

This alert summarizes the recent decision of the Mumbai Tribunal in the case of Newtech (India) Developers Pvt. Ltd. v. Commissioner of Income Tax (Mumbai Tribunal) (2020) 116 Taxmann.com 898 (Mumbai Tribunal) (‘the taxpayer’) wherein the Tribunal held that income will accrue to the taxpayer only when all the obligations necessary for receiving such income are performed and not on receipt of money.

BACKGROUND

In this case, the Taxpayer, being a builder and developer, entered into an agreement to redevelop a slum property. Pursuant to the agreement, the development rights were transferred to the Taxpayer.

Later on, the Taxpayer entered into a Joint Venture (‘JV’) agreement with Shivalik Ventures Pvt. Ltd. (‘SVPL’). Under the JV agreement, the Taxpayer transferred the development rights for a consideration of INR 5.40 crore to SVPL. The consideration to be paid by SVPL is as under:



**Mumbai Tribunal
affirms the principle
that income accrues /
arises
only once all the
obligations
necessary for
earning such income
are performed in
entirety and not
partially**

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Sr. No.	Particulars	Amt. (in INR)
1	On entering of the JV agreement	0.86 crore
2	On obtaining intimation of approval and commencement certificate	2.268 crore
3	When all the slum dwellers vacate the property and shift to alternate accommodation	2.268 crore
	Total	5.40 crore

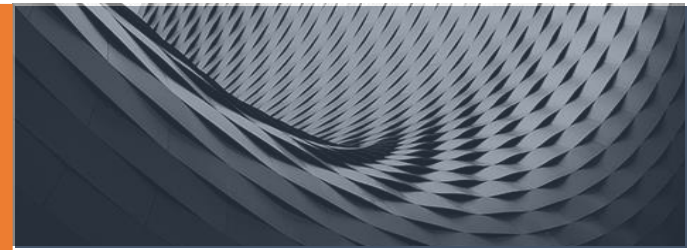
As per the JV agreement, the amount of INR 0.86 crore was to be treated as an advance till atleast 25% of the slum dwellers vacate the premises within 5 years. In case the Taxpayer

was unable to do so within 5 years, the entire money was to be refunded to SVPL.

Since the amount was contingent, the Taxpayer treated INR 0.86 crore as advance and did not offer to income-tax.

However, the Revenue Authorities treated the said amount as taxable on the following basis:

- The Taxpayer was following mercantile method of accounting, as per which the transactions were to be recognised as and when they took place.
- The Taxpayer had transferred development rights and handed over the possession of the property and hence, the said transaction qualified as transfer under Section 53A of the Transfer of Property Act, 1872.



- The condition of treating INR 0.86 crore as an advance till at least 25% occupants had vacated the property, was provided by way of a modification agreement and hence, it was a colourable device to evade taxes.

On appeal by the Taxpayer, the Commissioner (Appeals) ruled in Taxpayer's favour and hence, the Revenue Authorities filed an appeal before the Mumbai Tribunal.



TRIBUNAL DECISION

The Mumbai Tribunal held that when the obligations of the Taxpayer under the JV agreement were not performed, there was no occasion to bring the consideration for performance of such obligations to tax. The Tribunal made the following observations:

- The JV agreement was a composite agreement, irrespective of whether we look at the modifications or not, and all the terms of the agreement were to be read in conjunction of each other.
- When a Taxpayer had an obligation to perform something, and the same has not been performed, nor is the Taxpayer in a position to perform such obligations, then partial payment for fulfilling these obligations cannot be treated as income in the hands of Taxpayer.

- Following principles laid down by various judicial precedents were noted:

- loss is to be accounted as soon as it can be reasonably anticipated, but anticipated profits are not to be accounted until they actually arise - Chainrup Sampatram vs. CIT [24 ITR 481 (SC)];
- until the obligations for performance of which an amount is received, such a receipt cannot have an income character in the hands of the person who is still to perform such obligations - E.D. Sassoon & Co Ltd. vs. [CIT 36 ITR 27 (SC)] ;
- if income does not result at all, there cannot be a tax, even if in book-keeping an entry was made for a hypothetical income which did not materialise - CIT v. Shoorji Vallabhdas & Co. [46 ITR 144 (SC)]

- The Revenue Authorities could not disregard the modification agreement just because it negated tax liability in Taxpayer's hands.
- Whether the advance amount was actually refunded or not by the Taxpayer, did not matter for accrual of income.

COMMENTS

The Tribunal decision affirms the principle that income accrues / arises only once all the obligations necessary for earning such income are performed in entirety and not partially. It is important to note that the Tribunal decision is pronounced for the Financial Year when Income Computation and Disclosure Standards ('ICDS') were not issued. Hence, the Taxpayers needs to take into cognizance ICDS while relying on this Tribunal decision.

