

vआयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.2296, 2304 & 2305/Ahd/2014
(निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11 & 2011-12 respectively)

DCIT, Patan Circle, Patan Room No.104, 1 st Floor Santokaba Hall, Rajmahal Road, Patan – 384 265	बनाम/ Vs.	M/s. Ranjit Projects Pvt.Ltd. Natwarlal Ishwarlal & Co. Building 110, Old Market Yard, Unjha – 384 170
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCR 1363 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri K. Madhusudan, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri S. N. Soparkar, A.R.

सुनवाई की तारीख / Date of Hearing	23/10/2017
घोषणा की तारीख /Date of Pronouncement	27/10/2017

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

These three appeals are taken by the department against the separate orders of the Commissioner of Income Tax(Appeals)-Gandhinagar, Ahmedabad, dated 06/06/2013, 12/05/2014 & 19/05/2014 for the Assessment Years (AYs) 2009-10, 2010-11 & 2011-12 respectively.

2. Since the issue involved is common in all the appeals and all three appeals are disposed off by a common and consolidated order, for the sake of convenience, the case for A.Y. 2009-10 is taken for discussion in detail and the following Grounds of appeal has taken by the assessee:

- i. The learned CIT(A) has erred in law and on facts in deleting the disallowance of deduction made by the AO of Rs.3,76,68,740/- u/s.80IA(4) of the Act.*
- ii. On the facts and circumstances of the case the ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

3. The relevant facts as culled out from the materials on record are as under:-

Appellant company has filed its return of income on 26/09/2009 after claiming deduction u/s.80IA(iv) of the Act. The AO held that the company has entered into an agreement with GSRDC, which is neither any Central/State Government nor statutory body and denied the deduction claimed. But main Ground before the impugned authority was in respect of disallowance of deduction claimed u/s.80IA(4)(i)(a) of the Act at Rs.3,76,68,739/-. The claim of deduction u/s.80IA(4) was denied by the AO after holding that the appellant company has not entered in to agreement with the State Government/Statutory body and has entered into an agreement with GSRDC only.

3.2 Thereafter, a notice was given to the assessee and assessee has made detailed submissions which are reproduced as under:

“i. The 1st ground of appeal is in respect of disallowance of Rs.3,76,68,739/- deduction claimed u/s.80IA(4) of the I.T. Act. The facts are as under:-

- 1. The appellant is a Company assessed to tax. The appellant Company has undertaken a BOT contract from the Government of Gujarat whereby it constructed ROB at Charni, Vadodara. The Government of Gujarat issued notification authorizing the appellant Company to collect Toll and accordingly the Company has been collecting Toll tax as per the rates authorized by the Government of Gujarat in the notification.*
 - 2. The A.G. Audit party pointed out that no deduction u/s.80IA should be allowed since the appellant Company has not entered into contract with the Government of Gujarat but has entered into agreement with G.S.R.D.C. which is a Corporation incorporated under 'the Companies Act.*
 - 3. The appellant filed detailed evidence before the Id.A.O. that G.S.R.D.C. was Government Agency working under the full control and approval of the Government of Gujarat as explained in its letter dated, 26-12-2011 which are as under:-*
- 1. Government of Gujarat passed a Resolution dated 20-02-1999 whereby it was resolved as under:*
 - 1. It is felt that the development of road in the Gujarat State could be completed at a faster pace if the dependency on State Finance is reduced. As a solution to this the State Government has decided to let some of the development works be undertaken by private parties with resources being contributed by them and other lenders. To this effect, there is a proposal to establish a Roads Development Corporation to help improve the road infrastructure in the State. The Corporation will undertake works involving Roads, Bridges, Fly-overs, underground roads. After due consideration, the Government has decided to establish the Gujarat State Road Development Corporation Ltd. The objective of the Corporation are as under:-*
 - i. Object of the Corporation inter alia include:*
 - a. To undertake the development of projects and roads.*
 - b. To raise financial resources from Banks, Institutions, Mutual Funds etc.*

- c. *To commercially develop and exploit land alongside the roads/bridges.*
- d. *Other objects – Draw up plans for the projects, prepare feasibility studies become a consultant or appoint consultant or environment studies etc.*
- ii. *The Government under the above decision orders that Corporation shall be registered under the Companies Act, 1956 and its initial authorized capital will be Rs. 5 Crores. Initially the Government shall hold 100% of paid up capital aggregating Rs.5 Crores. This capital may be increased subsequently for which the relevant permissions will be sought by the Corporation.*
- iii. *The proposed objects of the Corporation will be restricted to works undertaken, under the jurisdiction of the Roads and Building Department and also as directed by the Government of Gujarat.*
- iv. *The Registered Office of the Corporation will be in Gandhinagar and its address will be as under:-*
- Nirman Bhavan,
Sector No. 10A, .
Gandhinagar-382010*
- v. *The constitution of the Board of Directors of the Corporation will be as under:-*
- a) Hon. Minister (Roads & Buildings): Ex-officio Chairman
Chief Secretary : Ex. Office Vice Chairman
b) Four experts appointed by The Government: Directors
c) Secretary, Road & Building Department: Director
d) Special Secretary & Chief Engineer (CP): Director
e) An Officer from the Roads & building department in the category of Chief engineer and additional secretary: Managing Director*

A copy of the Resolution is submitted herewith.

2. *Government of Gujarat, R & O.B. Department by its Resolution dated 04-08-1999 entrusted the work of various projects to Gujarat State Road Development Corporation and one of such projects was*

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Chhayapuri ROB, near GSFC Junction, Vadodara. A copy of Resolution is submitted herewith.

3. *To implement the Government policy for participation of Private Parties in the development works of Roads, Bridges etc the Gujarat Infrastructure Development Act, 1999 was enacted on 05-10-1999, Concession Agreement, developer, Government Agency, Infrastructure etc have been defined in section 2 of the Act. Government Agency is defined as under:-*

“Government agency means a Corporation or a Body owned or controlled by the State Government or an authority established by or under any law and includes a local authority”

A copy of this Act is submitted herewith.

4. *GSRDC by its letter dated 26-07-2000 addressed to Shri Ravi Saxena, IAS, CEO, GIDB sought approval for four lining of ROB near Chhayapuri, near GSFC Junction, Vadodara. A copy of this letter is submitted herewith.*
5. *Government of Gujarat, Roads & Building Department, Gandhinagar by its Resolution dated, 01/08/2002 allotted the land for Chhayapuri, near GSFC Junction, Vadodara since agreement was to be entered into through G.S.R.D.C. for construction of ROB on BOT basis. A copy of this Resolution is submitted herewith.*
6. *The concession agreement entered into by G.S.R.D.C. with Ranjit Projects Pvt. Ltd. was approved by the Government of Gujarat in its meeting held on 24-10-2000. We submit herewith a copy of letter dated, 01/01/2001 addressed by Government of Gujarat to G.S.R.D.C. along with its minutes. We submit herewith copy of gist of the concession agreement entered between G.S.R.D.C. and R.P.P.L. On page 9 of the agreement 'Government Agency' is defined which reads as under:-*

"Government Agency" means GSRDC, R & B.D.(GOG) or any State Government etc.

4. (a) *In the assessment proceedings the A.O. by his show cause notice dated, 09-12-2011 u/s.142(1) called upon the appellant to explain why the deduction claimed at Rs.3,76,68,739/- u/s.*

80IA(4) should not be disallowed. A copy of this notice is compiled in the paper book.

(b) The appellant by its letter dated, 26-12-2011 replied the show cause notice in detail with evidence and explain that the deduction claimed u/s.80IA(4) should not be disallowed.

(c) In the assessment order the ld. A.O. has observed in Para 6&7as under:-

“6. The reply of the assessee is considered and found not acceptable in view of provision of section 80IA of the Act. As discussed above it has been expressly provided under section 80IA(4) of the Act that the profits and gains of an enterprise carrying on business of developing, operating or maintaining any infrastructure facility shall be allowed as deduction, provided that it should have entered Into an agreement for the same with the Central Government or State Government, a local authority or any other statutory body.

7. In the instant case it is seen that the assessee had not entered into any assignment as such with central/state government local authority or a statutory body. The assessee had entered into a concession agreement with GSRDC, a corporation incorporated under the Companies Act. As such the assessee could not fulfill important conditions as provided u/s.80IA(4) that the agreement for developing, operating or maintaining any infrastructure facility should have been entered with central/state government, local authority or a statutory body. Therefore, it is held that deduction claimed u/s.80IA(4) of the Act is in violation of the provision of that section. Accordingly, the deduction claimed u/s.80IA(4) of the I.T. Act disallowed and added back to the total income of the assessee.

2. The appellant submits as under:-

i. The Government of Guj'arat, R & B Department passed Government Resolution No. MIS-1098/ (50)/C dated, 20th February, 1999 as stated in detail above. A copy of the Resolution is compiled in the paper book. It is observed in the said Resolution that, THIS Government Resolution

issued with 'the concurrence of the Finance Department obtained on 29-01-1999 on this Department file of even Number.

In the said Resolution finally it is written as under:-

"By order and in the name of the Governor of Gujarat."

- 2. Government of Gujarat, R&B Department by its Resolution dated 04-08-1999 entrusted the work of various projects to Gujarat State Road Development Corporation "Ltd. and one of such projects was Chhayapuri ROB, near GSFC Junction, Vadodara. A copy of this Resolution is compiled in the paper book.*
- 3. To implement the Government policy for participation of Private Parties in the development works of road, bridges etc the Government Infrastructure Development Act, 1999 was enacted on 05-10-1999. Concession Agreement, Developer, Government Agency, Infrastructure etc have been defined in section 2 of the Act. Accordingly, Government Agency is defined as under:-
"Government Agency means, a corporation, or a body own or control by the State Government or an authority established by or under any law and includes a local authority. A copy of this act is compiled in the paper book.*
- 4. GSRDC by its letter dated, 26-07-2000 addressed to Shri Ravi Saxena, IAS, GIDB sought approval for four lining of Chhayapuri ROB, near GSFC Junction, Vadodara. A copy of this letter is compiled in the paper book.*
- 5. Government of Gujarat, Roads & Building Department; Gandhinagar by its Resolution dated, 01-08-2002 allotted the land for Chhayapuri near GSFC Junction, Vadodara as the agreement was to be entered with the appellant by GSRDC for construction of ROB on BOT basis. A copy of this Resolution is compiled in the paper book.*
- 6. The Concession Agreement was entered into by GSRDC with the appellant which was approved by the Government of Gujarat in its meeting held on 24-10-2000. A copy of letter dated, 01-01-2001 addressed by Government of Gujarat to GSRDC along with its minutes is compiled in the paper book. A copy of the Concession Agreement upto definitions is also compiled in the paper book. The definition of Government Agency is given on page No. 9 as under:-*

"Government Agency means, GSRDC, R & BD (GOG) or any State Government or Government Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, or other Judicial or Administrative Body, Central, State or local having jurisdiction over the concessional, the project assets or any portion thereof or the performance of all or any of the services or obligations of the concessional under or pursuant to this agreement."

Further "GSRDC" is defined as under:-

"GSRDC means Gujarat State Road Development Corporation Ltd."

- 7. The appellant under the concessional agreement dated 30-10-2011 completed the work of ROB, near Chhayapuri, near GSFC Junction, Vadodara (construction of Chhayapuri ROB in lieu of existing underpass No.6 across Mumbai-Delhi Railway line near GSFC Junction on BOT basis by the end of February, 2003 and therefore, Government of Gujarat, R & B Department issued an order No.Toll/102001-(29)-part-1 Pvt. Cell dated 07-03-2003 permitting the appellant to collect Toll fee as indicated therein. A copy of this order is compiled in the paper book.*
- 8. In view of the above facts, the appellant respectfully submits that this concession agreement is with the Government of Gujarat through its agency GSRDC. It is therefore, very respectfully urged that, there is no justification in disallowing the claim of the appellant u/s.80IA(4) of the I.T. Act.*
- 9. GSRDC, a Corporation incorporated under the Companies Act is under the Government Resolution dated, 20th February, 1999 and 100% owned by the Government. It is specifically resolved in the Resolution that GSRDC will be registered under the Companies Act as 100% owned Company and therefore,, the Agreement entered into by the appellant with the GSRDC is nothing but the agreement with the Government as can be seen from the above documents."*

3.3 But learned Assessing Officer was not satisfied with the explanation given by the assessee and held as under:

"In the instant case it is seen that the assessee had not entered into any assignment as such with central/state govt. local authority or a statutory

body. The assessee had entered into a concession agreement with GSRDC, a corporation incorporated under the companies Act. As such the assessee could not fulfill important conditions as provided u/s.80IA(4) that the agreement for developing, operating or maintaining any infrastructure facility should have been entered with central/state govt. local authority or a statutory body. Therefore it is held that deduction claimed u/s.80IA(4) of the Act is in violation of the provision of that section. Accordingly, the deduction claimed u/s.80IA(4) of the I.T. Act disallowed and added back to the total income of the assessee and made an addition of Rs.3,76,68,739/-.”

4. Against the said order assessee preferred appeal before the Learned CIT(A) who granted the relief to the assessee and partly allowed the appeal of the assessee.

5. Now department's appeal is before us.

6. We have gone through the relevant record and impugned order. It is held by the learned CIT(A) that the concessional agreement and the entire project was clearly not only executed in agreement with GSRDC but the Gujarat Government was directly involved in the agreements for the project. This is clear from:

- (a) The approval for the project i.e., four lining of Chhayapuri ROB, near GSFC Junction, Vadodara was sought from the Gujarat Industrial Development Board by the GSRDC.*
- (b) Government of Gujarat, Roads & Building Department, Gandhinagar by its Resolution dated. 01/08/2002 allotted the land for construction of ROB on BOT basis.*
- (c) The Concession Agreement was entered into by GSRDS with the appellant which was approved by the Government of Gujarat in its meeting held on 24/10/2000.*

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(d) *Government of Gujarat, R&B Department issued an order No. Toll/102001-(29)-part-1 Pvt. Cell dated. 07/03/2003 permitting the appellant to collect Toll fee as indicated therein.*

*In view of the above, it is held that the appellant has developed, operated and was to transfer the project in agreement with the constitutional body i.e. an **agency** as defined under section 2(e) of the **Gujarat Infrastructure Development Act, 1999 under the Gujarat Government Act** and also in direct and explicit agreement and approval of Gujarat government which has given land and allowed to collect toll fee.*

In view of the above, it is held that the appellant fulfills the conditions as required under section 80IA(4)including 80IA(4)(i)(b) and has developed, operated and was to transfer the infrastructure facility and therefore, was eligible for the deduction claimed under the section. The grounds of appeal are decided accordingly.

7. In the judgment of the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) has been discussed in the said case, dispute was between Burmah Shell, company under the Companies Act, 1956, and one of its former employees. The company M/s. Burmah Shell was acquired by Government of India and later it was known as Bharat Petroleum. A Writ Petition was filed by the employee against Bharat Petroleum. A preliminary objection arose as to whether the Writ Petition was maintainable against M/s. Bharat Petroleum as it was neither a statutory corporation and nor a Government department. The Court examined whether it was a State within the meaning of Article 12 of the Constitution of India. The Hon'ble Supreme Court laid down certain tests in this context and the relevant portion of the Head notes of judgment is as under:

“2. Some of the tests laid down by this Court for deciding whether a body is State **within** the meaning of Article 12 are:

- (i) *If the entire share capital of the corporation is held by Government, it would go a way towards indicating that the corporation is an instrumentality or agency of the Government.*
- (ii) *A finding of State financial supports plus an unusual degree of control over the management and policies might lead, one to characterize an operation as State action.*
- (iii) *The existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.*
- (iv) *Whether the corporation enjoys monopoly status which is State conferred or State protected is a relevant factor.*
- (v) *If the functions of the corporation are important public functions and related to governmental functions it would be a relevant factor in classifying the corporation as instrumentality or agency of the Government.*
- (vi) *If a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference that it is an instrumentality of the State*
- (vii) *Where the chemistry of the corporate body answers the test of State if comes within the definition of Article*
- (viii) *Whether the legal person is a corporation created by a statute, as distinguished from under a statue is not an important criterion although it may be an indicium.*

18. As per the Hon'ble Supreme Court, if the aforesaid tests are fulfilled by an **entity**, it would qualify to be understood as an instrumentality of State. As per the **Hon'ble** Supreme Court, the aforesaid tests provide an aid to determine whether a body is a State within meaning of Article 12 of the Constitution of India, Emphasizing the import of the aforesaid tests, the Hon'ble Supreme Court noted that true test is not how the legal entity in Question was created but why it was created. The Hon'ble Supreme Court

also observed that all the tests may not be applicable or satisfied in a given case, but one will have to arrive at a conclusion based on the cumulative effect of the said tests.

19. The claim of the assessee before us is that SSNNL complies with all the tests laid down by the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) First test is whether the share capital of the corporation is held by the government. In the present case, the entire share capital of SSNNL is admittedly owned and held, by the Government of Gujarat. The second test is as to whether the State exercises unusual degree of control over the management and policies and financial support is received from the State. In our considered opinion, the said test is fulfilled in case of SSNNL as per the detailed discussion made by the Ahmedabad Bench of the Tribunal in the case of Sardar Sarovar Narmada Nigam Ltd.. Moreover, the Memorandum of Association and Articles of Association of SSNNL clearly establish that the said concern is operating under superintendence and direction of the Government of Gujarat. It has also been pointed out before us that the Directors of the SSNNL are drawn from the officials of the Government of Gujarat. The next test is the existence of deep and pervasive State control. In this context, it emerges that the Board of Directors of SSNNL are appointed by the Gujarat Government and it consists of the Government employees of the rank of Secretary/Additional Secretaries. The next test is whether the corporation enjoys monopoly status which is otherwise conferred on a State. The objects to be pursued by the SSNNL, the powers conferred on it, as revealed by the Memorandum of Association clearly suggest that SSNNL is in the activity of executing, operating and maintaining the Sardar Sarovar project comprising of a dam across river Narmada, a canal system the Sardar Sarovar power houses at the foot of the said dam, etc.. All these aspect clearly show that SSNNL is involved in carrying out State monopoly functions, like operation of Airports, Ports, Railways, etc.. The next test is whether functions performed are important public functions related to governmental functions. In the case of SSNNL, it is quite obvious that apart from executing operating and maintaining the Sardar Sarovar project it is also involved promoting schemes in the State of Gujarat for flood control in the Narmada river, irrigation and water supply schemes for utilization of water from Sardar Sarovar. All these are essentially government functions and obligations, which are being performed by SSNNL. The next test is if a Department of a Government transferred to a corporation. In this context, it is quite clear that the erstwhile Narmada Development Department consisting of its

employees as well as the asset of Sardar Sarovar project were transferred enbloc by the Government of Gujarat to SSNNL. The next test is as to whether the chemistry of the concerned body answers the test of a State. In our view, the said test is also fulfilled in the face of the fact that the incorporation of SSNNL, its ownership, management, control as well as the powers have a unmistakable stamp of a Government.

20. In view of the aforesaid discussion, in our view, the tests laid down by the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) are fulfilled in the present case and it would be appropriate to deduce that SSNNL is an instrumentality or an agency of the state. Therefore, SSNNL is to be understood as an entity akin to those specified in sub-clause (b) of clause (i) to sub-section (4) of section 80IA of the Act. Therefore, the objection of the Revenue that SSNNL was a company incorporated under the provisions of the Companies Act, 1956 and is therefore outside the purview of section 80IA(4)(i) of the Act is unfounded. In-fact, the Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) specifically observed that merely because an entity is created under a statute and not created by a statue is not an important criteria. The test relating to the purpose, State control and functions performed are more important and determinative of the issue. Such control and functions performed are more important and determined of the issue. Such tests, in our view, are clearly applicable in the case of SSNNL, and it is to be understood as an entity specified in section 80IA (4) (i) (b) of the Act.”

8. Learned AR cited an order of Co-ordinate Bench in ITA No.3081/Ahd/2014 and contends that IRCTC is a 100% owned company of Govt. of India earlier the catering was done by railways. Subsequently observing the manifold increase in catering for expediency Govt. formed its supporting arm by constituting the IRCTC as a 100% owned company. ITAT, Pune has threadbare examined all aspects including the Constitution of India, the ratio of judgment is fully applicable to this case. Therefore, it is alternatively urged that IRCTC for all legal and practical purposes being a Govt. no TDS is deductible by assessee from

any payment made to it including the impugned license fee. On this count also there is no question of disallowance u/s.40(a)(ia), consequently the entire disallowance deserves to be deleted.

9. Learned AR cited an order of ITAT Bench (Pune) [2016] 69 taxmann.com 78 (Pune-Trib), in the case of Kirloskar Brothers Ltd. vs. DCIT. In this case, it was also contended by the Revenue is that the assessee does not fulfil the condition prescribed in sub-clause (b) of clause (i) to sub-section (4) of section 80IA of the Act. In terms of the said objection, the Revenue contends that assessee has entered into a works contract agreement with SSNNL which is not an entity specified in sub-clause (b) of section 80IA(4)(i) of the Act. According to the Revenue, SSNNL is not a Central Government or State Government or a local authority or any other statutory body, so as to be considered as an entity specified in sub-clause(b) of section 80IA(4)(i) of the Act. As per the Revenue, SSNNL is a company registered under the Companies Act, 1956 and does not fall within the prescription of sub-clause (b) of section 80IA(4)(i) of the Act. As per the Revenue, though the entire share capital in the said company is owned either by the Central or the State Government, yet it can only be called a 'Government company' but it does not come within the purview of the entities specified in sub-clause (b) of clause (i) of section 80IA(4) of the Act.

In this matter, the learned counsel for the assessee has vehemently reiterated the position of the assessee taken before the lower authorities to the effect that the contract with SSNNL fulfills the condition

prescribed in section 80IA(4)(i)(b) of the Act. The arguments of the assessee were two-fold. Firstly, it has referred to the judgements of the Hon'ble Supreme Court in the case of (i) Som Prakash Rekhi vs. Union of India & AIR 1981 SC 212; and, (ii) Pradeep Kumar Biswas & Ors. vs. Indian Institute of Chemical [Appeal (Civil No.992 of 2002, dated 06/04/2002)], In this judgements, it is canvassed that an entity, like SSNNL, is liable to be considered as an instrumentality or an agency of the Government, and thus, it qualifies to an entity specified in section 80IA(4)(i) of the Act. Secondly, it is sought to be made out that having regard to the background and peculiar features of SSNNL, the said concern is executing Governmental functions and is not engaged in any commercial activities.

All kinds of infrastructure facilities referred in section 80IA(4)(i) of the Act, like Railways, ports, dams, bridges, roads, etc. are always owned by the Government and cannot be owned by private owners. So however, for an efficient execution and handling of such infrastructure facilities, the governments form a Special Purpose Vehicle (SPV) in the form of separate entity registered under the Companies Act, 1956. It was, therefore, contended that even if such like entities are incorporated under the provisions of the Companies Act, 1956 still having regard to the functions performed, they have to be considered as mere extensions of the Government.

Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) and Pradeep Kumar Biswas & Ors. (supra) are fulfilled and SSNNL is

liable to be considered as a 'statutory body' falling within the meaning of section 80IA(4)(i)(b) of the Act.

10. Similarly in this case, the entire project was clearly not only executed in agreement with GSRDC but the Gujarat Government directly was involved in the agreements for the project.

11. In our considered opinion, assessee has developed, operated and was to transfer the project in agreement with the constitutional body i.e. an **agency** as defined under section 2(e) of the **Gujarat Infrastructure Development Act, 1999 under the Gujarat Government Act** and also in direct and explicit agreement and approval of Gujarat government which has given land and allowed to collect toll fee.

Assessee company fulfills the conditions as required under section 80IA(4) including Section 80IA(4)(i)(b) and has developed, operated and was to transfer the infrastructure facility and therefore, is eligible for the deduction claimed under the section.

12. With the above observation, we are of the considered opinion that GSRDC is an extended arms of the Gujarat State and is entitle to eligible for deduction. Therefore, we dismiss all three appeals in ITA Nos. 2296, 2304 & 2305/Ahd/2014 for Asst. Years 2009-10, 2010-11 & 2011-12 respectively.

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13. In the result, all the three appeals are dismissed.

This Order pronounced in Open Court on	27/10/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 27/10/2017

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-Gandhinagar, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad