

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA. Nos. 544 & 637/H/17
Assessment Years 2011-12 and 2012-13

M/s. Rithwik Projects Pvt Ltd., Hyderabad. PAN:AABCR 5748 L	vs.	DCIT, Circle-3(1), Hyderabad.
(Appellant)		(Respondent)

ITA. Nos. 660 & 658/H/2017
Assessment Years 2011-12 and 2012-13

DCIT, Circle-3(1), Hyderabad.	vs.	M/s. Rithwik Projects Pvt Ltd., Hyderabad. PAN: AABCR 5748 L
(Appellant)		(Respondent)

For Assessee :	Shri P. Murali Mohan Rao
For Revenue :	Shri Nilanjan Dey, DR

Date of Hearing :	02.01.2019
Date of Pronouncement :	30.01.2019

ORDER

PER BENCH:

These are cross appeals by the assessee as well as the Revenue for the assessment years 2011-12 and 2012-13 respectively against the respective orders of the CIT(A)-3, Hyderabad dated 17.01.2017. The assessee has raised the following grounds of appeal:-

Grounds of appeal for the A.Y. 2011-12:

- “1. *The order of the Ld. CIT(A)-3, Hyderabad is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in upholding the disallowance of donation of Rs. 15,00,000/- made u/s 80G of the Act.*
3. *The Ld. CIT(A) ought to have appreciated that the assessee had made donation to M/s. Hyderabad Runners Society and that the entire amount of donation is allowable u/s 80G of the Act.*
4. *The Ld. CIT(A) erred in upholding the disallowance of Rs. 10,12,460/- made u/s 40A(3) of the Income Tax Act, 1961.*
5. *The Ld. CIT(A) ought to have appreciated that payments were made to the workers / coolies at the venue of Koteswar site where no bank facility is available and where the said persons have no account in any bank near that place.*
6. *The Ld. CIT(A) ought to have appreciated that the payments made to the workers / coolies are covered under sub-clause (g) (h) and (j) of Rule 6DD of the Income Tax Rules, 1962.*
7. *The Ld. CIT(A) erred in upholding the disallowance of depreciation for Rs. 1,43,86,913/-.*
8. *The Ld. CIT(A) ought to have appreciated that the assessee has actually incurred the expenditure in constructing temporary sheds in the remote place having no communication facility, road transport or any other motor transport etc.*
9. *The Ld. CIT(A) ought to have appreciated that as per the provision of section 32 of the Income Tax Act, 1961, the assessee is entitled for depreciation @ 100% on the temporary sheds.*
10. *The Ld. CIT(A) ought to have appreciated that as per section 32 of the Income Tax Act, 1961, Plant & Machinery acquired and installed on or after 1st day of September, 2002 in a water supply project or in a water treatment project and put to use for the purpose of business providing infrastructure facility under clause (i) of sub-section (4) of the Act is eligible for 100% depreciation.*
11. *The appellant may add, alter or modify or substitute any other point to the grounds of appeal at any time before or at the time of hearing of appeal.”*

Grounds of appeal for the A.Y. 2012-13:

- “1. *The order of the Ld. CIT(A)-3, Hyderabad is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in upholding the disallowance of Rs. 3,00,000/- towards donation made to Hyderabad Runners Society, by way of cheque.*
3. *The Ld. CIT(A) ought to have appreciated that the assessee had made donation to M/s. Hyderabad Runners Society and that the entire amount of donation is allowable u/s 80G of the Act.*

4. *The Ld. CIT(A) erred in upholding the disallowance of loss on sale of assets of Rs. 4,74,93,277/-.*
5. *The Ld. CIT(A) CIT (A) ought to have appreciated that the loss accrued on sale of asset is revenue in nature and hence an allowable expenditure u/s 37 of the Act.*
6. *The Ld. CIT(A) ought to have appreciated that the expenditure that has been incurred is not personal in nature and not an expenditure which is prohibited in law.*
7. *The Ld. CIT(A) ought to have appreciated that when once an expenditure has been incurred in the course of currency of business activity, it has to be allowed in some form or the other viz., during the year itself if revenue in nature or allowed over a period of time either as a deferred revenue or as depreciation allowance and if capital in nature, capitalized to some depreciable assets.*
8. *The Ld. CIT(A) erred in upholding the disallowance of Rs. 2,91,68,847/- towards depreciation claimed u/s 35 of the Income Tax Act, 1961.*
9. *The Ld. CIT(A) ought to have appreciated that the assessee has actually incurred the expenditure in constructing erected temporary shed in remote place having no communication facility, road transport or any other motor transport etc.*
10. *The Ld. CIT(A) ought to have appreciated the fact that as per provision of section 32 of the Income Tax Act, 1961, the assessee is entitled for depreciation @ 100% on the temporary sheds and in case of assets held for less than 182 days, the assessee is entitled for depreciation @ 50% of the normal depreciation allowable.*
11. *The Ld. CIT(A) also ought to have appreciated that as per section 32 of the Income Tax Act, as per which the Plant & Machinery acquired and installed on or after 1st day of September, 2002 in a water supply project or a water treatment project and put to use for the purpose of business of providing infrastructure facility under clause (i) of sub-section (4) and the same is eligible for 100% depreciation as provided in the Income Tax Act, 1961.*
12. *The appellant may add, alter or modify or substitute any other point to the grounds of appeal at any time before or at the time of hearing of appeal”*

2. Assessee also raised the following additional grounds of appeal before the Tribunal, which are common for both the AYs 2011-12 and 2012-13.

- “13. *As per the ratio laid down by the Hon’ble Supreme Court of India in the case of National Thermal Power Co. Ltd vs. CIT (1998) 229 ITR 383 (SC) the ITAT has jurisdiction to examine the question of law which though not arose before the lower authority but arose before the ITAT for the first time.*
14. *The Ld. CIT(A) ought to have appreciated the fact that any addition made to the income of the assessee will increase the claim of deduction made u/s 80IA of the Act.*

- *Circular No.37/2016 via F.No. 279/Misc/140/2015/ITJ dated 02/11/2016.*
- *Hon'ble ITAT Hyderabad in the case of Planet Online Pvt Ltd vide ITA No. 1016/Hyd/2007 (sic)."*

3. At the outset, Learned Counsel for the Assessee briefly narrated the facts of the case and submitted that the assessee is eligible for deduction u/s 80IA of the Act and the disallowance and the consequential additions have increased the eligible profit of the assessee for deduction u/s 80IA of the Act and therefore, deduction should be allowed on these incomes also.

4. On the other hand, Learned Departmental Representative, however opposed the admission of the additional grounds.

5. Having regard to the rival contentions and the material on record, we find that it is a legal ground raised by the assessee which needs no verification of facts and therefore, following the ratio laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd vs. CIT [1998] 229 ITR 383 (SC) the additional grounds raised by the assessee (supra) are admitted.

6. We find that the CBDT vide Circular No.37/2016, dated 02nd November, 2016 has directed as under:

"3.....the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance."

7. Since the CBDT Circular (supra) is binding on the Revenue Authorities, we direct the Assessing Officer to allow the deduction u/s 80IA of the IT Act, 1961 on the increased income consequent to the disallowance and the additions made by the A.O as enumerated in the

Board Circular. Accordingly, the additional grounds raised by the assessee are allowed and the other grounds of appeal raised along with Form No.36 are not adjudicated at this stage and therefore, they are treated as rejected. Thus, assessee's appeals (ITA No. 544/H/2017 and ITA No.637/H/2017) for the A.Ys 2011-12 and 2012-13 are partly allowed.

8. As regards the Revenue's appeals (ITA No.660/H/2017 and ITA No.658/H/2017) for the assessment years 2011-12 and 2012-13, we find that the only issue raised therein is against the deletion of disallowance made u/s 14A read with Rule 8D(2) of the Act. It is submitted that the assessee has not earned any exempt income during the relevant assessment year. Therefore, respectfully following the decision of the Hon'ble Delhi Court in the case of Cheminvest in ITA No. 749/2014, dated 02.09.2015, no disallowance u/s 14A can be made when the assessee has not earned any exempt income during the year. Respectfully following the same, the Revenue's appeals for the both the AYs 2011-12 and 2012-13 are dismissed.

9. In the result, both the assessee's appeals are partly allowed and both the Revenue's appeals are dismissed.

Pronounced in the open Court on 30th January, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 30th January, 2019.

OKK

Copy to:-

- 1) P. Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad-82.
- 2) DCIT, Circle 3(1), Hyderabad.
- 3) The CIT(A)-3, Hyderabad
- 4) The Pr. CIT-3, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File