

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1056/Hyd/16	2012-13	M/s. Techtrans Construction (I) Pvt. Ltd. KCPL - JV, Hyderabad [PAN No. AABAT5477E]	The Income Tax Officer, Ward-6(2), Hyderabad
892/Hyd/16	2012-13	The Income Tax Officer, Ward-6(2), Hyderabad	M/s. Techtrans Construction (I) Pvt. Ltd. KCPL - JV, Hyderabad [PAN No. AABAT5477E]

निर्धारिती द्वारा/Assessee by: Shri K.C.Devdas, AR  
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 12/01/2023  
घोषणा की तारीख/Pronouncement on: 25/01/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax(Appeals)-6, Hyderabad ("Ld.CIT(A)") in the case of M/s. Techtrans Constructions India (P) Limited ("the assessee") for the

assessment year 2012-13, both the assessee and Revenue preferred these appeals.

2. Brief facts of the case are that, assessee is an Association of Persons (AOP) consisting of two Members, namely, M/s. Techtrans Constructions (I) Pvt. Ltd., and M/s. Ksheeraabd Constructions Pvt. Ltd. They have entered into a contract with M/s. Reliance Utility Engineers (P) Ltd., for execution of work and got Rs. 1,001,213,555/- towards contract received for the financial year 2011-12 relevant for assessment year 2012-13. According to the assessee, the entire contract receipts were transferred to the constituents in the ratio of 65% and 35%, after claiming the tax at 2% immediately. The total tax deducted at source was Rs. 1,80,21,812/- out of which, a sum of Rs. 42,75,326/- was paid to Government on 07/10/2011 and the balance was remitted on 29/10/2014.

3. It was submitted before the learned Assessing Officer that the road contract was awarded to the assessee, was divided amongst the constituents, they were raising the monthly bills in respect of the works executed by them through the leading partner of the JV, namely, M/s. Techtrans Constructions (I) Pvt. Ltd., who used the monthly bill and submit the same to M/s. Reliance Utility Engineers (P) Ltd. On verification of the same, M/s. Reliance Utility Engineers (P) Ltd., was deducting the TDS as applicable and remit the amount to the credit of JV, which in turn was deducting the TDS equivalent to the sum deducted by M/s. Reliance Utility Engineers (P) Ltd., and disburse the balance to the constituents of the JV in proportion to the work executed by them.

4. According to the assessee, the JV is a mere entity in whose name the contract work secured and the benefit of executing the contract has been passed to the constituents without retaining any part of it as its share and, therefore, the JV is a zero income entity. In this situation, according to the assessee, the single revenue stream, which passed from the M/s. Reliance Utility Engineers (P) Ltd., to the constituents of the JV was subject

to deduction of TDS twice which the JV is claiming as refund and the department has been refunding the same in the earlier assessment years.

5. The learned Assessing Officer, however, did not consider this explanation of the assessee as acceptable and held that the above remittance of TDS into the Government account by the assessee, though belatedly indicates that the assessee is aware of the provisions of the Act and its liability to do so being a distinct entity from its constituent members. According to the learned Assessing Officer, the assessee allotted the work to the sub-contractors, who claimed credit of TDS in their individual returns and, therefore, the assessee cannot escape its liability under law. On this premise, learned Assessing Officer disallowed a sum of Rs. 68,73,26,650/- under section 40(a)(ia) of the Act.

6. Apart from this, learned Assessing Officer noticed that the receipts as per form 26AS statement was about Rs. 94,08,92,854/- whereas the receipts as per P&L Account were only Rs. 90,10,92,199/-, resulting in variation of Rs. 3,98,00,655/-. Assessee replied that certain credits do not pertain to assessee and, therefore, they have asked M/s. Reliance Utility Engineers (P) Ltd., to reverse the entry. Further according to the assessee, since the assessee is a zero income returned account inasmuch as whatever the amounts that were received by the JV are paid to the constituents of JV, there is no income or profit in the books of JV.

7. Learned Assessing Officer recorded that assessee did not produce any material whatsoever in support of their contention nor any correspondence made with the deductor, namely, M/s. Reliance Utility Engineers (P) Ltd. Therefore, the learned Assessing Officer considered the receipts as per form 26AS since there is no proof of rectification at the end of M/s. Reliance Utility Engineers (P) Ltd. was produced and added the same of Rs. 3,98,00,655/- to the income of assessee.

8. In the appeals preferred, assessee reiterated its stand as was before the learned Assessing Officer. Learned CIT(A), however, while brushing aside the contentions of the assessee, directed the learned Assessing Officer to estimate the net profit of the assessee at 8% of the gross turnover holding that the assessee is a distinct entity and the net profit earned through its constituents i.e., surplus over the expenditure incurred by them for the purpose of its business has to be disallowed under section 40(ba) of the Act instead of 40(a)(ia) of the Act.

9. Even in respect of addition of Rs. 3,98,00,655/-, learned CIT(A) held that it is possible that the bills for Rs. 3.98 crores raised by the assessee in the past and recognized as revenue were passed by M/s. Reliance Utility Engineers (P) Ltd. during the year under consideration but, since the assessee had not taken any such plea and there is no documentary evidence to support such a proposition, there is no reason for her to interfere with the findings of the learned Assessing Officer. Learned CIT(A) accordingly confirmed this addition.

10. Aggrieved by these findings of the learned CIT(A), assessee preferred ITA No. 1056/Hyd/2016 stating that joint venture was formed not for dividing profits but for dividing the contract work itself and, therefore, the assessee is only a zero income entity and the entire income component out of the contract work is assessed in the hands of the constituents ever since the JV has been formed; whereas the Revenue preferred appeal in ITA No. 892/Hyd/2016 contending that the learned CIT(A) committed error in deleting the addition made towards disallowance of sub-contract expenses by invoking the provisions under section 40(a)(ia) of the Act by ignoring the default in remittance of TDS.

11. Learned AR submitted that estimate of income at 8% on gross receipts amounts to enhancement of income and issuance of such direction without proper opportunity to the assessee is illegal and cannot be sustained. He further submitted that the application of maximum

marginal rate under section 167B(2) of the Act by the learned CIT(A) on the estimated income at 8% of the gross receipts cannot be sustained. So also learned AR submitted that the reconciliation statement submitted by the assessee by way of note on addition of extra credit along with the statement filed by way of additional evidence may be considered. Learned DR submitted that because of non-production of any evidence whatsoever the authorities below were constrained to make the addition and it is always open for the assessee to clarify the issue.

12. We have gone through the record in the light of the submissions made on either side. The main plank of argument of the learned AR is that the assessee is only a zero income entity because the JV is constituted not for sharing the profits, but to share the work itself in a particular ratio. Whatever the work and receipts that were received by the JV are immediately passed on to the constituents without retaining anything in the hands of the JV to inure any income. He submits that the JV was constituted in the financial year 2007-08 and ever since the JV has been treated by the department as a zero income entity and the entire income component has been assessed in the hands of the constituents. He submits that there is nothing for the authorities this year to divide from its constituents or that the constituents or its sub-contractors or that the JV works through its constituents thereby, it is subject to the provisions of TDS. He submits that rule of consistency demands that a settled view taken in the case of assessee cannot be deviated suddenly for this year. Insofar as this submission of the learned AR that ever since the constitution of the JV all through these years, the income component has been assessed in the hands of the constituents of the JV, leaving JV as a zero income entity is a verifiable fact. Learned AR produced the assessment order for the assessment year 2010-11, whereunder JV was assessed at the admitted NIL income and TDS affected by the JVs was allowed refund. However, the assessment order for the other assessment years are not produced to verify the aspect of consistency in the stand taken by the

department in the case of the assessee. In these circumstances, we are of the considered opinion that if the submissions made by the assessee turns out to be correct, it would not be proper for the department to deviate from the view taken in the earlier assessment years. We, therefore, set aside the findings of the authorities below on this issue and restore the same to the file of learned Assessing Officer to verify the stand taken by the department in assessee's case for other assessment years and to take a view in consonance with the same for this year also.

13. Insofar as the addition of Rs. 3.98 crores are also concerned, the assessee has come forward with a letter dated 07/11/2017 whereunder this amount of Rs. 3,98,00,655/- was explained. We allow this additional evidence and direct the learned Assessing Officer to look into the reconciliation statement and take a view accordingly.

14. In the result, both the appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 25<sup>th</sup> day of January, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 25/01/2023

TNMM

Copy forwarded to:

1. M/s. Techtrans Construction (I) Pvt. Ltd. KCPL-JV, C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No. 554, Road No.92, Jubilee Hills, Hyderabad.
2. The ITO, Ward-6(2), Hyderabad.
3. CIT(A)-6, Hyderabad.
4. Pr.CIT-6, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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