

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.2678/Del/2016
Assessment Year: 2011-12**

Continental Foundation Joint Venture, Continental House-28, Nehru Place, New Delhi-19 PAN: AAAAC0084D	Vs.	Assistant Commissioner of Income Tax, Circle-38(1), Room No.2202, E-2, Civic Centre, Minto Road, New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. M. P. Rastogi, Advocate Sh. Shivam Malik, Advocate
Respondent by	Sh. Rajesh Kumar Dhanesta, Sr.DR
Date of Hearing	06.05.2025
Date of Pronouncement	04.08.2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal of the assessee for the Assessment Year ('AY') 2011-12 is directed against the order dated 31.03.2016 of the Commissioner of Income Tax (Appeals)-20, New Delhi ['CIT(A)'].

2. The assessee has raised following grounds:

- "1. On the facts and circumstances of the case and in law, learned Assessing Officer has erred and was not justified in disallowing a sum of Rs 2.31,80,000/- on account of reimbursement of legal & professional fee paid to members of the Appellant, by wrongly invoking the provisions of section 40ba) of the Act, conveniently ignoring earlier orders u/s 195(2) to the effect that impugned amounts were not covered u/s 40(ba).*
- 2. On the facts and circumstances of the case and in law, learned Assessing Officer has erred and was not justified in disallowing a sum of Rs.27,50,000/- paid to Mohinder Verma, Dy Project Manager by arbitrarily & wrongly holding that same are not allowable u/s 40(ba) as*

per joint venture agreement and in total disregard to the mandate under the provisions of the Act.

3. *On the facts and circumstances of the case and in law, learned Assessing Officer has erred and was not justified in disallowing a sum of Rs.80,34,570/- being the tax payable in India on the salary of Mr. Harjit Dhillon, as Project manager [whose gross salary was never claimed by appellant] and such tax component borne by the appellant were allowed in all preceding years and thus learned AO arbitrarily & wrongly held that same are not allowable u/s 40(ba) as per joint venture agreement in total disregard to the provisions of the Act.*
4. *On merits, facts and circumstances of the case and in law, that above stated impugned amounts paid to members on account of reimbursement of legal & professional fee, exgratia and tax component of seconded employees of members of JV, were not same as interest, salary, bonus, commission or remuneration contemplated u/s 40(ba) of the Act and thus addition made on the assessed income is liable to be deleted.*
5. *On the facts and circumstances of the case and in law, the arbitrary action of the learned AO has resulted in double taxation, as the payees of employees' salaries, being seconded employees, have included respective incomes in the personal taxes and paid the taxes thereon.*
6. *All the grounds of appeal are independent, without prejudice to each other.*
7. *The assessee craves to add, modify any new ground of appeal or adduce any new evidence during the course of appeal, as may be necessary, for the disposal of appeal and discharge of due justice to the appellant."*

3. The relevant facts giving rise to this appeal are that the assessee is a joint venture of the Foundation Co., Canada (55%) and Continental Construction Ltd. (45%), India. The appellant assessee is a special purpose vehicle for the construction of a dam at Nathpa Jhakri (Himachal Pradesh) for Nathpa Jhakri Power Corporation (NJPC). The joint venture agreement dated 16.03.1993 (effective from 25.04.1992) has taken place between the above mentioned two parties/persons; Foundation Co. of Canada ('FCC')

and Continental Construction Ltd. of India (CCLI). The construction of dam continued for more than a decade; i.e. from 1994 to Feb., 2005. The assessee filed its Income Tax Return (‘ITR’) on 30.09.2011 declaring income of Rs.5,19,07,470/-. The case was scrutinized and the consequential assessment was completed at income of Rs.8,68,65,150/- as under:

S. No.	Particulars	Amount (in Rs.)
	Income as per return of income	5,19,07,470/-
I.	Legal & Professional Fee paid to its member FCC	2,31,80,000/-
II.	Payment of Special Incentive to Sh. Mohinder Verma	27,50,000/-
III.	Payment of tax of Sh. H. S. Dhillon	80,34,570/-
IV.	Disallowance of Depreciation on Machinery and equipments	5,42,362/-
V.	Addition on account of Interest allowed u/s 244A	4,50,750/-
	Total (I to V)	3,49,57,682/-
	Total Taxable Income	8,68,65,152/-
	Rounded off	8,68,65,150/-

3.1 The assessee claimed that some disputes arose with NJPC after completion of the Dam. Later, the said dispute went for arbitration. It was claimed that the assessee took assistance of legal professionals of FCC for the settlement of disputes and finalization of the arbitration and made payment of Rs.2,31,80,000/- to the FCC during the relevant year. However, the Assessing Officer (‘AO’) did not allow the same on the reasoning that the assessee had not brought any material on the record to substantiate its claim vis-à-vis such services rendered by the FCC. Thus, the AO disallowed the legal & professional fee of Rs.2,31,80,000/- as under:

“4.4 The assessee has claimed that the payment to M/S Foundation under the head Legal & professional Fee is a reimbursement of the cost incurred by M/S Foundation in relation to arbitration proceedings for the

Joint Venture assessee. However, the contention of the assessee in this regard is not acceptable as it is not supported by the documentary evidence.

4.5 Assessee has failed to substantiate as to why the payment of legal & professional fee for the services rendered has not been made directly to the professionals concerned. The assessee has not furnished any details of the nature of legal & professional services rendered by FCC to the assessee. Hence, the submission of assessee is not found to be acceptable.

4.6 Besides, as per the JV agreement dated 30/06/1994, M/S FCC was appointed as the managing party of the Joint Venture. Hence in its capacity M/s FCC had the responsibility of directing and controlling the execution of the contract. Besides, the functions to be performed by FCC have been clearly mentioned in the JV agreement including the representation of the JV in all matters connected with the performance of the contract. The relevant para of the agreement is reproduced as under.

"7.2 (ii) representing the Joint Venture towards NJPC and third parties in all matters connected with the performance of the Contract as required by the relevant Articles of the Contract Documents in coordination with CONTINENTAL;"

4.7 Hence, M/s FCC was under the contractual obligation of representing the JV in all matters related to execution of the contract. Also FCC was obliged to perform these functions for the Joint Venture assessee for a fee. The relevant para of the agreement is reproduced as under.

7.4 (1) In consideration of the transfer of "technical knowhow outside India by FOUNDATION, the Joint Venture shall pay to FOUNDATION, subject to Indian tax, a lumpsum fee equal to 2% (two percent) of the contract value. This fee shall be payable to FOUNDATION based on 2% of the gross monthly Billings".

4.8 Here the assessee has claimed that FCC has incurred expenses in relation to the arbitration proceedings in relation to the contract awarded to it by as SJVN. Hence, this obligation has been fully covered under the JV agreement as discussed above.

4.9 Considering the fact that M/S Foundation was under contractual obligation for handling the arbitration proceedings with SJVN for the Joint

Venture assessee therefore all payments in the form of fee and reimbursement of expenses are in fact remuneration to the Member of the Joint Venture, and therefore is not allowable as business expenses under the provisions of the section 40ba of the Income Tax Act.”

(Addition of Rs.2,31,80,000/-)

3.2 The assessee has made the ex-gratia payment of Rs.27,50,000/- to Mr. Mohinder Verma, Member of the Board of the assessee JV constituted by representative of both members of the assessee JV and claimed the same as business expenditure. The AO therefore, show-caused the assessee to explain the genuineness of the ex-gratia payment of Rs.27,50,000/- made to Mr. Mohinder Verma, which was responded to. However, the AO was not satisfied with the said explanation of the assessee; therefore, he disallowed the same as under:

“5.4 the reply of the assessee has been duly considered and not found acceptable as;

(i) Sh. Mohinder Verma is not an employee of the assessee. He is a member of board of the JV constituted by representatives of both members.

(ii) The JV agreement clearly provides that,

“5.10 the members of board will not receive any remuneration but there out of pocket expenses of travel and lodging in India to attend board meetings will be charged to and reimburse by the joint venture.”

Hence, it is clearly established that the members of boards are not entitled for any remuneration or inventive or ex gratia payment by whatever name called.

(iii) The project of the assessee had been completed in 2005 and any payment after the completion of the project cannot be justified in whatever name called by the assessee.

(iv) The submission of the assessee that Sh. Mohinder Verma has already paid tax on such remuneration in his personal tax returns does not justify this expense as an allowable business expenditure for the assessee."

3.3 During the course of the assessment proceedings, the AO also noticed that the assessee had deposited the income tax liability of Rs.80,34,570/- of Sh. H. S Dhillon and had claimed the same as business expenditure. The AO show-caused the assessee to explain the genuineness of the said expenditure, which was responded to. However, the AO was not satisfied with the said explanation of the assessee; therefore, he disallowed the same as under:

"6.4 The reply of the assessee has been duly considered and not found acceptable as;

(i) Sh. H.S. Dhillon is not an employee of the assessee but a member of board of the JV constituted by representatives of both members.

(ii) The JV agreement clearly provides that;

"5. 10 the members of board will not receive any remuneration but there out of pocket expenses of travel and lodging in India to attend board meetings will be charged to and reimburse by the joint venture"

Hence, it is clearly establish that the Sh. Dhillon was not entitled for any salary.

(iii) The JV agreement also states "7.3 The Joint Venture Manager shall visit the Site whenever necessary. He will be paid by the Managing Party but travel and living expenses in India in connection with his visiting India and/or the Site shall be charged to and reimbursed by the Joint Venture." Hence the JV agreement clearly provided that Sh. H.S. Dhillon who is working for the JV as Joint Venture manager will be paid by managing party i.e. FCC.

(iv) The project of the assessee had been completed in 2005 and any payment after the completion of the project cannot be justified in whatever name called by the assessee.

(v) The submission of the assessee that only tax on the salary of Sh. Dhillon which is paid to him by FCC is borne by the assessee is not acceptable. The payment of tax is the liability of an individual who is in receipt of some income. If the assessee is bearing the liability to pay the tax on behalf of Sh. H.S. Dhillon this is nothing but a remuneration paid by the assessee in whatever name and form called by the assessee. Hence, under no circumstances such tax borne by the JV assessee is an allowable business expenditure.”

3.4 The AO also made disallowance of depreciation of Rs.5,42,362/- on plant & machineries on the reasoning that the assessee had not done any business activity during the year as the assessee JV completed its project in Feb., 2005. Further, the AO also taxed the receipt of interest of Rs.4,50,750/- on income tax refund of the assessee.

3.5 Aggrieved with the assessment order, the assessee filed appeal before the CIT(A) challenging all issues except the issue of taxability of interest of Rs.4,50,750/- on income tax refund. The assessee got relief only on the issue of disallowance of depreciation of Rs.5,42,362/-. Hence it filed this appeal agitating the above-mentioned disallowances in para 3.1, 3.2 and 3.3 of this order.

A. Legal & Professional Fee paid to its member FCC:

4. The 1st issue is in respect of the Legal & Professional Fee paid to the FCC, a member of the assessee JV.

5. The Ld. Counsel submitted that the FCC was well armed with legal experts and professionals having expertise in handling the legal matters including arbitration of the business of large Projects. Therefore, their services were utilized on payment of legal & professional charges by the

assessee JV to settle its dispute with the NJPC. The Ld. Counsel invited our attention to the order of the ITO (TDS) passed under section 195 of the Income Tax Act, 1961 ('Act'), wherein he had not only approved withholding tax @ 10% but had also held that the services rendered by the FCC in relation to which payments of legal & professional charges made by the assessee JV were in the nature of technical services falling under section 9(1)(vii) of the Act and Article 12 of the Indo Canadian Treaty. Hence, the same could not be treated as payment in the nature of remuneration within the meaning of the section 40(ba) of the Act. Thus, the Ld. Counsel also contended that the payment of legal & professional charges of Rs.2,31,80,000/- were not in the nature of remuneration within the meaning of section 40(ba) of the Act as held by the AO; hence, the disallowance made under section 40(ba) of the Act was not justified. Our attention was drawn to pages 107 to 112 of the Paper Book ('PB') containing the invoice raised by the FCC, order under section 195 of the Act, etc.

6. The Ld. Counsel further argued that the AO had wrongly disallowed the claim of "legal and professional fee" in view of Article 7.4 of the Joint Venture Agreement. It was contended that the joint venture agreement amongst the parties was made even before tendering for the contracts and to carry out the assessee JV works in a smooth manner. Their jobs were identified and were mentioned in Article 6.1, to 7.4 at page 6-9 of the JV agreement and the FCC would receive fee @ 2% of gross billing raised by the assessee JV. The said legal and professional fee did not fall in the Article 6.1, to 7.4 at page 6-9 of the JV agreement. It was submitted that the

Articles 7.1 to 7.4 of JV agreement were in relation to the services which were to be provided by the FCC in order to execute the project which was completed in the year 2005. Hence, it was argued that the payments in the form of legal & professional fee did not have any link or nexus with the sum specified in Article 7.4 of the JV agreement and accordingly the disallowance of the same as covered under Article 7.4 of JV agreement was not justified.

7. The Ld. Counsel drew our attention to the provisions of section 40(ba) of Act brought to the statute book by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989. It was submitted that the language of the provision of section 40(ba) of Act was in parimateria to the old provision of the section 40(b) of the Act applicable to the partnership firms before 31st March 1989. The issue before the courts arisen from time to time while considering the old provision of section 40(b) of the Act applicable to the partnership firm was that whether the remuneration paid to a partner for rendering specific and special services would also be covered by the provision of section 40(b) of the Act and would be disallowed while computing the income of partnership firm. The courts had consistently held that the provisions of section 40(b) of the Act were intended to prevent the siphoning of the firm's income to partners to reduce the tax liability in the hands of the partnership firm by way of salary, bonus, interest, commission and other remuneration. But wherever a partner is under no legal obligation to provide any particular service or involve himself in any particular activity, the payments made to him for such services would not fall under the provision of section 40(b) of the Act, argued the Ld. Counsel. In the case in

hand also, the legal and professional fee paid to FCC was for the specific services which were entrusted by the assessee JV after completion of the contracts and not for the execution of the contracts. It was submitted that the FCC was not under legal obligation to render such services. The reliance was placed on various decisions reported in 169 ITR 678 (Andhra), 191 ITR 261, 90 ITR 73 (Alld.), etc.

8. On the other hand, the Ld. Sr. DR, emphasizing on orders the Authorities below, contended that the legal and professional fee paid to FCC was nothing but the sum falling within the ambit of section 40(ba) of Act. He drew our attention to the letter of the assessee dated 29.03.2011 addressed to the Assistant Director of Income Tax, International Tax, placed on page 108-109 of the PB wherein it had been categorically mentioned that the legal and professional fee paid to FCC was disallowable under section 40(ba) of Act. The Ld. Sr. DR, placing emphasis on page 108-109 of the PB, submitted that the assessee, vide its letter dated 29.03.2011 addressed to the Assistant Director of Income Tax, International Tax, had admitted that the arbitration proceedings spread from 2006-2010 and the assessee was obliged to repay the cost incurred by the FCC on this account. It was further submitted that the page 110 of the PB showed that three men; namely, Mr. Doug Steels, Mr. Rolf Kindbom and Mr. Mike Kenny, as mentioned on page 112 of the PB worked for 12 months as per the invoice dated 31.12.2010 placed on the page 110 of the PB. The relevant page 108-110 of the PB is scanned below as under:



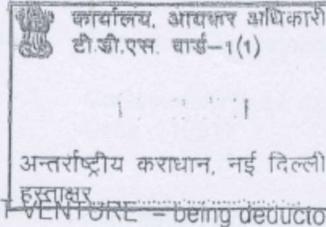
Continental - Foundation

JOINT VENTURE



CF JV/ADIT/
March 29, 2011

Asstt Director of Income Tax
International Taxation
New Delhi



Re: CONTINENTAL FOUNDATION JOINT VENTURE - being deductor

Sub: Application for Non Deduction of Tax at Source u/s 195(2)/197 of the Act for the year 2010-11 - Foundation Company of Canada Ltd.

Dear Sir,

This is to inform you that we M/s Continental Foundation Joint Venture ('The Company') PAN: AAAAC0084D and having its office at Continental House, 28, Nehru Place, New Delhi 110017. The Company is a joint venture between M/s Foundation Company of Canada Ltd (FCC) and Continental Construction Ltd (CCL) and is assessed as an Association of Persons (AOP) since previous year relevant to AY 1993-94. The assessee was engaged in the business of civil construction of dam at Nathpa Jhakri, Distt Kinnaur, Himachal Pradesh, awarded by Nathpa Jhakri Power Corporation (NJPC) which is inter alia financed by the World Bank. For the purpose, assessee was awarded two contracts namely Contract no 1.00 and Contract no. 2.01 with an aggregate estimated initial contract price of RS 1150 crores for the execution of the same project of construction of dam at Nathpa Jhakri. The profit sharing ratio between the two company is FCC 45% and CCL 55%. The Company has been regularly filing its tax returns, last being filed for AY 2010-11 by paying tax on AOP u/s 167B of the Act i.e. calculating taxes on the respective shares of the JV partners at applicable rates of 40% and 30% respectively.

This is also to inform you that consequent to various dispute arising between the NJPC and the assessee JV, a Dispute Redressal Board (Arbitration) was constituted for settlement of various disputes and arbitration as per terms of the contract agreement. As per the terms of JV agreement, the project was supervised by various ex-patriates from FCC and the people who could explain & counter the various claims by the client against the JV. Since all those ex-patriates went back to their native country on completion of the project, the arbitration proceedings continued where the JV needed the support and technical assistance for preparation of claims & forms, explaining the technical drawbacks attributable to client and not JV to counter the liquidated damages recovered by the client from JV etc.

The joint venture Company on completion of the Arbitration proceedings is now obliged to make payments for re-imburse the FCC on account of costs incurred by it in Canada for valuable inputs during the whole of Arbitration proceedings spreaded from 2006 to 2010. Therefore, JV is a person responsible to deduct [deductor] tax at source for any payment to a non-resident for the aforesaid payments by virtue of provisions of section 195 of the Act.

Since, to the best of our understanding & belief, the aforesaid proposed payments to FCC, being a non-resident company, are not allowable as expense by virtue of the provisions of section 40(ba) of the Act, such sums are liable to be included in the Total income of the AOP and tax is to be calculated in accordance with the provisions of section 167B of the Act. Thus the tax on such proposed sums shall be paid by AOP as part of its own Total Income and therefore such sums payable to FCC are not separately liable for tax deduction in India.

In view of the above, the present application is being made for a certificate of 'No Tax Deduction' in terms of provisions of section 195(2) of the Act



Continental - Foundation JOINT VENTURE



The relevant particulars of the deductee and proposed remittances to FCC are as follows:

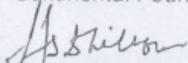
Name & Address of the Applicant company, being a 'Deductor'	Continental Foundation Joint Venture Continental House, 28 Nehru Place, New Delhi -110017
Name & Address of the Non-Resident with whom contract was made	Foundation Company of Canada Ltd 20 Carlson Court, Suit 800, Toronto, Ontario, M9W7K6, Canada
Date of invoice	Invoice no. FCC-2010-11 dated 31/12/2010.
Gross Amount of Contract	CAD 5,00,000 on account of reimbursement of expenses for defending JV before Arbitrators.
Nature of Contract	Joint venture agreement between Foundation Company of Canada Ltd and Continental Construction Ltd for civil construction of dam at Nathpa Jhakri, Distt Kinnaur, Himachal Pradesh, awarded by Nathpa Jhakri Power Corporation (NJPC) which is interalia financed by the World Bank

We confirm that the FCC does not have any other business interest of any kind or fixed place in India, other than its obligations under the joint venture agreement for execution of the Nathpa Jhakri Project.

In view of the above, we request that a certificate may kindly be issued for NIL deduction of Tax at Source from all payments to be made under the contract to the Foundation Company of Canada Ltd, being a member of AOP, who is liable to pay tax u/s 167B of the Act.

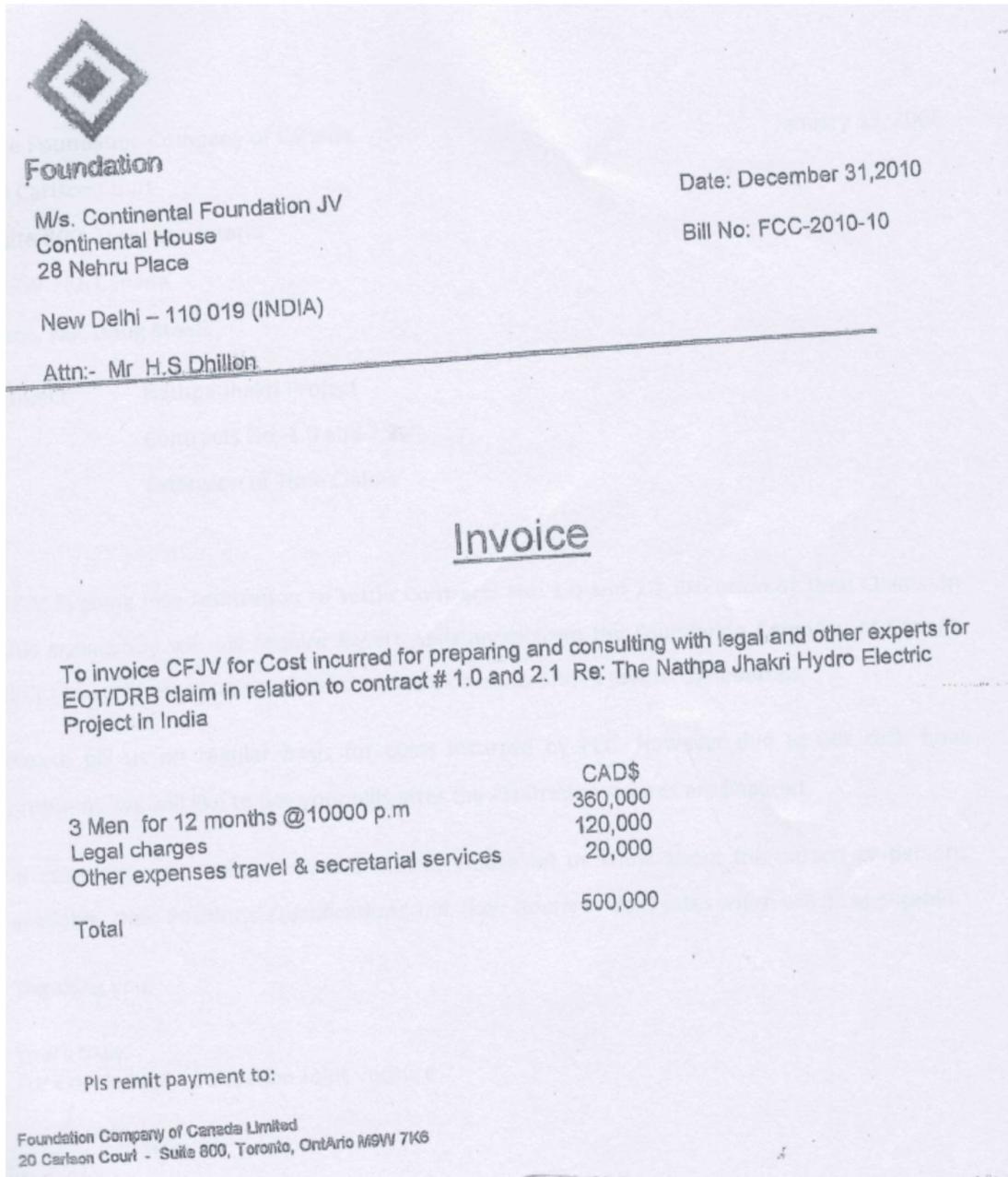
In the case you desire any further details, please let us know.

Yours faithfully
For Continental Foundation Joint Venture


Authorized Signatory

Enclosures:

- 1 Copy of Income tax Acknowledgement of AOP with Computation of Income for past three years
- 2 Power of Attorney



9. We have heard both parties and have perused the material available on the record. The above scanned pages of the PB clearly show that the arbitration proceedings spread from 2006-2010. Mr. Doug Steels, Mr. Rolf Kindbom and Mr. Mike Kenny, as mentioned on page 112 of the PB who worked for 12 months as per the invoice dated 31.12.2010 placed on the

page 110 of the PB were deputed for the said work vide letter dated 17.01.2006 placed on the page 112 of the PB. In case the above-mentioned three persons worked for arbitration proceedings spreading from 2006-2010 as admitted by the assessee vide its letter dated 29.03.2011 placed on the page 108-109 of the PB; then the invoice on annual basis would have been raised so that the assessee who maintained its account on mercantile basis would make provision for such expenses. However, such liability does seem to have been disclosed by the assessee in its books of accounts. In view of the page 108-112 of the PB, the issue of legal and professional fee paid to FCC during the relevant period needs further ascertainment of facts; (i) time period during which services by three persons as mentioned above rendered, (ii) whether the invoice dated 31.12.2010 referring 12 months consists of 9 months of the relevant year and 3 months of preceding year, (iii) prior period of expense, if any, under the head legal and professional fee, etc.

10. Further, the Ld. Counsel did not bring any material before us to contradict the finding of the AO that there is no corroboratory evidence along with the nature of services rendered by the FCC in relation to the arbitration proceedings of the assessee JV vis-à-vis the cost incurred in this regard by the FCC which was reimbursed by the assessee JV as mentioned in para 4.4 to 4.8 of the assessment order. Before us, no correspondence with the Arbitrator was filed. In view of the above and considering facts of the case in entirety and in the interest of justice, we deem it fit to set aside the finding of the Ld. CIT(A) in this regard and remit this issue; the legal

and professional fee paid to FCC, back to the file of the AO for deciding this issue afresh in view of the above.

B. Payment of Special Incentive to Sh. Mohinder Verma and Payment of tax of Sh. H. S. Dhillon:

11. The assessee had paid special incentive of Rs.27,50,000/- to Mr. Mohinder Verma, Deputy Project Manager of the assessee JV, during the relevant year. The Ld. Counsel submitted that such ex-gratia payment was made for the services rendered by Mr. Mohinder Verma during the course of execution of the contract since beginning to 2005 and secondly for assistance in settling the arbitration proceedings of the assessee JV after 2005. It was contended that the experience and services of Mr. Mohinder Verma was utilized beyond the specified services required to be rendered by him as a representative of FCC, Deputy Project Manager and Board Member of the assessee JV. Our attention was drawn to the fact that Mr. Mohinder Verma offered the said sum of Rs.27,50,000/- on which the TDS deducted by the assessee JV as his income in his ITR filed in India. The AO disallowed the sum of Rs.27,50,000/- by invoking the provisions of section 40(ba) of the Act and the details mentioned in clause 5.10 of the JV Agreement. The Ld. Counsel reiterated almost the same arguments what stated above on the issue of the legal and professional fee. It was contended that Mr. Mohinder Verma had not rendered any service as a member of JV but had rendered it as an independent person as there was no such bar under any law. It was argued that the sum of Rs.27,50,000/- was business expenditure of the assessee JV and therefore, the same had to be allowed under section 37 of the Act.

12. The last issue is in respect of the disallowance of business expenditure of Rs.80,34,570/-. The Ld. Counsel submitted that Mr. Harjeet Dhillon, the employee of FCC was appointed as Project Manager of the assessee JV to look after various works of NJPC Project undertaken by the assessee JV. His salary was paid in Canada by the FCC. However, his global income was taxable in India due to his residence in India during the progress of NJPC Project. Therefore, the demand of Rs.80,34,570/- was raised by the Revenue, which was borne by the assessee JV on the reasoning that his services were utilized for the purpose of business of the assessee JV and claimed as expenditure. It was argued that the sum of Rs.80,34,570/- was business expenditure of the assessee JV and therefore, the same had to be allowed under section 37 of the Act.

13. On the other hand, the Ld. Sr. DR, emphasizing on orders the Authorities below, contended that the ex-gratia payment to Mr. Mohinder Verma and the tax payment of Mr. Harjeet Dhillon were not at all the business expenditure of the assessee but these were the sums paid to the FCC through the ex-gratia payment to Mr. Mohinder Verma and the tax payment of Mr. Harjeet Dhillon. Further, it was contended that the tax liability of Mr. Harjeet Dhillon was his personal tax pertaining to earlier years and it had nothing to do with the business of the assessee for the relevant year. Further, it was submitted that the admitted ex-gratia payment to Mr. Mohinder Verma and the tax liability of Mr. Harjeet Dhillon could have been done out of the profit as an appropriation of income and not as a charge to income as the same was not paid to meet any obligation

in the normal course of business of the assessee. He drew our attention to the fact that the assessee JV had never paid any such sum in the past in lieu of their works done as an individual person and not as Board Members of the Assessee JV. The Ld. Sr. DR reiterated almost the same arguments what stated above on the issue of the legal and professional fee. In view of the above arguments/contentions/ submissions, the Ld. Sr. DR prayed for dismissal of the appeal.

14. We have heard both parties and have perused the material available on the record. As per the submission of the Ld. Counsel, Mr. Mohinder Verma and Mr. Harjeet Dhillon have rendered the services in their individual capacity over the years for the business of the assessee during the relevant year. However, no evidence thereof corroborating rendering of services by Mr. Mohinder Verma and Mr. Harjeet Dhillon have been filed before the Authorities below. We find part merit in arguments of both parties. In case these payments have been made wholly and exclusively for business purposes to the persons not falling under the JV Agreement, then the allowability of such expenditure has to be examined and considered as per the law. Whether the assessee JV had ever paid any such sum in the past in lieu of works of Mr. Mohinder Verma and Mr. Harjeet Dhillon needs to be ascertained. Further, these issues also need further ascertainment of facts as in the case of the legal and professional fee mentioned above. Further, the Ld. Counsel did not bring any material before us to contradict the finding of the AO on these scores. In view of the above and considering facts of the case in entirety and in the interest of justice, we deem it fit to

set aside the finding of the Ld. CIT(A) on these two issues also and remit these issues; Payment of Special Incentive to Sh. Mohinder Verma and Payment of tax of Sh. H. S. Dhillon, back to the file of the AO for deciding these issues afresh in view of the above.

15. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in open Court on 4th August, 2025

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 04/08/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(A)
5. Sr. DR-ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI