

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “E”, MUMBAI  
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER  
ITA No.1922/M/2024  
Assessment Year: 2017-18**

<b>Income Tax Officer - 14(3)(1)</b> Room No. 554, Aayakar Bhawan, New Marine Lines, Mumbai- 400020.	<b>Vs.</b>	<b>Trendsetter Constructions Pvt. Ltd.</b> Rajkamal 01, CST Road, Kalina, Mumbai- 400098. <b>PAN:AAACT2606C</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for :**

**Assessee by** : Shri Firoze B. Andhyarujina, Adv.

**Revenue by** : Shri P. D. Chougule, (Addl. CIT) SR. D.R.

**Date of Hearing** : 01 . 08 . 2024

**Date of Pronouncement** : 23 . 10 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the revenue against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1061028706(1) Dated 16/02/2024 for the Assessment Year 2017-18.
2. Following grounds of appeal have been raised:

1. *“The Ld. CIT(A) has erred on facts and in law and failed to appreciate that the amount aggregating to Rs.2,79,00,000 paid by M/s. A. A. Estates Private Limited during the year was as fees for professional and technical services rendered and TDS has been deducted u/s 194J and u/s 194C the Income Tax Act,1961.*
  2. *The Ld.CIT(A) has erred on facts and in law in considering the fees for professional and technical services as advance received by the assessee even though the assessee being a service provider is not required to follow Project Completion Method of accounting.*
  3. *The Ld.CIT(A) has erred on facts and in law considering the fees for professional and technical services as advance received by the assessee even though it is clear from clause 17 of the MOU dated 12.06.2002 between the assessee company and M/s. A. A. Estates Private Limited that the assessee company is not a JV as claimed by the assessee but only a service provider company. The assessee has misled the Ld. CIT(A) contending that they are following “Completion of the project” method.*
  4. *The appellant craves, leave to add, amend and alter any of the aforesaid Grounds.”*
3. The assessee company is engaged in the business of civil engineering, builders and contractors. The company is also engaged in the business of development of properties, resorts, malls and construction of building. During the assessment year under consideration, the assessee company has rendered services to M/s. A. A. Estate Pvt. Ltd. under MOU dated 12.06.2022 and supplementary agreement dated 01.06.2002 which were subsequently renewed from time to time i.e. 13.06.2007 and 13.06.2012 for procurement of land/ development right, execution, completion and handling over of real estate projects.

4. The case was selected under scrutiny to examine the receipts u/s. 194C and 194J (As per 26AS) which was more than the receipts shown in Return of Income. It is seen from the 26AS that during the financial year, the assessee has received professional fees to the tune of Rs.2,79,00,000/- from M/s. A. A. Estate Pvt. Ltd., however these receipts were not offered for taxation. The assessee was, therefore, asked to explain as to why the professional fees of Rs.2,79,00,000/- should not be treated as business income. In response to the notice, the appellant made a detailed submission which has been recorded in the body of the impugned assessment order. The Ld. AO, though, giving due consideration to the submission made by the appellant, treated the total receipts of Rs.2,79,00,000/- from M/s. A. A. Estate Pvt. Ltd. as income on account of fees for professional activities/services. However, the Ld. AO allowed a sum of Rs.1,20,41,784/- from total receipts of Rs.2,79,00,000/- on the ground that the amount of expenses incurred during the financial year under consideration should be allowed as a deduction and finally, added a sum of Rs.1,58,58,216/- to the total income of the assessee.
5. Aggrieved by the order of the Ld. AO, the appellant filed appeal before the Ld. CIT(A). The Ld. CIT(A) vide the impugned order allowed the appeal of the assessee on the ground that the Hon'ble ITAT Mumbai "E" Bench dated 18.12.2015 [2016] 46 ITR (Trib.) 132 (Mumbai) in the

appellant's own case for the AYs 2006-07, 2007-08, 2008-09 and 2009-10 upheld the order of the Ld. CIT(A) who had deleted the addition made by the Ld. AO in the respective assessment orders. Further, Hon'ble ITAT, Mumbai, 'E' Bench in ITA Nos. 7022 & 7023/Mum/2014 for the AYs 2010-11 & 2011-12 in the appellant's own case upheld the order of the Ld. CIT(A) who had deleted the addition made by the Ld. AO in the respective assessment orders. Further the Hon'ble Mumbai High Court also passed Order on 04.02.2019 in the case of the appellant's itself for the A.Y.2006-07 in Appeal Nos. 1673 of 2016, 1679 of 2016, 1681 of 2016 and 1691 of 2016 on this issue and upheld the order of the Hon'ble Tribunal in appellant's own case by holding as under:

*“3. A perusal of the material on record would show that the CIT(A) and the Tribunal on the basis of evidence on record came to the conclusion that the assessee had not engaged in the business of developing real estate. The assessee had engaged itself, may be, as a consultant out of which activity, the assessee would earn commission at pre-decided rate. The amounts received by the assessee before completion of the project were in the nature of deposits to be adjusted towards alternate payment to be made upon completion of the project. We do not find any error in the view of the Tribunal.*”

4. *The tax appeals are dismissed.*”

6. Further the Hon'ble ITAT Mumbai “E” Bench in appellant’s own case in its Order in ITA No. 2539/Mum/2017 dated 16.11.2018 for AY 2012-13, wherein, it has confirmed the stand of the appellant subject to some verification as under:

*“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.”*

7. The Ld. CIT(A) finally allowed the appeal of the assessee on the ground that the issues are covered both by the Hon'ble Tribunal and Hon'ble Mumbai High Court in appellant's own case. We have considered the facts of the case, submission made by the appellant and the impugned order and it is found that the appellant case is covered by the Hon'ble ITAT orders stated as above and therefore there is no reason to interfere with that order.

8. In the result, the appeal is dismissed.

**Order pronounced in the open court on 23.10.2024.**

**Sd/-**  
**NARENDER KUMAR CHOUDHRY**  
**JUDICIAL MEMBER**

**Sd/-**  
**RATNESH NANDAN SAHAY**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23.10.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench



//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.