आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH: CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

आयकर अपील सं./**I.T.A. No.3234/Chny/2017**
निर्धारण वर्ष **/Assessment Year: 2011-12**

M/s. Khivraj & Co., No. 12, General Muthiah Mudali Street, Sowcarpet, Chennai 600 079. **[PAN: AAAFK2848L]**	Vs.	The Deputy Commissioner of Income Tax, Non Corporate Circle 5, Chennai 600 006.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Ajit Kumar Choradia, C.A.
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh Kumar, Addl. CIT
सुनवाई की तारीख/Date of Hearing	:	26.11.2018
घोषणा की तारीख /Date of Pronouncement	:	02.01.2019

आदेश **/ O R D E R**

PER DUVVURU R.L.REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 5, Chennai, dated 26.10.2017 relevant to the assessment year 2011-12. The assessee has raised the following grounds:

> *"1. The order of the Ld. AO and Ld. CIT(A) is wrong on facts and in law.*
>
> *2. The Ld. AO and Ld. CIT(A) erred in his observation that the Appellant had agreed for the disallowances.*
>
> *3. The Ld. AO and Ld. CIT(A) erred in disallowing the Appellant's claim for deduction u/s 80-lA of the Income-tax Act, 1961.*

4. The Ld. AO and Ld. CIT(A) erred in law and on facts by disallowing the transmission and wheeling charges under section 40(a) of the Income-tax Act, 1961.

5. The Ld. AO and Ld. CIT(A) failed to note that the expenditure relating to erection, commissioning and infrastructural charges ("Impugned expenditure") were not claimed as deduction and had only been capitalized in the accounts.

6. The Ld. AO and Ld. CIT(A) failed to note that the Appellant had not claimed the impugned expenditure as deduction while computing the total income and therefore provisions of section 40(a)(ia) of the Income-tax Act, 1961 would not apply.

7. The Ld. AO and Ld. CIT(A) failed to note that section 40 of the Income-tax Act, 1961 applies only to those items of the expenses which are covered by section 30 to 38 of Income-tax Act, 1961 and not apply to any other item of expenditure.

8. The Appellant craves leave to add, alter, amend, substitute, delete and / or modify, in any manner whatsoever, all or any of the foregoing grounds of appeal, at any time before or during the hearing of the appeal."

2. The first ground raised in the appeal of the assessee relates to disallowance of claim for deduction under section 80IA of the Act. On verification of the income returned and the details furnished by the assessee, the Assessing Officer noticed that the assessee has claimed a deduction of ₹.80,53,099/- under section 80IA under chapter VI-A of the Act. On verification of the particulars furnished by the assessee, the Assessing Officer observed that since the assessee does not qualify to claim deduction under section 80IA(4) of the Act, the deduction of ₹.80,53,099/- was disallowed and brought to tax. On appeal, the ld. CIT(A) confirmed the addition.

3. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book. In this case, as per the deed of partnership entered on 01.05.2000, the partners of the assessee firm are Shri Ajit Kumar Chordia, Shri Bharat Kumar Chordia, Khivraj Automobiles Pvt. Ltd. and Khivraj Motors P. Ltd. It is also not in dispute that as per the agreement for private windmill generation (as per agreement WEG.HT.SC.No. 1737) with Tamilnadu Electricity Board made at Tirunelveli on 15.10.2007 in favour of Khivraj Motors P. Ltd. Since the partnership firm is neither a company nor consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act as required under clause (i) of section 80IA(4) of the Act, the deduction claimed by the assessee was rejected, which was confirmed by the ld. CIT(A). While confirming the addition, the ld. CIT(A) relied on the decision of the Tribunal in the case of Eahwarnath Constructions v. ACIT [2013] 32 taxmann.com 130 (Chennai-Trib), wherein, it was held as under:

> *"……In our opinion, an assessee while claiming deduction has to satisfy all conditions in sub-section 4(1)(a) or (b) or (c). It is mandatory for the assessee to first satisfy sub-section clause i(a), then (b) then (c), then proviso and so on. In case the concerned assessee fails in any one of the clauses, even if it satisfies the other part of the sub-section, the claim has to be rejected. Now we proceed to decide as to whether the assessee firm satisfies sub-section 4(i) of the "Act" or not. For the said sub-section, a reading of the provision makes it unambiguous that the concerned claimant has to be an enterprises carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility and it has to be owned by a consortium of such company or by an authority or a board or a corporation or any other body established or constituted*

under any Central or State Act. Admittedly, the assessee is a partnership firm. As we notice from the relevant statutory provision, the enterprise in the nature of firm nowhere finds mention in the mandate of the legislature. ....."

3.1 The above observations of the Coordinate Benches of the Tribunal relates to the claim of deduction for the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility and therefore, the Tribunal has rightly held that the assessee firm failed to satisfy applicability clause of provision as envisaged under section 80IA(4)(i) of the Act. However, this case has no application to the facts of the present case because of the specific substitution of applicability clause (iv) to section 80IA(4) of the Act, which reads as under:

(iv) an [undertaking] which,—

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2017;

Provided that the deduction under this section to an undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2017.

Explanation.—For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004;]

3.2 From the above specific sub-clause (a) to clause (iv) of section 80IA of the Act, it is clear that the intention of Legislation for substituting clause (iv) to section 80IA(4) of the Act to the Undertaking is only to extent the benefit of the provisions of section 80IA of the Act to such undertaking, which is neither a company nor a consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act as required under clause (i) to section 80IA(4) of the Act only to encourage electric power generation and its distribution.

3.3 Since the authorities below have not disputed any other parameters of eligibility criteria, we are of the considered opinion that the assessee is eligible to claim deduction under section 80IA(4)(iv) of the Act. Accordingly, we set aside the orders of authorities below and direct the Assessing Officer to allow the deduction claimed by the assessee. Thus, the ground raised by the assessee is allowed.

4. The next ground raised in the appeal of the assessee relates to confirmation of disallowances of infrastructure development charges and erection & commission charges as well as transmission and wheeling charges under section 40(a)(ia) of the Act.

4.1 On verification of the details submitted by the assessee, the Assessing Officer noticed that during the financial year 2010-11, the assessee has paid Infrastructure Development charges at ₹.17,25,000/- each to TANGEDCO Ltd.

in respect of two WTG (600KWT) commissioned and ₹.18,00,000/- towards erection and commission charges to M/s. RRB Energy P Ltd. Since TDS has not been deducted on the total amount of ₹.52,50,000/- as required under section 194C of the Act, the Assessing Officer disallowed the entire amount and brought to tax.

4.2 Similarly, the assessee has made certain payments such as transmission charges, Schedule operating charges, operating and maintenance charges and wheeling charges totaling to ₹.82,626/- made to TANGEDCO Ltd, in respect of power generated and sold to the assessee's group companies and others by the 4 WTGs owned by the assessee firm these payments have been adjusted out of the payments receivable from the consumers. Since the assessee has not deducted TDS on the above amount of ₹.82,626/-, the same was disallowed and brought to tax.

4.3 On appeal, after considering the submissions of the assessee, remand report as well as facts of the case, the ld. CIT(A) confirmed both the disallowances made under section 40(a)(ia) of the Act.

4.4 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The ld. Counsel for the assessee vehemently argued that the assessee has not claimed the expenses and the expenditures were capitalized, the Assessing Officer cannot make the disallowances. The ld. Counsel for the assessee has relied on

various case law in support of the contention. We find force in the arguments of the ld. Counsel. As per the remand report dated 08.09.2016, the Assessing Officer has clarified that the impugned payments were prior to commissioning of the windmill and the amounts have been capitalized. Further, in the remand report, the Assessing Officer has stated that a perusal of the Profit and Loss statement shows that the impugned payment has not been claimed as revenue expenditure by assessee, but capitalized as evident from the depreciation schedule. The provisions of section 40(a)(ia) of the Act is applicable only when the assessee has claimed an expenditure and no disallowance can be made under section 40(a)(ia) of the Act, if the payments were not claimed as an expenditure. In view of the above, both the disallowances made by the Assessing Officer under section 40(a)(ia) of the Act and confirmed by the ld. CIT(A) stand deleted.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 02nd January, 2019, in Chennai.

Sd/-	Sd/-
(**अब्राहम पी. जॉर्ज**)	**(धुव्वुरु आर.एल. रेड्डी)**
(ABRAHAM P.GEORGE)	(DUVVURU R.L. REDDY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 02.01.2019.
VM

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF