

## JV wasn't taxable as AOP as it was only formed to secure contract and entire work was split up between JV partners

**Summary – The High Court of Delhi in a recent case of Oriental Structural Engineers (P.) Ltd., (the Assessee) held that where JV was formed only to secure contract, in terms of which scope of each JV partner's task was distinctly outlined and further, entire work was split between two JV partners and they completed task, through sub-contractors, JV was not an association of persons and liable to be taxed on that basis**

### Facts

- The assessee was a Joint Venture (JV) between two companies formed to undertake projects awarded by NHAI. It reported *NIL* income for the relevant years and claimed refunds.
- From the Profit & Loss A/c of the assessee, it was noticed that out of the total contract receipts from the NHAI, assessee had debited most of the amounts towards payment to sub-contractors, *i.e.*, the JV partners themselves and the balance receipts were utilized to make payments for work contract, taxes, sales tax/VAT, professional fees and audit fees, etc.
- The Assessing Officer held that a proportion of the project receipts, commensurate with the risks/performance obligations, should be attributed to the assessee to whom tender had been awarded for the project and it was not allowable for the assessee JV to divert the entire receipts to its JV partners by designing a sub-contract to that effect. He taxed 5 per cent of the gross contractual receipts in assessee's hands in status of AOP.
- On appeal, Commissioner (Appeals), reversed the order of Assessing Officer observing that the JV constituents were already taxed at maximum marginal rate and further taxing AOP would tantamount to double taxation.
- On revenue's appeal, the Tribunal affirmed the order of Commissioner (Appeals).
- On appeal to the High Court:

### Held

- In the assessee's case for assessment year 2004-05, this Court had occasion to consider the same issue, in which the court had made the observation that assessee was created as a joint venture for obtaining works from the National Highways Authority of India without there being any requirement or necessity of the joint venture to carry out any activity itself and in fact, all the activities were to be carried out by the aforesaid two members of the joint venture for which they were to be reimbursed.
- Further, in the case of *Linde AG, Linde Engg. Division v. Dy. DIT* [\[2014\] 365 ITR 1/224 Taxman 43 \(Mag.\)/44 taxmann.com 244 \(Delhi\)](#), it was observed that unless the facts lead to a conclusion that there is sufficient joint participation for a common enterprise, it would not be appropriate to treat

two or more persons as an Association of Persons for the purposes of assessing them as separate taxable entity. A mere co-operation of one person with another in serving one's business objective would not be sufficient to constitute an Association of Persons merely because the business interests are common. A common enterprise, which is managed through some degree of joint participation, is an essential condition for constituting an Association of Persons.

- In the instant case too, the concurrent opinions of the Commissioner (Appeals) and the Tribunal were that the JV was formed only to secure the contract, in terms of which the scope of JV partner's task was distinctly outlined. Entire work was split between the two JV partners; they completed the task through sub-contracts and were responsible for the satisfaction of the NHAI. Therefore, applying the principles of the law declared in *Linde AG, Linde Engg. Division (supra)*, it is held that JV was not an association of persons and liable to be taxed on that basis.