

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.7579 & 8813/M/2011, 844 & 4921/M/2012
Assessment Years: 2006-07, 2007-08, 2008-09 & 2009-10**

The Income Tax Officer- 10(1)(3), Room No.457, 4 th Floor, Aayakar Bhavan, M.K. Marg, Mumbai - 400020	Vs.	M/s. Trendsetter Construction Pvt. Ltd., No.1, Rajkamal, Opp. University Campus, C.S.T. Road, Kalina, Mumbai – 400 098 PAN: AAAC 2606C
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Firoz B. Andhyarujina, A.R.
Revenue by : Ms. Surabhi Sharma, D.R.

Date of Hearing : 05.10.2015
Date of Pronouncement : 18.12.2015

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned four appeals have been preferred by the Revenue against the different orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07, 2007-08, 2008-09 & 2009-10. Since the facts and issues involved therein are identical, hence the same are heard together and are being disposed of with this common order.

2. The only issue involved in all the four appeals is regarding the postponement of income received as remuneration for profession/technical services rendered. For the sake of convenience, the facts have been taken from ITA No.7579/M/2011 for the A.Y. 2006-07.

3. The Revenue, in this appeal, has taken the following grounds:

"1. On the facts and the circumstances of the case as well as in law, the Ld. CIT(A) erred in deleting the addition made by the A.O., the receipt as an income and allowed expenses claimed in the accounts

from the receipts in order to determine the profit without appreciating the fact that the assessee company is only service provider company assisting M/s. A.A. Estate Pvt. Ltd. in their business and for that purpose assessee is getting professional fees.

2. On the facts and the circumstances of the case as well as in law, the Ld. C.I.T.(A) erred in deleting the additions made by the A.O. of Rs.32 lakhs paid by M/s. A.A. Estate Pvt. Ltd. on account of advance, without appreciating the fact that the payment received by the assessee is in the form of professional fees covered u/s. 194J of the I.T. Act, the assessee is acting as a consultant and getting the fees for work.

3. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

4. The facts in brief of the case are that from the TDS details mentioned in the return of income, the Assessing Officer (hereinafter referred to as the AO) noticed that the assessee had been paid a sum of Rs.32 lakhs by M/s. A.A. Estate Pvt. Ltd., Mumbai on account of professional services rendered by the assessee. The AO therefore observed that the assessee had income by way of professional fees of Rs.32 lakhs and the assessee had claimed the refund of TDS made on such payments in the return of income. On examination of accounts, the AO noted that the assessee had not shown any such income by way of professional fees. On being asked to explain, the assessee submitted that there was an MOU between assessee and M/s. A.A. Estate Pvt. Ltd. which has been engaged in the business of real estate developer. As per MOU, assessee was to be paid 20% of the profit from the project and in case of loss, assessee has to bear 20% of loss. Further, as per MOU, the assessee was to be paid fixed remuneration of Rs.2 lakh per month up to June 2007 which was increased to Rs.4 lakh per month from June 2007 onwards. This amount of remuneration paid was to be adjusted from the actual remuneration to be payable to the assessee on completion of project. The assessee further explained that the amount received of Rs.32 lakhs was only advance and as such the same had not been offered to tax. It was explained that as per MOU, it was settled that only when the respective project would be completed, the professional fees payable to the assessee would be determined on the basis of

profit or loss on the project and accordingly the assessee would be either eligible for 20% of the profit or would have to bear 20% of the loss. The amount of professional fees paid as advance would be accordingly adjusted. It was explained that accordingly the income or loss was being offered in the year of completion of various projects for which the assessee had rendered professional services as per the terms of the MOU. The AO, however, was of the view that the amount received by the assessee for rendering professional/technical services on which the payer had deducted TDS was the income of the assessee for the year under consideration. He was of the view that since the assessee was not a contractor or a builder, hence he was not supposed to adopt project completion method of accounting. He, therefore, made the impugned additions.

5. In appeal, the Ld. CIT(A) observed that though the services rendered by the assessee were of the nature of professional/technical services, however, as per MOU, the quantification of the actual amount payable to the assessee was possible only at the stage of completion of project. He, therefore, held that the amount received by the assessee during the year, though subjected to TDS, was only an advance which was adjusted on the completion of the project. He, therefore, deleted the additions so made by the AO. Being aggrieved by the order of the Ld. CIT(A), the Revenue has come in appeal before us.

6. The first contention of the Ld. D.R. has been that the amount paid to the assessee during the year was substantially much more as compared to the agreed payment of Rs.2 lakh per month up to June 2007 and Rs.4 lakh per month from June 2007 onwards. Further that the payments made to the assessee have been shown as payment for professional/technical services rendered in TDS certificate. The assessee's nature of business being providing consultancy and technical services, it should not have adopted project completion method. As per the terms of the MOU, the assessee had to do various services/work which was much more than the work of consultancy and therefore it seemed that the M/s. A.A. Estate Pvt. Ltd. was only the financier of

the project and the whole of the responsibility for execution of project was of the assessee company and that the MOU was a sham transaction. Without prejudice to the above, the Ld. D.R. submitted that when the assessee has not offered the corresponding tax in the year under consideration, then the claim of the TDS was liable to be disallowed.

7. On the other hand, the Ld. A.R. of the assessee has submitted that the amount received was categorised as professional/technical services although the nature of the amount was an advance. There were ongoing projects and since the advance was paid as per MOU, TDS was deducted u/s 194J of the Act. The method of accounting followed by the assessee has consistently been followed on the basis of completed project method and the profit or loss has been determined on the completion of each project. It may be noted that the expenses incurred by the assessee were not claimed as losses of each year have been capitalised to WIP and profit/loss is determined at the end of the completion of Project. It may further be noted that if there is a loss then the loss is to be borne by the assessee. he has further submitted that the project completion method is followed not only by the assessee but also by the payer (the Builder). That advance has nothing to do with the expenditure. Treatment in accounts is consistent in case of both the assessee as well of the payer and has been accepted in the past and even in the current year. However the appeal arises from reopening of the cases under section 147/148 of the Act.

8. We have considered the rival contentions and have also gone through the records. We find that the Ld. CIT(A) has passed a very detailed and elaborative order wherein after verification of the records it has been pointed out that the amount received by the assessee was including the expenditure incurred by the assessee which was paid by M/s. A.A. Estate Pvt. Ltd. The amount paid to the assessee has not been claimed by the M/s. A.A. Estate Pvt. Ltd. as expenditure but has only been shown as work in progress. So there was a consistency in the accounts of both the payer and the payee. The services rendered by the assessee were also relating to the activities of the builders and

developers and as per the MOU, the quantification of the remuneration of the assessee was dependant on the completion of the project and under such circumstances, the assessee was justified to follow the project completion method of accounting. On the completion of the project, the amount quantified as the remuneration of the assessee was offered by the assessee for taxation and the same was accordingly claimed as expenditure by the builder. Till the completion of the project, the amount was not claimed by the builder as expenditure. The Ld. CIT(A) has also taken into consideration the accounting method in relation to different projects and it was found that wherein there was a resultant loss, no income was offered by the assessee; and where there was a profit, the assessee had shown income being the remuneration received by him on certain fixed percentage out of the profits of the project. There was no discrepancy either in the accounts of the assessee nor of the builder. The Ld. CIT(A) therefore after proper appreciation of the evidence on the file has concluded that the amount received by the assessee during the year was an advance and the actual remuneration was to be quantified at the completion of the project. The assessee therefore was justified in not offering the said amount as income for the year. He therefore upheld the additions so made by the AO. We do not find any infirmity in the above well reasoned order of the Ld. CIT(A) and the same is accordingly upheld.

9. In the result, the appeal of the Revenue is dismissed. Since the issue involved in all the other appeals is also identical, hence in view of our observations made above all the above captioned appeals of the Revenue are hereby dismissed.

Order pronounced in the open court on 18.12.2015.

Sd/-
(N.K. Billaiya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 18.12.2015.

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.