

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE BENCHE, INDORE

श्री चन्द्रमोहन गर्ग, न्यायिक सदस्य

तथा

श्री ओ.पी.मीना, लेखा सदस्य के समक्ष

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

AND

SHRI O.P.MEENA, ACCOUNTANT MEMBER

ITA No.546/Ind/2016

Assessment Year: 2011-12

M/s. Vinod Kumar Shukla Const. Pvt. Ltd, Bhopal	ब	ACIT-3(1) Bhopal
(Appellant)	नाम/	(Revenue)
	Vs.	
P.A. No.AAACV5190P		

Appellant by	Shri Prakash Jain, CA
Revenue by	Shri Mohd. Javed Sr.DR
Date of Hearing:	26.07.2017
Date of Pronouncement:	11.8.2017

आदेश / O R D E R

PER CHANDRAMOHAN GARG, J.M:

This appeal is filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-2, Bhopal [hereinafter referred to as the CIT(A)] dated 03.02.2016 and pertains to assessment year 2011-12 as against appeal decided in assessment order passed u/s 143(3) of the Act dated 14.03.2014 of ACIT, 3(1), Bhopal [hereinafter referred to as the AO]. Earlier this appeal was dismissed as ex-parte quasis and subsequently it was recalled by order dated 24.05.2017 posted in the MA No.24/2017 of the appellant-assessee.

2. The following grounds have been raised by the assessee:-

1. That impugned order passed is bad in law as well as on the facts. It is based on incorrectness interpretation of law and the facts have also been incorrectly construed.

2.1 That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming AO's action for disallowing deduction u/s 80A(4) amounting to Rs.1,23,33,267/- without

appreciating the fact that during the assessment year in question assessee has developed and constructed new infrastructure facilities viz, constructed new bridge and roads.

2.2 That on the facts and in the circumstances of the case and in law, the ld. CIT(A) failed to appreciate the fact that the explanation to Section 80IA(4) inserted by Finance Act, 2009, with effect from 01.04.2000 is not applicable on the appellant company.

3. That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in upholding the addition of Rs.2,00,000/- out of disallowance of Rs.3,00,000/- made on account of business promotion expenses.

3. The Ld. Assessee's representative (AR) reiterated that the asseesee's written submissions filed before the CIT(A) which reads as follows;

"The assessee company is engaged in the business of construction work, by undergoing contract with the State Government and Central Government Department, specially to construct Bridges and Roads, by fulfilling all the provisions laid down in the Act, with reference to Section 80IA(4)(i).

Further, the assessee being a developer of the infrastructure facilities is fully entitled for exemption under the said Section. As

the assessee fulfill all the conditions required to avail the benefits available under the Act. The claim of u/s 80IA(4) is genuine considering the fact that the assessee is engaged in the development of infrastructure work awarded by the Government”.

- 4.** Replying to the above the Ld. Departmental Representative (DR) drew our attention towards page 4.4 of the first appellate order and submitted that as per written submission of the assessee no appeal has been filed for Assessment Year 2010-11 i.e. for immediately preceding year and the issue is covered in favour of the revenue and against the assessee by the order of the ITAT, Indore Bench in the case of ACIT V/s M/s. R.K. Gupta Contractors and Engineers Pvt. Ltd dated 28.7.2010 passed in ITA No.517 & 522/Ind/2009.

- 5.** On careful consideration of facts and circumstances of the case and rival submission we are of the view that ITAT, Indore Bench has adjudicated the issue in the case of ACIT V/s M/s. R.K. Gupta Contractors and Engineers Pvt. Ltd (supra) wherein the tribunal has held as follows;

3. *“we have heard the rival submissions of the parties and have gone through the material available on the file. A clarificatory Explanation below sub-section (13) of Section 80IA of the Act was inserted with retrospective effect from 1.4.2000 by the Finance Act, 2009, as per which nothing contained in this section shall apply in relation to a business referred to in sub-section (4) which is in the nature of a “works contract” awarded by any person including the Central or State Government and executed by the Undertaking or enterprise referred to in sub-section (1). The assessment year involved in the present appeal being 2006-07, therefore, this Explanation is clearly applicable to the facts of the present appeal. It has been specifically provided that the provisions u/s 80IA of the Act shall not apply to a business referred to in sub-section (4) of Section 80IA of the Act, which is of the nature of “works contracts”. In sub-section (1), the word “any business” has been mentioned. Identical issue has been deliberated upon and decided by the Tribunal in the aforesaid case, the relevant portion whereof has been reproduced above. We, therefore, hold that since no deduction is allowable to the assessee u/s 80IA of the Act, the Ld. CIT(A) was not justified in granting the same. The order of Ld. CIT(A) on this issue is, therefore, set-aside and the appeal of the Revenue is allowed.*

4. As far as the appeal of the assessee (ITA No.522/Ind/2009) is concerned, since while deciding the appeal of the Revenue, we have held that no deduction u/s 80IA of the Act is allowable to the assessee, there is no question of bifurcation of income/receipts for the purpose of deduction u/s 80IA of the Act, therefore, the decision of the Ld. CIT(A) in that regard cannot be sustained because the assessee is not at all eligible for deduction u/s 80IA of the Act. Accordingly, the appeal of the assessee is also dismissed.

Finally, the appeal of the Revenue is allowed whereas the appeal of the assessee is dismissed.”

- 6.** In view of the above, at the very outset we may point out that as per mandate and the settled legal position the provisions of Section 80IA of the Act does not apply to the business referred to in sub section (4) of Section 80IA of the Act which is of the nature of “works contract” and in sub-section (1), the words “any business” has been mentioned. The Ld. AR could not controvert the fact that the facts and circumstances of the present case are identical to the facts of the case of M/s. R.K. Gupta Contractors and Engineers Pvt. Ltd (supra) and thus we hold that no deduction is allowable to the assessee u/s 80IA of the Act as the appellant is only executing the works

contract awarded by the State/Central Governments and he is only a “works contractor”. Consequently, following the decision of Tribunal in the case of ACIT v/s R.K. Gupta Contractors and Engineers Pvt. Ltd (supra) we hold that the conclusion drawn at 4.4 of the order of the CIT(A) is correct and sustainable, thus we have no reason to interfere with the same. It is also relevant to mention that while dismissing the claim of the assessee the CIT(A) rightly noted that no appeal has been filed by the assessee for Assessment Year 2010-11 i.e. immediately preceding year, therefore the conclusion drawn by the first appellate authority also gets strong support from this fact.

7. In the result the appeal of the assessee being devoid of merits is dismissed.

Order was pronounced in the open court on 11.08.2017.

Sd/-

(O.P. MEENA)

लेखा सदस्य/ACCOUNTANT MEMBER

Indore; दिनांक Dated : 11/08/2017

Dev/

Sd/-

(CHANDRA MOHAN GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore