IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1673 OF 2016
WITH
INCOME TAX APPEAL NO.1679 OF 2016
WITH
INCOME TAX APPEAL NO.1681 OF 2016
WITH
INCOME TAX APPEAL NO.1691 OF 2016

Pr. Commissioner of Income Tax-14 .. Appellant
v/s.
M/s. Trendsetter Construction Pvt. Ltd. .. Respondent

Mr. Sursh Kumar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue is in appeals against the common judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short), raising following question for our consideration :-

> *(i) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in holding that payment received by the assessee is not in the form of professional fees covered u/s 194J of the I.T. Act, 1961, the assessee is acting as a consultant and getting the fees for work?*

2. The respondent assessee is a private limited company. The issue being common, we may record the facts from Income Tax Appeal No.1673 of 2016. The issue concerns for Assessment Year 2006-07. The assessee had earned income out of its engagement, claimed to be as a consultant in development of housing project. The Assessing Officer was of the opinion that the income was assessee's business income. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)" for short], who held that the assessee was acting merely as a consultant and accordingly reversed the decision of the Assessing Officer. The Revenue carried the matter in appeal before the Tribunal. The Tribunal by the impugned judgment confirmed the decision of CIT(A) making following observations :-

> *"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 payeee. 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 dependent 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."

3. A perusal of the material on record would show that the CIT(A)

and the Tribunal on the basis of evidence on record came to the conclusion that the assessee had not engaged in the business of developing real estate. The assessee had engaged itself, may be, as a consultant out of which activity, the assessee would earn commission at pre-decided rate. The amounts received by the assessee before completion of the project were in the nature of deposits to be adjusted towards alternate payment to be made upon completion of the project. We do not find any error in the view of the Tribunal.

4. The tax appeals are dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**