

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, AM
&**

SHRI PAVAN KUMAR GADALE, JM

**ITA No.6901/Mum/2019
(Assessment Year :2013-14)**

The ITO-14(3)(2) 4 th Floor, Room No.458 Aayakar Bhavan M.K. Road Mumbai – 400 020	Vs.	M/s. Trendsetter Construction Pvt. Ltd., 1, Rajkamal, Opp. University Campus, CST Road Kalina, Mumbai – 400 098
PAN/GIR No.AAACT2606C		
(Appellant)	..	(Respondent)

Revenue by	Shri Vijay Kumar Menon
Assessee by	Shri F.B. Andhyarujina
Date of Hearing	15/04/2021
Date of Pronouncement	20/04/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.6901/Mum/2009 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-22, Mumbai in appeal No.CIT(A)-22/ACIT-14(1)(1)/10168/2017-18 dated 30/08/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2016 by the Id. Income Tax Officer-14(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The revenue had raised the following grounds of appeal :-

<i>Grounds of Appeal</i>		<i>Tax effect</i>
1.	<i>Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition of Rs.4,82,00,000/- received by the assessee on account of professional fees for rendering the services to M/s. A.A. Estate P. Ltd during the year, which clearly indicates that the fact that the assessee is only a service provider. The Ld. CIT(A) ignored the fact that by adopting project completion method the assessee is not showing profit in a particular year thereby postponing the tax liability.</i>	<i>Rs.1,25,58,545/-</i>
2.	<i>The appellant craves leave to add, amend, vary, omit, or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal</i>	
3.	<i>The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored</i>	
<i>Total tax effect</i>		<i>Rs.1,25,58,545/-</i>

3. We have heard the rival submission and perused the materials available on record. We find that the Id CITA had placed reliance on the orders passed by his predecessor for the Asst Years 2006-07 to 2011-12 in assessee's own case on the same set of facts. We find that the Id CITA had stated that the order of of the Id CITA was upheld by this tribunal in ITA No. 7579/Mum/2011 dated 18.12.2015. Further the Id CITA also stated that the order passed by the tribunal for the Asst Year 2006-07 has been upheld by the Hon'ble Jurisdictional High Court in Income Tax Appeal No. 1673 of 2016 with Income Tax Appeal Nos. 1679,1681 & 1691 of 2016 dated 4.2.2019. We find that by following all the aforesaid orders, the Id CITA had granted relief to the assessee. Aggrieved, the revenue is in appeal before us.

3.1. We find that this issue is already decided in favour of the assessee in its own case for the latest Asst Year 2012-13 in ITA No. 2539/Mum/2017 dated 16.11.2018. The entire order is reproduced hereunder for the sake of convenience which addresses the issue in dispute before us for the Asst Year under consideration also :-

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income Tax (Appeals)-22 [CIT(A)], Mumbai, Appeal No.CIT(A)-22/IT/288/2015-16 dated 18/01/2017 by raising the following sole ground of Appeal:-

On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.1,55,00,000/- received by the assessee on a/c of professional fees u/s 194 J of the I.T. Act for rendering the services to M/s. A.A. Estate Private Limited during the year which clearly indicates the facts that the assessee is only a service provider. By adopting project completion method the assessee is not showing profit in a particular year thereby postponing the tax liability which is incorrect on the part of the assessee.

The assessment for the impugned Assessment Year [AY] was framed by Ld. Income Tax Officer– 14 (3)(2) , Mumbai [AO] u/s 143(3) on 06/03/2015 wherein the income of the assessee was assessed at Rs.81.19 Lacs after certain adjustments as against Nil return filed by the assessee on 24/09/2012. During impugned AY, the assessee being resident corporate entity was engaged as builder and developers.

2. During assessment proceedings, it was noted that the assessee did not reflected any income from business whereas it had incurred administrative expenditure of Rs.74.68 Lacs out of which it had transferred an amount of Rs.74.34 Lacs to Work-in-progress AAEPL Project Account. The perusal of Form 26AS revealed receipts of Rs.155 Lacs stated to be received by the assessee from an entity namely A.A.Estate Private Limited [AAEPL] as advance amount against the projects. The same was not offered to tax in view of the fact the assessee followed Project Completion Method of Accounting to offer the project income to tax. However, upon perusal of terms of the agreement, Ld. AO concluded that the assessee was merely rendering professional / technical services to the aforesaid entity and therefore, the plea of the assessee could not be accepted particularly when the same was rejected in preceding years also and the matter for those years was pending before the Tribunal. Finally, the aforesaid receipts were treated as business receipts against which the expenditure of Rs.74.34 Lacs as transferred by the

assessee to WIP Account was allowed and the net differential i.e. Rs.80.65 Lacs was treated as Business Income.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 18/01/2017 wherein Ld. CIT(A) deleted the impugned additions by following the orders of its predecessor for AYs 2006-07 to 2010-11 as confirmed by the Tribunal by observing as under:-

4.3 I have considered the facts of the case and the appellant's submissions. It is seen that identical issue has been considered and decided in favour of the appellant by my Id. predecessors in the appeals for A.Y.s 2006-07 to 2011-12. In the appeal for A.Y. 2006-07, my Id. predecessor had observed and held as under:

"Thus as per MOU, M/s. A.A. Estate P. Ltd. was the builders and developers who obtained the services of the appellant for works as mentioned above. In other words, the appellant was not acting as a builder and developer but was only rendering professional and technical services in respect of above identified work/activities to M/s. A.A. Estate P. Ltd. The terms and condition of the MOU shows that the appellant was required to render certain services in respect of particular project or projects and the appellant was to receive remuneration (for the services rendered) not in proportion to services rendered but in proportion to certain percentage (i.e. 20%) of the profits of the project. Since the execution/completion of project was spread over to number of years, therefore, the profit on such projects could not have been worked out in particular each year and therefore, the appellant's remuneration (for the services rendered) could not have been worked out in each particular year. The appellant's remuneration could only be worked out/ascertained only on completion of the project. It is also worth to mentioned here that as per clause 9 of the MOU, remuneration was not required to be payable in the event of losses in respect of project. Thus, even though the appellant would have rendered services for a particular project, no remuneration was payable to appellant in the event of losses in the project. In the facts and circumstances, the appellant's claim appears to be correct that the amount received in a particular year (though the payer i.e. M/s. A.A. Estate P. Ltd. shows the same in the TDS certificate as fees for professional or technical services), the same was in the nature of advance only."

The above decision of my Id. predecessor was also upheld by the Hon'ble ITAT in its order dated 18.12.2015 in ITA No.7579/M/2011 wherein it has been held as under:

"8. We have considered the rival contentions and have also gone through the records. We find that the id. CIT(A) has passed a very detailed and elaborative order wherein after verification of the records it has been pointed out that the amount received by the assessee was including the expenditure incurred by the assessee which was paid by M/s. A.A. Estate Pvt. Ltd. The amount paid to the assessee has not been claimed by the M/s. A.A. Estate Pvt. Ltd. as expenditure but has only been shown as work in progress. So there was a consistency in the accounts of both the payer and the payee. The services rendered by the assessee were also relating to the activities of the builders and developers and as per the MOU, the quantification of the remuneration of the assessee was dependant on the completion of the project and under such circumstances, the assessee was justified to follow the project completion method of accounting. On the completion of the project, the amount quantified as the remuneration of the assessee was offered by the assessee for taxation and the same was accordingly claimed as expenditure by the builder. Till the completion of the project, the amount was not claimed by the builder as expenditure. The Ld. CIT(A) has also taken into consideration the accounting method in relation to different projects and it was found that wherein there was a resultant loss, no income was offered by the assessee; and where there was a profit, the assessee had shown income being the remuneration received by him on certain fixed percentage out of the profits of the project. There was no discrepancy either in the accounts of the assessee nor of the builder. The Ld.CIT(A) therefore after proper appreciation of the evidence on the file has concluded that the amount received by the assessee during the year was an advance and the actual remuneration was to be quantified at the completion of the project. The assessee therefore was justified in not offering the said amount as income for the year. He therefore upheld the additions so made by the AO. We do not find any infirmity in the above well reasoned order of the Ld. CIT(A) and the same is accordingly upheld.

9. In the result, the appeal of the Revenue is dismissed. Since the issue involved in all the other appeals is also identical, hence in view of our observations made above all the above captioned appeals of the Revenue are hereby dismissed." Facts and circumstances of the issue in the instant appeal being identical with that of the earlier years, respectfully following the decision of my Id. predecessors and the Hon'ble ITAT, the appellant's grounds of appeal are allowed.

Aggrieved, the revenue is in further appeal before us.

4. The Ld. Senior Counsel appearing for Assessee, Shri F.B.Andhyarujina, at the outset, submitted that the issue stood squarely covered in assessee's favor

by the order of this Tribunal for AYs 2006-07 to 2011-12, the copies of which has been placed on record. Explaining the nature of transaction, Ld. Sr. Counsel submitted that the assessee was engaged in the business of development of properties, resorts, malls and construction of buildings. It had all the necessary expertise, knowledge and skills for the purpose of acquisition and utilization of development rights and to render related services. Accordingly, it entered into an agreement to render services of varied nature vide agreement dated 12/06/2002, supplementary agreement dated 13/06/2002 with an entity namely AAEPL. The terms of the agreement were renewed from time to time up-to 10/06/2017. As per the terms of the contract, the assessee was to be remunerated with a commission equivalent to 20% of profits and gains derived from the projects undertaken by him with AAEPL and no commission was payable to assessee, in the event of losses. The assessee continued to render the services to AAEPL and pending completion of the project, the assessee was receiving adhoc payments every month from AAEPL for the various projects undertaken. Therefore, the aforesaid payments received by the assessee were mere advance payments which never accrued to the assessee as income during impugned AY. Our attention is drawn to the fact that the aforesaid payment has not been claimed as expenditure by AAEPL and similar treatment has been given by AAEPL to the impugned payments in its books of accounts. It has also been submitted that profits / losses arising from the projects have been charged to Profit & Loss Account in the year of completion of the project. Per Contra, Ld. Departmental Representative [DR], Shri D.G.Pansari although supported the stand of Ld. AO but could not bring on records any contrary judgment.

5. We have carefully heard the rival submissions and perused relevant material on record. The nature of the transactions as explained by Ld. Sr. Counsel is not in dispute since similar facts have been noted by the Tribunal in earlier years. Upon perusal of impugned order, we find that first appellate authority has provided relief to the assessee by relying on the order of this Tribunal for AYs 2006-07 to 2009-10. Nothing on record suggests that the aforesaid order has ever been over-ruled or negated by the orders of any higher judicial authority. Further, following the same order, the appeal of the revenue has been dismissed by the Tribunal for subsequent AYs 2010-11 & 2011-12 vide ITA Nos. 7022- 23/Mum/2014 dated 24/06/2016, the copies of which are on record. Therefore, we find no reason to deviate from the same and inclined to confirm the impugned order. However, the same shall be subject to verification of the fact that similar treatment has been given to the aforesaid payments by AAEPL in its books of accounts and the stated payments have not been claimed as expenditure therein. The Ld. AO is directed to delete the additions after verifying the aforesaid fact, if found correct. The assessee is directed to provide documentary evidences to substantiate the same.

6. Resultantly, the appeal stands dismissed.”

3.2. Respectfully following the aforesaid judicial precedent, we find no infirmity in the order of the Id CITA granting relief to the assessee. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, the appeal of the revenue is dismissed.

Order pronounced on 20/04/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 20/04/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai