

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 6746/MUM/2013 : (A.Y : 2009-10)

M/s. Mehta Jaising Developers Vs. Addl. CIT, Range-15(2),
398, Kirti Kunj, 14th Road, Mumbai
Khar (W), Mumbai 400 052 (Respondent)
PAN : AABTM0713F (Appellant)

Assessee by : Shri Sameer G. Dalal

Revenue by : Shri M. Rajan

Date of Hearing : 27/09/2016

Date of Pronouncement : 30/09/2016

ORDER

PER G.S. PANNU, AM :

This appeal by the assessee is directed against the order of CIT(A)-26, Mumbai dated 04.09.2013, pertaining to the Assessment Year 2009-10, which in turn has arisen from order dated 08.12.2011 passed by the Assessing Officer, Mumbai under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, assessee has raised the following Grounds of appeal :

"1. The learned Commissioner of Income-tax (Appeals) has erred in upholding disallowance made on account of Professional Fees paid Rs.10,20,000 to the members of A.O.P u/s. 40(ba) of Income Tax Act, 1961.

2. *The learned Commissioner of Income-tax (Appeals) has wrongly considered status of your appellant as an A.O.P., in fact your appellant is an individual. For taxation purpose same is treated as an A.O.P."*

3. At the time of hearing, the learned representative for the assessee submitted that the dispute raised in this appeal is squarely covered by the decision of Tribunal in the case of assessee for preceding three Assessment Years of 2006-07, 2007-08 and 2008-09 rendered by the Tribunal vide ITA Nos. 286/Mum/2011, 571/Mum/2012 and 7391/Mum/2012 dated 19.9.2013, 1.7.2015 and 14.8.2014 respectively. It was also stated that the said precedents continue to hold the field and they have not been altered by any higher authority.

4. In brief, the relevant facts are that the appellant is engaged in the business of civil construction and it is following the mercantile system of accounting. The Assessing Officer has considered the status of assessee as AOP and accordingly, he held that payment of Professional Fee of Rs.10,20,000/- to Members of AOP was disallowable in terms of Sec. 40(ba) of the Act. CIT(A) has also affirmed the stand of Assessing Officer based on his earlier decision in the case of assessee for Assessment Years 2007-08 and 2008-09.

5. Before us, it has been pointed out that the said dispute came up before the Tribunal initially for Assessment Year 2006-07, wherein vide order dated 19.9.2013 a similar addition has been deleted. It was pointed out that the said decision of Tribunal has been further followed by the Tribunal in Assessment Year 2008-09 vide order dated 14.8.2014

(supra) and for Assessment Year 2007-08 vide order dated 1.7.2015 (supra). The aforesaid factual matrix has not been controverted by the Id. DR before us. As a consequence, following the aforesaid precedents, we set-aside the order of CIT(A) and direct the Assessing Officer to delete the impugned addition.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 30th September, 2016.

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th September, 2016

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai