the Revenue is dismissed.

12. In the combined result, the appeals of the assessee bearing ITA Nos. 2621/Ahd/2011, 608/Ahd/2011 & 2518/Ahd/2011 are allowed and the appeals of the Revenue bearing ITA Nos. 1486/Ahd/2013, 2283/Ahd/2016 & 1485/Ahd/2013 are dismissed.

Order pronounced in the Court on 25 April, 2019 at Ahmedabad.

-Sd-	**-Sd-**
(RAJPAL YADAV)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 25/04/2019
manish