

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D. S. SUNDER SINGH, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.2077/Mds/2016

निर्धारण वर्ष /Assessment year : 2011-12

The Asstt. Commissioner of
Income-tax
Non-Corporate Circle 1(1)
[formerly Business Circle-I]
Chennai

(अपीलार्थी/Appellant)

Vs. M/s Deloitte Haskins & Sells
ASV Ramana Towers
No.52, Venkatnarayana Road
T. Nagar, Chennai 600 017

**[PAN AACFD 3771 D]
(प्रत्यर्थी/Respondent)**

आयकर अपील सं./I.T.A.No.2079/Mds/2016

निर्धारण वर्ष /Assessment year : 2011-12

M/s Deloitte Haskins & Sells
ASV Ramana Towers
No.52, Venkatnarayana Road
T. Nagar, Chennai 600 017

(अपीलार्थी/Appellant)

Vs. The Asstt. Commissioner of
Income-tax
Non-Corporate Circle 1(1)
Chennai

(प्रत्यर्थी/Respondent)

Department by
Assessee by

: Shri B. Sahedevan, JCIT
:
: Shri Percy J. Pardiwala, Sr. Counsel
Shri Niraj Sheth, Ashesh Safi &
S.P.Chidambaram, Advocates

सुनवाई की तारीख/Date of Hearing

: 27-09-2016

घोषणा की तारीख /Date of Pronouncement

: 25-11-2016

आदेश / ORDER**PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

These cross appeals by the Revenue and the assessee are directed against the order of the Commissioner of Income-tax (Appeals)-2, Chennai, dated 4.3.2016 for assessment year 2011-12.

2. First we take up assessee's appeal I.T.A.No. 2079/Mds/2016.
3. Ground No. 1 and 7 are general in nature requiring no specific adjudication.
4. Ground No.2.0 to 2.6 are related to the disallowance of pension paid to the retired partners.
5. During the assessment proceedings, the Assessing Officer found that a sum of ₹ 1,49,76,851/- was reduced from the gross receipts with a note that the payment was made towards the retired partners as pension on account of overriding title in the partnership deed. The Assessing Officer called for the details and examined the same and held that the payment is an application of income and brought to tax. The assessee during the assessment proceedings alternately claimed that the payment made to the retired partners as an expenditure allowable u/s 37(1) of the Act. The Assessing Officer rejected the alternate claim of the assessee also holding that the

payment made to the retired partners is not expenditure to carry on the business but it was a gratuitous payment.

6. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A). The Id. The CIT(A) confirmed the addition made by the Assessing Officer both on diversion of income by overriding title as well as the revenue expenditure u/s 37(1) of the Act. Therefore, the assessee is in appeal before the Tribunal.

7. On behalf of the assessee, Senior Counsel, Shri Percy J. Pardiwala appeared and presented the case. In his argument, the Senior Counsel stated that the assessee is a firm of Chartered Accountants rendering auditing, tax advisory and compliance as well as financial advisory services to its clients. The partners of the firm play pivotal role in rendering professional services. As a professional firm, the method of accounting adopted by the firm is cash method of accounting. As a matter of practice, memo of fees is raised on the client on completion of engagement. The income in respect of professional fees gets booked only on receipt of professional fees from the client. Similarly, at any given point of time, there are several ongoing professional engagements for which professional time has been spent and efforts are made. Such work in progress is not

reflected in the accounts because of the cash method of accounting. In view of the above, there is considerable amount of income either unbilled or billed but not received and work in progress to be received from the clients for which costs are incurred, time is devoted and efforts are made during the period when retiring partner was active in the firm. Such sums will be realized by the firm in the post retirement period. The assessee-firm continues its operations after the retirement of a partner with same name and apparatus. The ongoing firm has the base of clients and human and physical infrastructure built over a period of time inter alia with efforts made by the retiring partner.

8. The Id. Senior Counsel taken us to the partnership deed placed at paper book pages 20 to 61 and explained that as per clause 10(l), (m) and (n)[pages 47 to 51 of the paper book, the payments were made to the retiring partners. For ready reference, we reproduce hereunder the relevant clauses of the partnership deed.

Payment of profits for the year of retirement or death	i. In respect of the year of retirement or death of a Partner, the Net Profits or Losses of the Firm shall be worked out for the full financial year at the end of the financial year in which the retirement or death occurs. Such Net Profits or Losses of the current year shall be apportioned on a time basis from the commencement of the current year to the date of the Partner's retirement or death and the Partner or the legal heirs or nominees, as the case may be, shall be paid the share of such apportioned sum by the continuing or surviving Partners as adjusted by the tax liability of such
--	--

	<p>Partner with respect to his share of profits of the Firm for the year of retirement or death, as the case may be. It is clarified that the Partner or regal representatives, as the case may be, shall be entitled to the proportionate monthly remuneration under clause 9.a to the extent not drawn by the Partner up to the date of retirement, or death as the-case may be.</p>
<p>Right to receive payments on retirement or death</p>	<p>m. In addition to the amounts, if any, payable, as provided in the preceding clauses 10.k and 10.1 above,</p> <ul style="list-style-type: none"> • a retired/retiring Partner of the Firm who became a Partner in the Firm or Participating Firms on or before 31 March 2010 or the spouse or nominee of such deceased Partner; or • a retired/ retiring Partner of the Legacy Firm in respect of which the liability thereof has been taken over by this Firm or the spouse or nominee of such deceased Partner; <p>as the case may be, shall be entitled to receive further sums determined on the basis specified in clause 10.n in respect of the following:</p> <ol style="list-style-type: none"> i. amounts bills, but not received, work completed, but not billed, and work partly completed and not billed as at the date of death or retirement, as the case may be, having regard to the fact that the Partnership follows the cash system of accounting. ii. In consideration of the Retiring Partner or the spouse or nominee of the deceased Partner, as the case may be, permitting the continuing partners the use of the Firm name of Deloitte Haskins & Sells., to carry on the profession, along with the clientele and the attendant rights of the Firm; . iii. the contribution made by the surviving Partner or the deceased Partner as the case may be, during his association with the Firm, in increasing the future income earning potential of the Firm, the benefits whereof are likely to be reflected in the receipts of the Firm for a reasonable number of years immediately following the retirement or death of the Partner; and/or

<p>Determination and payment of amounts under clause 10.m</p>	<p>iv. In consideration of the assuming of the liability of the Retired Partners of the Legacy Firms consequent to the acquisition of the clientele and employees together with the substantial business of the Legacy Firms.</p> <p>It is clarified that a person who becomes a Partner in the Firm or Participating Firms on or after 1 April 2010 shall not be entitled to any payments under this clause, as computed under clause 10.n.</p> <p>n. The further sum payable to Retiring Partners or the spouse or nominees of deceased Partners referred to in the clause 10.m above shall be determined in accordance with clause(i) to clause (vii) below as may be applicable.</p> <p>i. In case of Partners who have retired from the Legacy Firms on or prior to 31 March 2007 as listed in Annexure III, the payments in respect of clause 10.m will be made, for the balance period out of the period of ten years from the date of retirement, to the Retired Partner. The payments will be made on a monthly basis.</p> <p>ii. In terms of clauses 10.n.vi of the Partnership Deed dated 1 April 2008, the amount of pension payable to Shri Anil Chandra Gupta is as per Annexure IV.</p> <p>iii. For the Partners other than those listed in clauses (i) and (ii) above, any Partner retiring after 'Qualifying Period' of 20 years with the Participating Firm, shall be entitled to receive payments, at the rate of 25 per cent of his average annual amount received in the previous year from all the Participating Firms for best three years out of the last five years prior to retirement(even if it is related to the period prior to 1 April 2007) in absolute terms, for a period of ten years from the date of retirement. If the Partner retires in between the end of two accounting years than the average annual Amount Received in the Previous Year shall be computed with reference to completed financial years before the date of retirement as a Partner. The absolute amount referred to above will be indexed</p>
---	--

	<p>as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 or will be increased every year at the simple rate of 5% per annum, whichever is higher. The payments will be made on a monthly basis. The payments under this clause will be restricted to Rs.60 lakhs per annum and this limit will be indexed as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 and the base year for the indexation being 2007-08 or increased every year at the simple rate of 5% per annum, whichever is higher.</p> <p>Payments as per this clause shall be made in case any Partner retires on becoming permanently incapacitated from continuing as Partner or dies. In such case the Qualifying Period will not be considered. In case of death of a Partner or retirement of a Partner due to incapacity before completion of three years as a Partner, then the average annual amount received in the previous year would be worked out with reference to the Amount Received in the Previous Years in absolute terms for the period he served as a Partner.</p> <p>Provided that a Partner who retires on attainment of the normal Retirement age after completing at least five continuous years as a Partner but without completing the Qualifying Period of 20 years shall be entitled to the payments of Rs.6,00,000 per annum for a period of ten years from the date of the retirement. The absolute amount referred to above will be indexed as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 and the base year for the Indexation being 2007-08 or increased every year at the simple rate of 5% per annum, whichever is higher.</p> <p>iv. Notwithstanding anything contained above the amounts payable under clause 10.n iii to a Retiring Partner or the Spouse or nominee of a deceased Partner in any financial year (on or after 1 April 2007) shall not be less than Rs.6,00,000 per annum provided the said Partner has completed the Qualifying Period of 20 years. The minimum amount of Rs.6,00,000 shall be adjusted by Cost Inflation Index specified in section 48 of the Income Tax act, 1961, the base year for the indexation being</p>
--	---

	<p>2007-08 or increased every year at the simple rate of 5% per annum whichever is higher.</p> <p>v. Notwithstanding anything contained in clause 10.n.iii and clause 10.n.iv, the amounts payable to a Retiring Partner or the Spouse or nominees of a deceased Partner under this clause shall cease at the end of the financial year in which the Partner concerned attains the age of 75 years, or would have attained the said age if alive.</p> <p>vi. The payments under this clause and in any other clause of this agreement are subject to deduction of tax at source, as may be applicable from time to time.</p> <p>vii. On the basis of iii to vi above, the payment of pension to Partners under clauses 10.m and 10.n will be made as per Annexure V.</p> <p>For the avoidance of any doubt, it is clarified that a person who becomes a Partner in the Firm or Participating Firms on or after 1 April 2010 shall not be entitled to any payments computed under this clause.</p>

9. The Id. Senior Counsel further explained that in view of the clauses in the partnership deed, there is a prior charge in respect of payments due to retired partners as the gross fee received by the continuing partners. In view of the prior charge arising from the provisions of the partnership deed, the same is payable to the retired partners and therefore, it is not income of the assessee-firm. The nature of application is such that the same payable to the retired partners cannot be said to be part of the assessee's income. He

argued that the sums paid to the retiring partners was related to the work carried on by the partners during their service but the bills not raised, work completed but bills not raised and work partly completed and not billed etc. The assessee-firm is carrying on the business in the name of Deloitte Haskins & Sells. In nutshell, it is a consideration to the retired partners to continue the same business in the same line with the new partners and to retain the retired partners to support competitiveness on their own and not to join a new firm which is a threat to the existing firm and to settle the pending bills relating to the income earned by them as a partner during their tenure in the partnership-firm. Further the Senior Counsel further submitted that the method and manner of payment is determined as per clause 10(m) of the partnership deed which is reproduced in the earlier paragraph.

10. Referring to the decision of ITAT Mumbai Bench in the case of associated concern of the assessee-firm M/s C.C Chokshi & Co. vs JCIT in I.T.A.No.s 492 to 495/Mum/2003 for the A.Y 1995-96 to 1997-98 the Id. Senior Counsel submitted that on identical facts, the ITAT Mumbai, Bench held that the payment is by overriding title but not an application of income. He further submitted that clauses 22 and 28 of partnership deed of M/s C.C. Chokshi & Co. are identical to the clauses 10(m), 10(n) and 7(e) of assessee's partnership deed and a

comparative chart was submitted by the Senior Counsel which reads as under:

Clause in the Partnership Deed of C.C. Chokshi & Co.	Clause in the Partnership deed of the Appellant	Description	Detailss
Clause 22	Clause 10m	Right to receive payments on retirement or death.	The list of sums entitled to be received determined based Clause 10n of the deed.
	Clause 10 n	Determination and payment of amounts under clause 10m.	The period post which the retired partner shall be eligible for the payments made as per Clause 10m of the deed.
Clause 28	Clause 7(e)	Payments under clause 10n & 10.n.vi are prior charge on the receipts of the firm.	Payment made to retired partners is a prior charge on receipts of the firm

11. The ITAT Mumbai in the case of M/s C.C. Chokshi & Co. (supra), while dealing with the issue of payments made to the retired partners on identical facts has held as under:

"8. We have heard both the parties and considered their rival contentions. The Hon'ble Supreme Court in the case of CIT Vs Sitaldas Tirathdas (supra) has considered the aspect of diversion of income by overriding title and has laid down the tests for application of the rule of diversion of income by overriding title. It is laid down as under:

'In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the

decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee.

Where by the obligation income is diverted before it reaches , it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable"

This proposition still holds good even today. Let us now see whether the facts in the case satisfies the test laid down by the Hon'ble Supreme Court"

9. For proper appropriation. Clause 22 of the Partnership deed of the assessee-firm is reproduced hereunder:

22 it is agreed that in addition to the amounts, it any, payable as provided in the preceding clause, namely clause 21, a retiring partner or the legal representative of a deceased partner as the case may be, shall be entitled to receive the further sum speared in clause 23, in respect of the following:-

(a) (i) amounts billed, but not received,
 (ii) work completed, but not billed, and
 (iii) work partly completed and not billed as at the date of death of retirement, as the case may be, having regard to the fact that the partnership follows the cash system of accounting, and

(b) (i) in consideration of the retiring partner or the legal representative of the deceased partner, as the case maybe, permitting the continuing partners the use of the firm name of C. C. CHOKSHI & Co. to carry on the profession, along with the clientele and the attendant rights of the firm,

(ii) the contribution made by the surviving partner or the deceased partner as the case may be during his association with the Firm, in increasing the future income earning potential of the Firm, the benefits thereof are likely to be reflected in the receipt of the Firm for a reasonable number of years immediately following the retirement or death of the partner, and

(iii) the restrictive covenants contained in clause 26 thereof from engaging in any gainful occupation or in the practice of the

profession of accountancy in India after such retirement.

10. The first test to be applied is to see the nature of the obligation of the assessee. This obligation is created by the Partnership Deed. The Hon 'ble Supreme Court in the case of Prince Khandelrao Gaikwad vs. CIT reported in 16 ITR 294 at page 373 held as under

"There is no distinction between a charge created by a decree of court and one created by agreement of parties, provided that by that charge the income from the property can be said to be diverted so as to bring the matter within section (9)(1)(iv) of the Act. "

Thus, it cannot be said that as this. Partnership Deed is an agreement between the parties. It does not create any charge on the income of the assessee.

11. This Charge over the income of the assessee is created in favour of the retiring partner or legal representative of the deceased partner for the work executed by them before retirement or death, but the amounts were not collected during their tenure and also as a consideration for permitting the continuing partners to use name of the firm as well as to carry on the profession along with the clientele and attendant rights of the firm and for increasing the future income earning potential of the firm the benefits whereof are likely to be reflected in the receipt of the firm for a reasonable number of years immediately following the retirement/death of the partner and also for restricting themselves from engaging in any gainful occupation or in the practice of the profession of accountancy in India after such retirement which is in competition with that of the assessee. Thus, it is clear that the amounts to be paid under Clause 22 are in lieu o their services rendered already to the firm and for restraining themselves to carry on any competing profession. Thus, what is being paid is expenditure necessary for earning the income.

12. It is therefore clear that the assessee is obliged to pay the amount computed under clause 23 before distribution of the same under Clause 28 of the partnership-Deed and it cannot be said to be an application of the income by the assessee firm. As under this obligation the income is diverted before it reaches the assessee it is deductible. The assessee is in fact in the position of a collector of income on behalf of the persons to whom it is payable and is only paying the amount subsequently. The decisions relied upon by the learned DR are not applicable to the facts of the case. "

12. The Senior Counsel also relied on the decision of ITAT Mumbai in the case of M/s C.C. Chokshi & Co for the assessment years 200-01 to 2001-02 which held the issue in favour of the assessee following decision of the Co-ordinate Bench in I.T.A.Nos. 492 to 495/Mum/2003 and observed that the ITAT has referred to several judgments in the above case including the judgment of Hon'ble Supreme Court in the case of CIT vs Sitaldas Tirathdas, 41 ITR 367 which was relied upon by the Assessing Officer in the assessment order as well as by the CIT(A) in his appellate order. The appeal filed by the Revenue against the above order of the Tribunal was dismissed by the Hon'ble Bombay High Court in ITA No.209 of 2008 dated 25.7.2008. The Bombay High Court followed its judgment in the case of CIT vs Mulla and Mulla and Craigie, Blunt and Caroe 1991 ITR 198. The Id. Senior Counsel relied on the following decisions also on identical facts:

1. CIT vs Punjab Tractors Co-op. Multipurpose Society Ltd, 95 Taxman 579
2. GFA Anlagenbau GmbH vs ITO, 57 ITD 81 (Hyd)
3. S. Priyadarsan vs JCIT, 73 TTJ 378 (Chennai)
4. ACIT 11(2) vs M/s A.F. Ferguson & Co. in I.T.A.No.7792/Mum/2004 dated 30.1.2008
5. CIT vs M/s A.F Ferguson and Co. in I.T.A.No.419 of 2012 dated 9.7.2014 Bombay High Court.

6. CIT vs Subramaniam Bros, 236 ITR 148 (Mad)
7. CIT vs Mulla & Mulla & Craigie Blunt & Caroe, [1991] 54 Taxman 192.
8. CIT vs RSM & I Co. in I.T.A.No. 188 of 2014 dated 11.8.2016 [Bombay High Court]
9. CIT vs Nariman B. Bharucha & Sons, [1980] 4 Taxman 76 (Bom)

13. On the other hand, the Id. DR argued that the payment made to retired partners was made from the income of the firm and hence, cannot be regarded as diversion but must be regarded as application of income and relied on the orders of the lower authorities.

14. We have considered the rival submissions and the material placed before us. We have also carefully gone through the decisions of the Mumbai ITAT in the case of associated concern of the assessee M/s C.C. Chokshi & Co. (supra) and also the partnership deed and its relevant clauses. Clause 10(m) of the partnership deed deal with the right to receive payments on retirement or death. As per clause 10(m), the retiring partners is entitled to receive the sums determined on the basis of clause 10(n) in respect of the amounts billed but not received etc. The payment is made to the retiring partner as consideration for permitting the continuing partners the use of the firm name to carry on the profession, alongwith the clientele and the attendant rights of the firm. The contribution made by the surviving

partner, during his association with the firm, in increasing the future income earned as discussed in clause 10 of the partnership deed. The determination of the payment is calculated as per clause 10(n) of the partnership deed. The clauses of the partnership deed are identical to that of the decision of the ITAT Mumbai Bench in the case of M/s C.C. Chokshi & Co. (supra).

15. The Id. DR's contention is that the payment to retired partners is an 'application of income'. When the partnership deed specifies that the payment made to the retiring partner is with regard to the work done by them during the tenure as a partner and towards the settlement of their income for the work done and to allow the partnership firm to continue its business, the payment cannot be held as an application of income or gratuitous payment. We therefore respectfully following the decision of Coordinate bench of ITAT Mumbai in the case of the associate concern of the assessee, M/s C.C. Chokshi & Co. (supra), hold that the payment is a diversion by overriding title and cannot be included in the total income.

16. The assessee also raised the ground for allowance of expenditure u/s 37(1) of the Act. Since we held that the payment made to retiring partners is diversion of income by overriding title, the ground raised by the assessee became infructuous and hence dismissed.

17. The next ground is related to the TDS credit of ₹ 1,98,27,735/- which has been suffered by the assessee in connection with the professional fees received from clients.

18. The CIT(A) in her appellate order, has directed the Assessing Officer to verify the claim of the assessee vis-à-vis Form 26AS and give for the correct amount of T.D.S. Giving correct amount of payment of taxes is the duty of the assessing officer. The assessee should not be made to suffer for getting the refund of taxes paid. We direct the assessing officer to allow the correct amount of TDS without any further delay. This ground is allowed for statistical purposes.

19. The next ground is related to levy of interest u/s 234D to the extent of ₹ 6,10,636.

20. The Assessing Officer is directed to examine the applicability of interest u/s 234D and levy correct amount of interest.

21. In the result, the appeal of the assessee is partly allowed.

22. Now, coming to Revenue's appeal I.T.A.No.2077/Mds/2016, the only issue is addition made by the Assessing Officer towards advance fee of ₹ 64,39,989/-.

23. During assessment proceedings, the Assessing Officer found that the assessee is following the cash system of accounting and received advances of ₹ 64,39,989/-. The assessee submitted to the

A.O that the sum of ₹ 64,39,989/- represented the receipt of advances for the services not concluded. The bills are raised by the assessee on completion of the work and as per the method of accounting regularly followed. Not convinced with the explanation of the assessee the Assessing Officer made the addition of ₹ 64,39,989/- to the returned income.

24. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A). The Ld.CIT(A) allowed the assessee's claim by placing reliance on the judgment of the Delhi High Court in the case of CIT vs Dinesh Kumar Goel, 197 taxman 375(Delhi).

25. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

26. The Id. DR argued that the assessee-firm is following the cash system of accounting and all the receipts represent income and not offering the income on receipt basis leads to difference of income recognition and contradictory stand to the principles of accounting. Further, the Id. DR also argued that the assessee was accounting the expenditure on cash basis, which resulted in mismatch frequently.

27. On the other hand, the Id. AR submitted that the assessee has disclosed advances of ₹ 64,39,989/- at the end of financial year 2010-11. The said advances represented advances received from

clients on account of professional fees. The assessee is following cash system of accounting and the bills are raised as and when the services are rendered. No professional charges are received in advance, therefore, the same cannot take the character of income unless the invoices are raised and services are rendered. In exceptional cases, the assessee-firm received advances from clients before rendering such services. Such advances are kept in advance account. The advance received from client is transferred to professional fee account on completion of service. The assessee further submitted that the advance is a very small amount as compared to the aggregate professional fees. Apart from the above, alternatively the Id. AR submitted that the advance received during the assessment year under consideration was only ₹ 2,79,161/- which may be added to the income of the assessee if the assessee's contentions are not accepted. Further Ld. A.R submitted that on identical facts in the case of A.F. Ferguson & Co in ITA No.7792/M/04 dated 30/01/2008 Mumbai ITAT has dismissed the appeal of the revenue.

28. We heard the rival submissions and perused the material placed before us. The assessee-firm is a Chartered Accountants rendering professional services. As per Balance Sheet as on 31.3.2011 the advance outstanding was ₹ 64,39,989/-. The assessee contended that the amount of advances were received from clients for the

services not yet rendered, therefore, the income is not accrued and accordingly, the advance cannot partake the character of income. Further, the assessee submitted that all advances cannot be held as income. In other words, the receipt resumes the character of income only when the services are rendered. The assessee is following the same method of accounting consistently for several years. The assessee placed reliance on the judgment of P& H High Court in the case of CIT vs Punjab Tractors Co-operative Multi-purpose Society Ltd, 234 ITR 10, decision of this Tribunal in S. Priyadarsan vs JCIT, 73 TTJ 738 and on identical issue in the case of associated concern of the assessee viz. A.F. Ferguson & Co., in I.T.A.No.7792/Mum/2004 dated 30.1.2008, ITAT Mumbai. In the facts and circumstances of the case, we agree with the submission of the assessee that the advance cannot be treated as income in the hands of the assessee unless the services are rendered by the assessee. The Assessing Officer has not made out a case that advances received in question were towards the services rendered by the assessee. The Id. DR also could not bring any evidence to controvert the submissions made by the assessee. In view of the above facts and placing reliance on the decisions relied upon by the assessee cited (*supra*) we do not find any reason to interfere with the order of the CIT(A) and accordingly we uphold the same.

29. In the result, the Revenue's appeal is dismissed.

30. To summarize, the appeal of the assessee is partly allowed whereas that of the Revenue is dismissed.

Order pronounced in the open court on 25th November, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 25th November, 2016

RD

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF