

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.845/Del/2019
[Assessment Year : 2009-10]**

ITO, Ward-30(1), New Delhi.	vs	TRG-JKS Joint Venture, E-461, Greater Kailash, Part-II, New Delhi-110048. PAN-AABAT6758J
APPELLANT		RESPONDENT
Appellant by	Shri Sahil Kumar Bansal, Sr.DR	
Respondent by	None	
Date of Hearing	04.02.2025	
Date of Pronouncement	12.02.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal has been filed by the Revenue against the order dated 30.11.2018 passed by Ld. Commissioner of Income Tax (A)-10, New Delhi in Appeal No.-402/2017-18 u/s 250(6) of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 31.12.2017 passed u/s 143(3) of the Act pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee is a Joint venture (JV) formed under the name & style as M/s TRG-JKS JV to execute a contract awarded by Airport Authority of India for certain works at Coimbatore airport in terms of the agreement executed between two parties namely M/s TRG Industries Pvt. Ltd. And M/s JKS Construction Pvt. Ltd. The return of income was filed on 24.09.2009 declaring total income at NIL. The assessment was completed u/s

143(3) vide order dated 23.12.2011 at a total income of Rs. 2,97,54,692/-. Against the said order, assessee preferred appeal before ld. CIT(A) who vide order dated 19.08.2013 dismissed the appeal of the assessee. Aggrieved by the order of ld. CIT(A), the assessee come before this Tribunal wherein vide order dated 14.06.2016, in ITA No. 6229/Del/2013 'D' Bench of ITAT Delhi Benches has sent back the matter to the file of AO with the directions to provide sufficient opportunity to the assessee and to admit the additional evidences which were submitted before the ITAT. In second round, the AO vide order passed u/s 143(3) dated 31.12.2017 has made the additions to the tune of Rs. 2,93,86,816 comprising of addition of Rs. 59,64,478/- as profit @ 8% on the receipts of Rs. 7,45,55,984/- and further addition of Rs. 2,34,22,138/- was made by holding the mobilisation advance as receipt of the assessee. In first appeal ld. CIT(A) after considering the submissions of the assessee and also after taken into the consideration all the documents filed as additional evidences before the ITAT in first round has allowed the appeal of the assessee both on merits and on technical grounds. Against this order of ld. CIT (A), the revenue is in appeal before us.

3. In first ground of appeal, revenue has challenged the action of ld. CIT(A) in deleting the addition of Rs. 59,64,478/- made by AO by estimating the income of the assessee by applying the profit rate of 8% on the total receipts of Rs. 7,45,55,984/-.

4. Brief facts leading to this issue are that the assessee was formed as Joint venture and was awarded a contract from Airport Authority of India to carry

out various works at Coimbatore airport. The work was executed by the two constituents of the assessee joint venture and the total revenue was shared by them in their agreed ratio. The AO by holding that assessee is an AOP and separate legal entity within the meaning of section 2(31) of the Act, recognized total revenue of Rs. 745,55,984/- in the hands of the assessee and estimated the income at Rs. 59,64,478/- being 8% of the same. In first appeal, ld. CIT(A) in para 13 to 16 of the order has observed that entire receipts have been duly incorporated by the JV constituents in their return of income and also by relying upon the CBDT circular no. 7 of 2016, has deleted the addition.

5. Before us, ld. Sr. DR submits that assessee was awarded the contract from the Airport Authority of India and upon execution of the work, income earned out of the gross receipts should be taxed in the hands of the assessee. According to him, before the AO assessee has failed to substantiate that the profits on such receipts were declared by JV constituents in the individual hands and merely unsigned copies of the financial statements were submitted. He thus prayed that the addition made by AO deserves to be restored.

6. On the other hand, none appeared on behalf of the assessee.

7. We have perused the material available on records and gone through the order of ld. CIT(A). While deciding this issue, ld. CIT(A) in paras 13 to 16 of his order, has given a categorical finding that both the parties of the JV i.e. namely M/s TRG Industries Pvt. Ltd. And M/s JKS Construction Pvt. Ltd. have duly incorporated the receipts from the assessee JV in their financial statements and profits earned thereon was offered to tax. Ld. CIT(A) also verified this fact

from the financial statements filed by the appellant which are tabulated in para 13 at page 35 of the appellate order. Besides this ld. CIT(A) further observed that due TDS was also made at the time of apportionment of the income which has been distributed between the JV members. Ld. CIT(A) in para 12 also refers the circular no 7 of 2016 issued by CBDT wherein the CBDT in clear terms clarified under what circumstances the JV should not be treated as AOP for the purpose of taxing the receipts from such projects.

8. Before us, the revenue has failed to demonstrate that any of the conditions stated in CBDT Circular is not applicable in the instant case of the assessee. Further, all the observations made by ld. CIT(A) while deleting the addition, remained uncontroverted. Under these circumstance, we find no infirmity in the order of ld. CIT(A) which is hereby upheld on this issue. Thus, grounds of Appeal No.1 of Revenue is dismissed.

9. In second ground of appeal, revenue has challenged the action of ld. CIT(A) in deleting the addition of Rs. 2,34,22,138/- made by AO by treating the mobilization advance as the receipts of the assessee.

10. Before us, ld. Sr. DR submits that the ld. CIT(A) has deleted the addition by admitting the additional evidences without following due procedure of obtaining remand report from the AO. He further submits that it is evident from para 17 of the appellate order that ld. CIT(A) has based his conclusion after verification of running bills and reconciliation statement submitted by the assessee which were not filed before the AO. He thus prayed that this issue be set aside to the file of AO for making necessary verification.

11. We have gone through the records and order of ld. CIT(A). We find that the assessee during the course of assessment proceedings assessee vide letter dated 03.10.2017 has filed all the necessary documents. It was claimed by the assessee that mobilization advance was adjusted out of the running bills in subsequent assessment year i.e. in AY 2010-11 where the same was offered for tax being part of gross receipts of that year. Also a reconciliation statement of the receipts declared and as appearing in 26AS statement was also filed. Further to confirm these facts, an affidavit of one Shri T.R. Gupta of T.R. Industries was also filed, wherein in para 10 of the affidavit these facts were duly informed to the AO. All these documents are placed in the paper book pages 89 to 97 filed by the assessee. It appears that the AO has failed to appreciate these crucial details in right perspective. Ld. CIT(A) in order to verify the correctness of the claim of the assessee further asked the assessee to file further documentary evidences which were referred at pages 29 to 31 of his order. At page 30, ld. CIT(A) has tabulated these documents and after making verification of the same, reached to the conclusion that the entire amount of mobilization advances of Rs. 2,34,22,138/- was adjusted in the running bills by the Airport Authority of India in subsequent assessment year and all the receipts of such running bills was offered for tax in that year. He thus was of the view that taxing the same in the year under appeal is taxing an income twice. Since the ld. CIT(A) is quasi-judicial authority and has coterminous powers as of the AO. Making verification of the facts with the help of some documents cannot be said to be an act which is not permissible. Looking to these facts and after perusing the observations of ld. CIT(A) in para 17 and 18

of the appellate order we find no infirmity in such findings of ld. CIT(A) and we are inclined to interfere in the same. Accordingly the ground of appeal No. 2 of the revenue is hereby dismissed.

12. In ground of appeal No. 3, revenue has challenged the action of ld. CIT(A) allowing the appeal of the assessee on technical grounds.

13. Ld. CIT(A) while allowing the technical objections raised by the assessee in paras 20 to 29 of the appellate order has made categorical findings that AO has not issued notice of demand within the time limit prescribed u/s 153 of the Act. Before us, ld. Sr. DR has failed to controvert any of the findings given by ld. CIT(A) nor we find any infirmity in the same. Accordingly this ground of appeal is dismissed.

14. As a result, appeal of the revenue is dismissed.

Order pronounced in the open Court on 12.02.2025.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Amit Kumar, Sr.P.S

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI