

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.7158/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO-26(1)(7) Room No.625, 6 <sup>th</sup> Floor, Kautilya Bhavan, Block-G. Bandra- Kurla Complex, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	M/s. HCC-CPPL Joint Venture Hincon House, LBS Marg, Vikhroli West, Mumbai- 400083.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAH2660J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Ms. Bharti Singh	
Assessee by:	Shri H. P. Mahajani	

सुनवाई की तारीख / Date of Hearing: 05/04/2022

घोषणा की तारीख /Date of Pronouncement: 07/04/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 27.08.2019 passed by the Commissioner of Income Tax (Appeals) -40 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

*"1. “On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition made by the Assessing Officer on account of contract receipt from client as income of the assessee, ignoring the fact that the agreement executed between the assessee and the Govt. of Andra Pradesh that the Joint Venture is sole*



ITA No. 7158/Mum/2019

A.Y.2011-12

*entity and that they have not been recognized as two separate entities by the Andhra Pradesh government, which in fact had issued TDS certificates in the name of the assessee and not in the name of the partners of the Joint Venture.”*

*2. “Ignoring the fact that, since the JV is a sole entity the provisions of section 5 of the IT Act is applicable to the assessee.”*

*3. “The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.”*

*4. “The appellant craves leave to amend or to alter any ground or add a new ground which may be necessary.”*

**3.** The brief facts of the case are that the assessee filed its return of income on 29.03.2013 declaring total income to the tune of Rs. Nil for the A.Y.2011-12. The assessment was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee was a joint venture Hindustan Construction Company Ltd. and Costal Projects Ltd. set up for the purpose of execution of Pula Subbaiah Veligonda Tunnel-2 Project of Irrigation & CAD Department of Government of Andhra Pradesh. During the course of assessment proceedings, the assessee submitted return of income, computation of income form 3CD, Joint Venture Agreement between HCC-CPPL, copy of contract between Government of Andhra Pradesh and M/s. HCC-CPPL Joint Venture Copy. On perusal of the P & L Account, it was noted that the assessee accounted an amount of Rs.90.89 crores as gross receipts and no expenses have been claimed by assessee. No profit was computed by assessee. The expenses relating to project incurred by



representative member were debited to their accounts in the ratio of 60 to 40%. The assessee was asked to file the explanation as to why the income of the Joint Venture should not be taxed in the hands of Joint Venture of assessee. After the reply of the assessee, the income was treated of the Joint Venture. After some more disallowance, the taxable income of the assessee was assessed to the tune of Rs.7,27,14,320/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

### **ISSUE NOS. 1 to 3**

4. Under these issues the revenue has challenged the finding of the CIT(A) in which it is specifically held that the income is liable to be taxed in the name of partners and not in the name of the Joint Venture. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee whereas the tax is liable to be assessed on account of Joint Venture, therefore, the finding of the CIT(A) is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) on these issues. Before going further we deem it necessary to advert the finding of the CIT(A) on record: -

#### *“3. Decision:*

*I have gone through the facts of the case and the various decisions on the subject. The appellant has submitted the contract between the two members of the joint venture as well as the letter of award issued to the joint venture by the client. They have also provided the Notarised*



ITA No. 7158/Mum/2019

A.Y.2011-12

*declarations issued by each member stating that each member has duly accounted for it's share and offered the same to tax in the individual returns. It may be noted that the issue of TDS certificate in the name of the venture by itself does not determine the mode of taxation as TDS is nothing but machinery provisions. The appellant has relied on certain judicial pronouncements that address cases of similar nature.*

*In the decision of SMC Ambika JV Vs ITO [2011-TIOL-597-ITAT-MUM] the jurisdictional Tribunal has taken cognizance of such ventures while determining the existence of liability to deduct TDS by the JV from the distribution to the members. The Tribunal had noted that contract receipt from Thane towards expenses of Municipal Corporation for Rs.2,00,097,075/- and debited the \$s op did not carry any Work ire declaring the profit at Rs. No OV partners, M/s SMC Infrastructure, If The work carried by in Enterprises. After completing the work the AOP received the receipts from TMC and handed over the received the AOP received the receipts from tract. The AOP has its members enable to execute the contract is a fact that either kept any commission for its own nor any profit. Put the AOP consist; merely M/s SMC Infrastructure Ltd consisting two partners name of the purpose of and M/s Ambika Enterprises joined together AOP the executing the project. In fact the project was executed by the At Partners M/s SMC Infrastructure Put Ltd. and M/s Ambika Enterprises and the only duty was entrusted to the AOP was filing of tender and after getting the contract the AOP partners executed the contract, accordingly, the amount received was shared by them. Therefore, in our humble opinion, there is no contract or sub-contract relationship existed in between the assessee and JV partners namely*



ITA No. 7158/Mum/2019

A.Y.2011-12

*M/s SMC Infrastructure Creations & Ambika Enterprises, therefore, section 194C(2) has no application in the facts of the assessee's case”*

*Furthermore, in the case of M/s Soma TRG Joint Venture V. Commissioner of Income Tax [TS-405-HC-2017] the court has taken cognizance of the fact that the contract was awarded to the joint venture. It has however noted that the members of the joint venture have agreed to share the work amongst themselves such that the entire works was carried out by one of the members of the joint ventures. While deciding on whose hands the income is to be assessed the court has concluded as under*

*“Admittedly, the appellant had not incurred any expenditure and the work admittedly was executed by M/s Soma Enterprises Ltd. In CIT v. Sitaldas Tirathdas, (1961) 41 ITR 367, it has been held that true test of diversion of income by overriding title is whether the amount sought to be deducted, in truth, never reached the assessee as his income. To apply the doctrine of diversion of income by overriding title, the first and foremost condition to be satisfied is the nature of assessee's obligation, whether by the obligation, the income is diverted before it reaches the assessee, or whether the income is required to be applied to discharge an obligation after such income reaches the Ta OY assessee, In the instant case, there is diversion of income at the source itself. ye Therefore, the instant case is diversion of income by overriding title. The receipt we Lo of amount of Rs. 12,09,55,137/- could not be treated as income of the assessee or and it was the case of diversion of income by overriding title. Accordingly, the wat first substantial question of law is answered in favour of the appellant.”*



ITA No. 7158/Mum/2019

A.Y.2011-12

*The Honourable Supreme Court has also affirmed a decision of aa a. Jurisdictional Bombay High Court in the case of CIT Vs Rajdeep and PMCC infrastructure Ltd. {2016-TIOL-250-SC-IT and 2014-tiol-277 1-hc-mum-it}*

*wherein it was held that no income had accrued to the AOP but to the respective constituents of the AOP, who were to do a specified portion of the contract at their own risks and in their own individual capacities, then the AOP is not liable to be taxed.*

*Therefore, respectfully following the decisions of the jurisdictional courts and Tribunal, it is held that the income is taxable in the hands of the members of the AOP and not in the AOP. Hence in view of the same the estimation of profit in the hands of the joint venture is hereby deleted. In the Result the Ground — allowed.*

*Ground No. 2 pertains to reference by the Assessing Officer to a judgment rendered in the case of MS Ramachandra Rao. The Appellant has pleaded that no such case was referred to by them and judgments actually referred were neither noted nor distinguished by the learned Assessing Officer. In view of the decision rendered in Ground No. 1, the disposal of this ground is done for statistical purposes. Ground No. 2 is dismissed .*

*Ground No. 3 is without prejudice to the Ground No.1 and reads as under “Without prejudice to Ground No. 1, on facts and in the circumstances of the case and in law, the learned Assessing Officer has erred in not allowing as expenditure, the disbursement of receipts to its members while taxing the gross receipts from client.” Similarly Ground No. 4 reads as under*



*“Without prejudice to Ground No. 1 & Ground No. 3, on the facts and in the circumstances of the case and in law, the learned Assessing Officer has erred in taxing the recovery of interest from members, as income in the hands of the joint venture, without allowing interest paid to client as an expenditure”*

*In this regard the appellant has submitted as under*

*“The assessee joint venture had submitted its balance sheet and receipts and payment account in the course of the assessment proceedings. A perusal of the same shows that the Joint Venture received, on behalf of the members, sums towards Work Bills raised on the client. The client had also issued Mobilization Advances which were shared amongst the JV Members as per the ratio of work done. Interest was charged by the client on these advances which in turn was recovered from the members. The table below illustrates the amounts and the mode*

<i>Head</i>	<i>Details</i>	<i>Amount (Rs.) in lakhs.</i>
<i>Work Bin Receipt including escalation</i>	<i>Received by JV from client</i>	8,768.66
<i>Interest On Mobilization Advance</i>	<i>Recovered from members by JV</i>	320.63
<i>Total</i>		9,089.29
<i>Work Bill Disbursement including escalation</i>	<i>Disbursed members by JV</i>	8,768.66
<i>Interest on Mobilization advance</i>	<i>Recovered by Client from JV</i>	320.63
<i>Total</i>		9,089.29



ITA No. 7158/Mum/2019  
A.Y.2011-12

*From the table it can be seen that whatever work bill was received by the Joint Venture the same was passed on to the Members of the Joint Venture since it was them who were responsible for the execution of the work. Similarly, the interest levied by the client was recovered from the members to the joint venture since the corresponding mobilization advance was also shared amongst the members.*

*The learned assessing officer has taxed the Work Bill Receipts and the Interest on Mobilization Advances by attributing a gross profit rate of 8% on both items. In doing so, the learned assessing officer has disregarded the disbursements made to the joint venture member. Similarly, the while taxing the Interest recovered by the Joint Venture from its members, the learned assessing officer has failed to grant as expenditure, the interest paid to the client. In fact, it is this interest paid to the client, which has been recovered from the members and hence taxing the same merely because it appears on the receipts side of the account is grossly bad in law.”*

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision of the Hon’ble ITAT in the case of **SMC Ambika JV Vs. ITO (2011-TIOL-597-ITAT-Mum)** and the decision of Hon’ble Bombay High Court in the case of **M/s. Soma TRG Joint Venture Vs. CIT (TS-405-HC-2017)** and the decision of the Hon’ble Supreme Court in the case of **CIT Vs. Rajdeep and PMCC Infrastructure Ltd. (2016 – TIOL-250-SC-IT and 2014-TIOL-2771-Hc-Mum-IT)**. This issue has now been settled. The facts are not distinguishable at this stage. No contradictory finding of any court has produced before us. Therefore, we are of the view that the finding of



ITA No. 7158/Mum/2019  
A.Y.2011-12

the CIT(A) is quite correct which is not liable to be interfered with at this appellate stage. Accordingly, we affirm the finding of the CIT(A) on these issues and decide these issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 07/04/2022

Sd/-

(S. RIFAUH RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/04/2022

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai