



ITA.No.2539/Mum/2017  
Trendsetter Construction Private Limited  
Assessment Year-2012-13

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

**माननीय श्री जोगिन्दर सिंह , उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**

**BEFORE HON’BLE SHRI JOGINDER SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.2539/Mum/2017  
(निर्धारणवर्ष / Assessment Year: 2012-13)

Income tax Officer-14(3)(2) 458, 4 <sup>th</sup> Floor Aayakar Bhavan Mumbai-400 020.	<b>बनाम/ Vs.</b>	<b>Trendsetter Construction Pvt.Ltd.</b> 1, Rajkamal Opp. University Campus CST Road, Kalina Mumbai-400 098
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACT 2606 C</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri F.B. Andhyarujina- Ld. AR
<b>Revenue by</b>	:	Shri D.G. Pansari-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	23/10/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16/11/2018

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income Tax (Appeals)-22 [CIT(A)], Mumbai, *Appeal No.CIT(A)-22/IT/288/2015-16* dated 18/01/2017 by raising the following sole ground of Appeal:-



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*On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.1,55,00,000/- received by the assessee on a/c of professional fees u/s 194 J of the I.T. Act for rendering the services to M/s. A.A. Estate Private Limited during the year which clearly indicates the facts that the assessee is only a service provider. By adopting project completion method the assessee is not showing profit in a particular year thereby postponing the tax liability which is incorrect on the part of the assessee.*

The assessment for the impugned Assessment Year [AY] was framed by Ld. Income Tax Officer– 14 (3)(2) , Mumbai [AO] u/s 143(3) on 06/03/2015 wherein the income of the assessee was assessed at Rs.81.19 Lacs after certain adjustments as against *Nil* return filed by the assessee on 24/09/2012. During impugned AY, the assessee being *resident corporate entity* was engaged as *builder and developers*.

2. During assessment proceedings, it was noted that the assessee did not reflected any income from business whereas it had incurred administrative expenditure of Rs.74.68 Lacs out of which it had transferred an amount of Rs.74.34 Lacs to *Work-in-progress AAEPL Project Account*. The perusal of *Form 26AS* revealed receipts of Rs.155 Lacs stated to be received by the assessee from an entity namely *A.A.Estate Private Limited [AAEPL]* as *advance amount against the projects*. The same was not offered to tax in view of the fact the assessee followed *Project Completion Method* of Accounting to offer the project income to tax. However, upon perusal of terms of the agreement, Ld. AO concluded that the assessee was merely rendering professional / technical services to the aforesaid entity and therefore, the plea of the assessee could not be accepted particularly when the same was rejected in preceding years also and the matter for those years was pending before the Tribunal. Finally, the aforesaid receipts were treated



as business receipts against which the expenditure of Rs.74.34 Lacs as transferred by the assessee to *WIP Account* was allowed and the net differential i.e. Rs.80.65 Lacs was treated as *Business Income*.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 18/01/2017 wherein Ld. CIT(A) deleted the impugned additions by following the orders of its predecessor for AYs 2006-07 to 2010-11 as confirmed by the Tribunal by observing as under:-

*4.3 I have considered the facts of the case and the appellant's submissions. It is seen that identical issue has been considered and decided in favour of the appellant by my Id. predecessors in the appeals for A.Y.s 2006-07 to 2011-12. In the appeal for A.Y. 2006-07, my Id. predecessor had observed and held as under:*

*"Thus as per MOU, M/s. A.A. Estate P. Ltd. was the builders and developers who obtained the services of the appellant for works as mentioned above. In other words, the appellant was not acting as a builder and developer but was only rendering professional and technical services in respect of above identified work/activities to M/s. A.A. Estate P. Ltd. The terms and condition of the MOU shows that the appellant was required to render certain services in respect of particular project or projects and the appellant was to receive remuneration (for the services rendered) not in proportion to services rendered but in proportion to certain percentage (i.e. 20%) of the profits of the project. Since the execution/completion of project was spread over to number of years, therefore, the profit on such projects could not have been worked out in particular each year and therefore, the appellant's remuneration (for the services rendered) could not have been worked out in each particular year. The appellant's remuneration could only be worked out/ascertained only on completion of the project. It is also worth to mentioned here that as per clause 9 of the MOU, remuneration was not required to be payable in the event of losses in respect of project. Thus, even though the appellant would have rendered services for a particular project, no remuneration was payable to appellant in the event of losses in the project. In the facts and circumstances, the appellant's claim appears to be correct that the amount received in a particular year (though the payer i.e. M/s. A.A. Estate P. Ltd. shows the same in the TDS certificate as fees for professional or technical services), the same was in the nature of advance only."*

*The above decision of my Id. predecessor was also upheld by the Hon'ble ITAT in its order dated 18.12.2015 in ITA No.7579/M/2011 wherein it has been held as under:*

*"8. We have considered the rival contentions and have also gone through the records. We find that the id. 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."*

*Facts and circumstances of the issue in the instant appeal being identical with that of the earlier years, respectfully following the decision of my Id. predecessors and the Hon'ble ITAT, the appellant's grounds of appeal are allowed.*

Aggrieved, the revenue is in further appeal before us.

4. The Ld. Senior Counsel appearing for Assessee, *Shri F.B.Andhyarujina*, at the outset, submitted that the issue stood squarely covered in assessee's favor by the order of this Tribunal for AYs 2006-07 to 2011-12, the copies of which has been placed on record. Explaining the nature of transaction, Ld. Sr. Counsel submitted that the assessee was engaged in the business of *development of properties, resorts, malls and construction of buildings*. It had all the necessary expertise, knowledge and skills for the purpose of acquisition and utilization of development rights and to render related services. Accordingly, it



entered into an agreement to render services of varied nature vide agreement dated 12/06/2002, supplementary agreement dated 13/06/2002 with an entity namely *AAEPL*. The terms of the agreement were renewed from time to time up-to 10/06/2017. As per the terms of the contract, the assessee was to be remunerated with a commission equivalent to 20% of profits and gains derived from the projects undertaken by him with *AAEPL* and no commission was payable to assessee, in the event of losses. The assessee continued to render the services to *AAEPL* and pending completion of the project, the assessee was receiving *adhoc payments* every month from *AAEPL* for the various projects undertaken. Therefore, the aforesaid payments received by the assessee were mere advance payments which never accrued to the assessee as income during impugned AY. Our attention is drawn to the fact that the aforesaid payment has not been claimed as expenditure by *AAEPL* and similar treatment has been given by *AAEPL* to the impugned payments in its books of accounts. It has also been submitted that profits / losses arising from the projects have been charged to Profit & Loss Account in the year of completion of the project. Per *Contra*, Ld. Departmental Representative [DR], *Shri D.G.Pansari* although supported the stand of Ld. AO but could not bring on records any contrary judgment.

5. We have carefully heard the rival submissions and perused relevant material on record. The nature of the transactions as explained by Ld. Sr. Counsel is not in dispute since similar facts have been noted by the Tribunal in earlier years. Upon perusal of impugned order, we find that first appellate authority has provided relief to the assessee by relying



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on the order of this Tribunal for AYs 2006-07 to 2009-10. Nothing on record suggests that the aforesaid order has ever been over-ruled or negated by the orders of any higher judicial authority. Further, following the same order, the appeal of the revenue has been dismissed by the Tribunal for subsequent AYs 2010-11 & 2011-12 vide ITA Nos. 7022-23/Mum/2014 dated 24/06/2016, the copies of which are on record. Therefore, we find no reason to deviate from the same and inclined to confirm the impugned order. However, the same shall be subject to verification of the fact that similar treatment has been given to the aforesaid payments by *AAEPL* in its books of accounts and the stated payments have not been claimed as expenditure therein. The Ld. AO is directed to delete the additions after verifying the aforesaid fact, if found correct. The assessee is directed to provide documentary evidences to substantiate the same.

6. Resultantly, the appeal stands dismissed.

*Order pronounced in the open court on 16<sup>th</sup> November, 2018.*

Sd/-  
**(Joginder Singh)**  
उपाध्यक्ष / **Vice President**

Sd/-  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16.11.2018  
Sr.PS:-Thirumalesh/Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)



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4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.