

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स। / ITA No.1928/PUN/2017

निर्धारण वर्ष / Assessment year : 2013-14

The Income Tax Officer,
Ward-3(1), Pune.

..... अपीलार्थी /
Appellant.

बनाम v/s

M/s. Shraddha & Prasad Joint Venture
(Khura Varoda Project),
Shraddha House, CTS No.1206/A/1,
Plot No.887-A, Shirole Road,
Off. J.M. Road, Shivajinagar,
Pune – 411 004.

..... प्रत्यर्थी /
Respondent

PAN : ABGFS6231A.

Assessee by : Shri Kishore Phadke.

Revenue by : Ms. Nandita Kanchan.

सुनवाई की तारीख / Date of Hearing : 20.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 2, Pune dated 16.02.2017 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an AOP carrying on the business of Civil Contracts.

Assessee electronically filed its return of income for A.Y. 2013-14 on

29.08.2013 declaring total income at Rs.Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 02.03.2016 and the total income was determined at Rs.11,75,00,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 16.02.2017 (in appeal No.PN/CIT(A)-2/ITO Wd-3(1)/PN/599/2015-16) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and circumstances of the case, the order of the Ld.CIT(A) is contrary to law and to the facts and circumstances of the case.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in holding that in absence of any contract or sub-contract work by the Joint Venture to its members, provisions of Section 194C were not applicable for the purpose of TDS, without appreciating the fact that the work contract order was issued in the name of the assessee (JV) and re-allocation of the contract between the members of the JV would amount to sub-contracting.

3. On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating that the assessee Joint Venture was in full control of the contract, responsible for its completion, submitting bills, receiving payments and making those payments to its members towards sub contract on which tax was deductible u/s 194C.

4. On the facts and circumstances of the case, the Ld. CIT(A) erred in not taxing profit in the hands of the Joint Venture irrespective of such profit was offered to tax in the hands of members. Reliance is placed on decision of Hon'ble Supreme Court in the case of Ch. Atchiah (1996) 218 ITR 239 (SC) and on the ruling of Hon'ble AAR in the case of Geoconsult ZT GmbH in [2008] 304 ITR 283 (AAR).”

3. All the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO noticed that assessee is a Joint Venture (JV) represented by M/s. Shraddha – Energy and Infraprojects Pvt. Ltd., and M/s. Prasad & Co., Pvt. Ltd., as members sharing profit and losses in the ratio of 80% - 20%. AO noticed that gross contract receipts were distributed in the proportion of the work executed by the Members of the Joint Venture. AO noted that

since the entire contract received by the firm was transferred to its members for executing the work, the assessee was asked to explain as to why the contract receipts transferred to its members should not be treated as sub-contracts and since no tax was deducted by the assessee as per the rates prescribed in Chapter XVII B of the Act and why the same should not be disallowed u/s 40(a)(ia) of the Act. To the query of the AO, assessee inter-alia submitted that similar issue arose in A.Ys. 2010-11 and 2011-12 and the disallowance was made u/s 40(a)(ia) of the Act but the same was deleted by the Ld.CIT(A). AO noted that since Revenue has preferred appeal against the order of Ld.CIT(A) and the matter is disputed, to keep the issue alive he did not accept the submissions of the assessee and held that assessee has not deducted TDS on the work allotted to M/s. Shraddha – Energy and Ifraprojects Pvt. Ltd., and disallowed the entire amount of Rs.11,75,00,000/- paid to it u/s 40(a)(ia) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who decided the issue in favour of the assessee by observing as under :

“4. I have considered the submission made by the appellant and also perused the material on record. The issue raised in grounds no. 1 to 5 revolves around the single issue of giving credit of tax deducted at source to the joint venture instead of the members of joint venture i.e. M/s Shraddha Energy & Infraprojects Pvt. Ltd. and M/s Prasad & Co. Ltd. As has been pointed out by the appellant that the Hon'ble ITAT Pune Bench has passed orders in the case of Shraddha & Mahalaxmi Joint Venture, 'Shraddha & IHP Joint Venture vide ITA Nos. 942/943/PN/2013' on 28.11.2014 on similar issues. In this order hon'ble Bench analysed the issue in the context of its own decision in 'ITO Vs Swapnali RDS Joint Venture in ITA No. 771/PN/2011. In that case, the facts of which are identical, the hon'ble Bench has held that there was no relationship of contractor and contractee between the joint venture and its partners and since contract receipts, assets, liabilities were apportioned between the members, therefore, taxability of the income has to be considered in the hands of the members and not the joint venture. Following the above decision of the Hon'ble ITAT Pune, my predecessor has also allowed the appeals in appellant's case for A.Y. 2010-11, 2011-12 and 2012-13. Since the hon'ble Bench has already decided the matter in similar cases, therefore, here too it is held that the income has to be taxed in the hands of the members.

4.1 Reference is also invited to the recent decision of Hon'ble High Court of Andhra Pradesh in the case of CIT Vs Bhooratnam & Company reported at 262 CTR 405 (AP). The question addressed to the High Court was that whether the credit for TDS based on the certificates produced in the name of the joint venture and Directors is not in accordance with Rule 37BA under the Income-tax Rules and credit could be denied holding that these do not relate to the assessee firm or company. The Hon'ble High Court after reviewing the evidence gave the following finding:

20. The revenue cannot be allowed to retain tax deducted at source without credit being available _ to anybody. If the credit of tax is not allowed to the assessee and the joint venture has not filed a return of income then the credit of TDS cannot be taken by anybody. This is not in the spirit and intention of law.

21. Therefore, in our view the Assessing Officer erred in denying the benefit of the TDS mentioned in the TDS certificate filed by the assessee on the ground that the TDS certificate is issued in the name of the Joint Venture or a Director and not the assessee.”

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that in assessee's own case for A.Y. 2012-13, the Co-ordinate Bench of the Tribunal in ITA Nos.35 and 36/PUN/2016 vide order dated 28.02.2018 has decided the issue in favour of the assessee by dismissing the appeal of the Revenue. He placed on record the copy of the aforesaid order. He therefore submitted that there is no merit in the appeal of Revenue and it be dismissed. He thus, supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance made u/s 40(a)(ia) of the Act. We find that on identical facts while deciding the issue in assessee's own case for A.Y. 2012-13, the Co-ordinate Bench of the Tribunal, by following the order of the Tribunal in assessee's own case in ITA Nos.1597 & 1598/PN/2014 vide order

dated 29.07.2016 for A.Ys. 2010-11 and 2011-12 had dismissed the appeals of the Revenue.

7. Before us, Revenue has not placed any material on record to demonstrate that the decision of Co-ordinate Bench of the Tribunal in assessee's own case for earlier year i.e., A.Y. 2012-13 in ITA Nos.35 & 36/PUN/2016 (supra) has been set aside or stayed by Higher Judicial Authorities nor has pointed any distinguishing feature in the facts of the case for the year under consideration and that of earlier year. We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds of the Revenue are dismissed.**

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

Order pronounced on 12th day of September, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 12th September, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Pune.
4. Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.