

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

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

S.No.	ITA No.	AY	Appellant	Respondent
1 to 4	607, 608, 609 & 610/H/2016	2010- 11 to 2013- 14	Dy. Commissioner of Income-tax, Central Circle – 2, Hyd.	Megha Engg. & Infrastructure Ltd., Hyderabad
5	1375/H/16	2014- 15	Dy. Commissioner of Income-tax, Central Circle – 2, Hyd.	-do-
6	1540/H/17	2015- 16	Dy. Commissioner of Income-tax, Central Circle – 2, Hyd.	-do-

Revenue by: Shri YVST Sai
Assessee by: Shri K.C. Devdas

Date of hearing: 05/12/2018
Date of pronouncement: 15/02/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

All these appeals are filed by the revenue are directed against the orders of CIT(A) – 12, Hyderabad for AYs 2010-11 to 2015-16. As identical issues are involved in all these appeals, they were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. Brief facts as taken from AY 2010-11 are, the assessee filed its return of income on 12/10/2010 declaring total income of Rs. 4,00,05,00,410/-. AO passed the assessment order u/s

143(3) on 22/02/2012 determining the total income of Rs. 4,00,40,19,698/-.

2.1 While finalizing the assessment, the AO observed that the assessee company filed the return of income in pursuance of notice u/s 153A, admitting net income of Rs. 2,21,04,67,400/- after claiming deduction u/s 80IA(4) of Income-tax Act, 1961 (in short 'the Act') to the extent of Rs. 1,88,00,33,014/- on eligible projects, which is shown to have not been claimed in return of income filed originally on 12-10-2010, where in the total income admitted was shown at Rs. 4,00,05,00,413/-. The revised return of income for the year was filed on 10-12-2013, in pursuance of notice u/s 153A dtd. 16-11-2012, served on 26-11-2012, in consequence to the search proceedings in this case on 24-04-2012. Observing that the claim of deduction was not claimed in original return of income and a fresh claim of deduction is not allowable for the assessee, the assessee was asked to show cause, why fresh claim of deduction u/s.80IA(4) should not be disallowed, in the light of the judgment in the case of Sun Engineering Pvt Ltd by Apex Court, with regard to making fresh claim in income escaping assessment, for which it was submitted by the assessee before the AO that legal position was ambiguous and assessee was ignorant on the issue of u/s.80IA(4) at the time of filing original return of income, as result of which they could not make claim of deduction.

2.2 While examining the claim of the assessee, the AO analysed the details of the projects that were carried by the assessee during the year, under each of the category such as direct works, works carried for JVs and other works. For the year under reference, the eligible projects were examined with

reference to the provisions u/s. 80 IA(4) and various judicial decisions and arrived at 36 numbers of such projects as eligible projects with a profit of Rs.188,00,33,012/-. The AO also identified the projects under JVs and Direct Projects with reference to their turnovers and eligibility for deduction u/s.80IA(4) and the AO was of the view that profits related to JVs/consortia as an AOP, where the assessee is only a constituent, for execution of projects in proportion of shares, is not eligible for deduction u/s.80IA(4), notwithstanding the decision of ITAT on the issue, in case of Transtroy India. This issue was taken up by the AO, as an alternative way of disallowing the disallowance on the ground of fresh claim of revised return u/s.153A, this is taken up separately.

2.3 The AO while examining the claim of the assessee on fresh claim of deduction u/s.80IA(4) made in the return of income filed in response to the notice u/s.153A, as against no claim made in original return of income, have arrived at the conclusion that it is not open to the assessee to make such claim in the assessment u/s.153A made in pursuance of search or requisition, which reached finality or unabated. The AO relied on the decision of Rajasthan High Court in the case of M/s. Jai Steel (India) Vs ACIT as reported in 259 CTR 281, holding further that the decision of Hon'ble Rajasthan High Court (supra) reiterates the decision of Supreme Court in the case of Sun Engineering Pvt Ltd. Accordingly, the AO disallowed the claim of the assessee to the extent of Rs.188,00,33,012/- which was claimed in the return of income, filed in response to notice u/s.153A, on the premise that the assessment for the year under reference was unabated or achieved finality and amount which was to be added to the total income, was computed at Rs. 400,05,00,413/-, which is

equal to the total income as enshrined in original return of income.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee filed written submissions, which were extracted by the CIT(A) in his order at pages 7 to 12.

5. After considering the submissions of the assessee as well as analysing the order passed by the AO, the CIT(A) directed the AO to allow the claim of the assessee u/s 80IA(4), by observing as under:

“6.0 However, while finalizing the assessment, the AO denied the deduction of Rs.188,00,33,012/- made by assessee in return of income filed in response to the notice u/s.153A, holding that such claim would be made in return filed u/s.153A in completed assessment, based on the analogy of Rajsthan High Court in the case of Jai Steels (India) Ltd. At the same time the AO quantified the disallowance u/s.80IA(4), related to the works/projects of JVs, but executed by the assessee as a constituent and proposed for disallowance, an alternate way/ground that assessee is not eligible for deductions on profits derived from such projects/works, on the ground that projects by Govt. and other Authorities as principals awarded the contracts to JVs/Consortia, not to the constituents, as such the claim of deduction u/s.80IA(4) on such profit amounts to violation of provision. In this regard, the assessee's submissions and claims based on the decision of Transtroy (India) Ltd, was disregarded by the AO, on the ground that the said decision was not accepted by department and a further appeal made, Thus, the AO quantified the eligible profit attributable to the main contracts to 17 projects, with a profit of Rs.39,81,70,643/-, as against the total eligible 36 projects, with attributable profits of Rs.188,00,33,012/-, as claimed in revised return of income. This means, the AO intended to disallow the deduction for Rs.148,18,62,369/- [188,00,33,012-39,81,70,643] attributable profits from JVs/Consortia. On the lines of the discussions and disallowances made in

A.Y.2013-14, in case the appellant gets relief on the issue of allowing claim of deduction made through return of income filed u/s.153A, related to completed assessments. However, such proposal for disallowance got merged with the addition made for Rs.188,00,33,012/- in the assessment order, based on the other issue.

6.1 The appellant objected for such alternate proposal for disallowance and it has been submitted that this issue was concerned in the A.Y. where detailed submissions were made. It was also contended that AO ought to have followed the order of ITAT, Visakhapatnam, in case of Transtroy (India) Ltd, as a measure of Judicial discipline and allowed deductions on the works executed through JV constituents and should not have proposed to restrict the deductions to the works executed by assessee, directly, as an alternate plea. This issue has been raised through ground no.8 separately.

6.2 Based on similar facts, in the case of the assessee for A.Y.2012-13 and 2013-14, while deciding the issue, vide the order dtd.14-03-2016, the matter was decided in favour of the assessee, holding that assessee company is eligible for deduction u/s.80IA(4), on the profits related to JVs/consortia, as a constituent. The relevant portion of the order runs as under:

"Thus, based on the ratio of the judicial decisions cited, it is reasonable to hold that the AO is not justified in denying the deduction u/s.80IA(4), on the profits of JVs to the assessee, as a constituent, based on the decision of ITAT, Vishakapatnam, which was not stayed in its operation and as such binding on the AO. It is not correct on the part of the AO to not to implement the said order, merely on the ground that such decision was not accepted by department. Further, the order of Allahabad High Court upheld the allowance of claim of deduction u/s.80IA(4), on the profits from the Joint Ventures, in the hands of the constituents. "

6.2.1 Thus, on similar facts, the AO is directed to allow the total amount of Rs.188,00,33,012/-, claimed as deduction u/s.80IA(4), for the year including the deduction of Rs.148,18,62,369/-, claimed on profits of JVs, as claimed in return of income. Accordingly, this ground of appeal also treated as Allowed."

6. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal, which are common, in all the appeals under consideration:

“1. On the facts and in the circumstances of the case, and in law, the CIT(A) erred in granting deduction u/s.80IA though the said claim was made for the first time in return filed in response to notice u/s. 153A.

2. Without prejudice to ground No.1, on the facts and in the circumstances of the case, and in law, the CIT(A) erred in allowing deduction u/s. 80IA in respect of contracts received by the assessee from its JVs and consortia.

3. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary.”

7. Before us, Id. DR filed written submissions, which are as under:

“2. With regard to the claim of deduction u/s 80IA for the first time in search proceedings, it is humbly submitted that the same is not entertainable for the following reasons. It was not correct on the part of the learned CIT(A) to ignore the provisions of section 80AC, which clearly state that furnishing of the return before due date specified under section 139(1) is mandatory for claiming deduction u/s 80IA. In the case of Plastiblends India Ltd [2017] 86 taxmann.com 137 (SC), the Apex Court held that 80IA is a self-contained code. The Court held that "not only section 80-IA is a code by itself; it contains the provision for special deduction which is linked to profits. In contrast, Chapter IV, which allows depreciation under section 32, is linked to investment. It is also made clear that section 80-IA not only contains substantive but

procedural provisions for computation of special deduction. Thus, any device adopted to reduce or inflate the profits of eligible business has to be rejected".

Therefore, it is humbly submitted that in a self-contained code the procedural provisions like stipulated dates for making the claim etc have to be followed along with the substantive claim. Once the claim is barred due to the procedural provisions, the same cannot be made good at a later date.

3. It is also humbly submitted that but for the search operation, there was no way the appellant would have made a claim and a search operation cannot be used to advantage by the appellant to make claims which are not made earlier. It is also submitted that neither the AO nor the appellant can seek unfettered jurisdiction in case of search assessments u/s 153A. In the case of *Kabul Chawla (380 ITR 573)*, the Hon'ble Delhi High Court held (at para 37 of the decision) that "*In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings*".

4. Reliance is also placed on the decision of Hon'ble Supreme Court in the case of *Sun Engineering Works Pvt Lt (198 ITR 297)* and in the case of *Chettinad Corporation Pvt. Ltd. Vs. CIT* reported in (200 ITR 320) on the point that fresh claim of deductions cannot be made in reassessment proceedings. In the present case, the proceedings are in the nature of reassessment

proceedings because the original assessments were concluded earlier for most of the years. The return in response to notice u/s 153A is also not filed within the time specified. In light of the above, it is submitted that a search assessment cannot be used for the benefit of the appellant to make new claims of deduction in case of completed assessments because the search assessment is only a "reassessment" on the basis of material relate to search action u/s 132.

5. Reliance is also placed on the decision of Rajasthan High Court in the case of Jai Steel (India) Ltd [2013] 36 taxmann.com 523, where in it was clearly held in case of assessment or reassessment proceedings, which have already been completed and assessment orders have been passed determining assessee's total income, there is no question of any abatement. It was also held that it was not open to the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment merely on account of the fact that assessment in pursuance of section 153A needs to be made, as the assessment already stands completed.

6. It is submitted that the argument that JV /Consortium is only a pass through entity is devoid of merit in the context of rights and liabilities with the main contractee. It is the JV which entered into contract with the main contractee and as per the terms of the contract, the entire responsibility to carry out the project lies on JV. For instance, if there is any default on part of the assessee, the main contractee cannot fix responsibility on the assessee and such responsibility can be fixed only on the JV /Consortium. The rights and liabilities

arising out of a contract would not pass on to the sub-contractors or constituents of the JV merely because for the own convenience of the partners of the JV/Consortium, the work is distributed or sub-contracted. It is also humbly submitted that the exemption/deduction provisions cannot be interpreted in liberal manner and if there is any ambiguity, benefit of the same shall pass on to the Revenue. Reliance in this regards is placed on the decision of Constitution Bench of the Supreme Court dated 30/07/2018 in the case of Dilip Kumar and Company & others in CA No: 3327 of 2007. At paragraph 52 of the decision, the Apex Court held as follows:

"52. To sum up, we answer the reference holding as under:

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."

In the light of the above decision, it is humbly submitted that section 80IA has to be interpreted strictly both with regard to its substantive nature as well as procedural nature and the benefit of ambiguity, if any has to be passed on to the Revenue.

7. It is also submitted that in the case of Katira Constructions Ltd, the Hon'ble Gujarat High Court in its decision dated 04/03/2013 in SCA 11781/2009 held that

deduction u/s 80IA is not applicable to a business in the nature of works contracts. It is humbly submitted that the contracts executed by the appellant upon assignment from JVs and Consortia are in the nature of works contracts as it does not carry any risk of the developer and the entire risk is carried by the main contractee or JV in most of the cases. The appellant carries only a business risk which is present in case of all enterprises in general and there is no risk of developer in his case.

In light of the above, the Hon'ble ITAT may kindly allow the appeal of the Department.”

8. The Id. AR made similar submissions as made before CIT(A) and further, he submitted that there is no incriminating material found in the search and for AY 2009-10, the assessment u/s 143(3) was completed and for other years, pending before the AO, at the time of search, therefore other years cases are abated. He relied on the following cases also:

1. ITO Vs. M/s Palavi – MRKV JV, ITA No. 762/Hyd/2015, dated 01/07/2016.
2. CIT Vs. Sheth Developers (P) Ltd., [2012] 25 Taxmann.com 173 (Bom.)
3. Fenoplast Ltd. Vs. ACIT, [2014] 367 ITR 761 (T&AP)
4. E.N. Gopakumar Vs. CIT, 390 ITR 131 (Ker.) [2017]
5. M/s KCEL-MEIL (JV) and others in ITA No. 323/H/14 and others, order dated 13/01/2015.
6. M/s KNR Constructions Ltd., Hyd. in ITA No. 946/H/18 and others, order dated 16/10/2015.
7. Transstory (India) Ltd. Vs. ITO, 134 ITD 269 [2012]
8. CIT Vs. Pnc Construction Co. Ltd., [2015] 55 Taxmann.com 21 (Allahabad)

9. ACIT Vs. M/s JSR Constructions (P) Ltd., ITA No. 898/Bang/2009, dt. 29/03/2011.

10. CBDT Circular No. 7, dtd. 07/03/2016

9. Considered the rival submissions and perused the material on record. Ld. DR submitted written submissions, in which, beside supporting findings of AO, he also submitted on issues like applicability of section 80AC on non-filing of return of income in time etc. However, we would like to restrict ourselves to the question raised in grounds of appeal and findings of AO. The issues like 80AC are never disputed by AO. Therefore, we proceed to address only two issues which arose out of Id. CIT(A)'s order, they are:

- i) Can the assessee claim deduction u/s 80IA for the first time in return of income filed in response to notice u/s 153A.
- ii) Can the assessee claim deduction u/s 80IA in respect of contracts received from its JVs and consortia.

9.1 With regard to first issue, Id. DR made submissions by relying on the following judicial precedents:

- a) Kabul Chawla (supra)
- b) Sun Engineering Works (supra)
- c) Jain Steel (India) Ltd. (supra)

With regard to the above issue, the coordinate bench of this Tribunal in the case of M/s KNR Constructions Ltd. (supra) has already distinguished and the observations of the Bench are reproduced below, for the sake of clarity:

“3.1. As regards the preliminary issue as to whether the assessee is entitled to make a new claim for deduction under [section 80IA](#) in the returns of income filed in response to notices issued under [section 153A](#) as involved in six out of seven years under consideration i.e., A.Ys. 2006-07 to 2011-12, the Ld. Counsel for the assessee has relied on the decision of the Mumbai Bench of this Tribunal in the case of [DCIT vs. Eversmile](#)

Construction Co. P. Ltd., (supra), wherein while dealing with a similar issue, the main features of the relevant provisions were noticed by the Tribunal and after analysing the same, it was held by the Tribunal that any deduction claimed by the assessee in the proceedings under section 153A could not be rejected simply on the ground that it was not claimed in the original assessment. The relevant observations recorded by the Tribunal as contained in paragraph Nos. 6 to 9 of its order are extracted below :

"6. From the prescription of the above section the following features are noticeable in so far as we are concerned with the instant appeal :-

- Assessment pursuant to search is to be made notwithstanding anything contained inter alia in section 147 ;

- Clause (a) of sub-section (1) provides that the relevant provisions shall apply as if the return filed in response to notice u/s 153A(1) is a return required to be furnished under section 139 ;

- First proviso to sub-section (1) states that the Assessing Officer is required to assess or reassess "total income" in respect of each assessment falling within the relevant six assessment years.

- The second proviso to sub-section (1) provides that the assessment or reassessment, if any, relating to any of the six assessment years pending on the date of search u/s 132 or making requisition u/s 132A, shall abate .

- Sub-section (2) of Section 153A provides that if due to one reason or the other the assessment made u/s 153A is annulled in any appeal or any other proceedings then the assessment or reassessment which had abated in second proviso to subsection (1) shall stand revived with effect from the date of receipt of the order of such annulment.

7. A close look at the above provision manifests that the Assessing Officer is required to make assessment afresh and compute the 'total income' in respect of each of the relevant six assessment years. As there is no specific inhibition on the jurisdiction of the Assessing Officer in not including any new income to such fresh total income pursuant to search which was not added during the original assessment, in the like manner, there is no restriction on the assessee to claim any deduction Which was not allowed in the original assessment. The

requirement of [section 153A](#) is to compute the total income of each of such assessment years. Such determination of the total income has to be done afresh without any reference to what was done in the original assessment. Of course, the AO is entitled to make any addition in the fresh assessment, which he made in the original assessment, provided he is satisfied with the merits of the addition. But the mere fact that there was some addition in the original assessment, would not preclude the assessee from Contesting the addition in the subsequent proceedings. As it is going to be a fresh exercise of framing assessment or reassessment of the total income at the end of the AO, the assessee cannot be stopped from not even arguing about the merits of his case qua the addition which was made in the original assessment. Debarring the assessee from making a claim about the deductibility of any item, which was earlier disallowed, counters the very concept of fresh assessment of total income.

8. The reliance of the learned Departmental Representative on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works Pvt. Ltd [(1992) 198 ITR 297 (SC)] is misconceived. The reason for the same is that in that case the Hon'ble Supreme Court was considering the provisions of [section 147](#) and it was held that once an assessment is validly reopened it is not open to an assessee to seek a review of concluded items unconnected with the escapement of income. Here it is pertinent to note that the conditions for taking action u/s 147 vis- vis under [section 153A](#) are altogether different. Even though assessment u/s 147 is made read with [section 143\(3\)](#), but the initiation of assessment or reassessment u/s 147 originates from the belief of the AO, on the basis of some tangible material, that income chargeable to tax has escaped assessment. After forming such belief, the AO is called upon to record reasons for the reopening of the assessment before issuing mandatory notice u/s 148. If the foundation of reassessment, being the reasons about the escapement of some income do not exist, then it is impermissible to go ahead with the assessment u/s 147. It is sine qua non that some escaped income must be brought to charge in order to make a fresh assessment u/s 147. On the contrary, the search action itself mandates on the Assessing Officer to pass orders u/s. 153A computing total income for all the relevant six assessment years, irrespective of the fact whether some concealed income has surfaced as a result of search or not. It is thus apparent that the ambit

of assessment u/s 147 cannot be imported into the scope of [section 153A](#).

9. It is further important to note that the provisions of assessment in the case of search u/s 153A etc. have been inserted by the [Finance Act, 2003](#) with effect from 01.06.2003. These provisions are' successor of the special procedure for assessment of search cases under Chapter XIV -B starting with [section 158B](#). Whereas Chapter XIV - B required the assessment of "undisclosed income" as a result of search, which has been defined in [section 158B\(b\)](#), [section 153A](#) dealing with assessment in case of search with effect from 01.06.2003 requires the Assessing Officer to determine "total income" and not "undisclosed income."

3.2. For the reasons given above, it was held by the Tribunal that the starting point of the assessment under [section 153A](#) is the amount of income declared in the return of income and when the A.O. has to compute the total income of the assessee on the basis of the return of income, there may not be any scope for arguing that the assessee has been rendered powerless to even lodge a claim in respect of which deduction was not allowed earlier. In the said case before the Tribunal, reliance was placed by the learned D.R. in support of Revenue's stand on the decision of Hon'ble Supreme Court in the case of Sun Engineering (supra) as in the present case, but the same was found to be misconceived by the Tribunal for the reasons given in paragraph No.8 of its order which are already extracted above.

4. Besides the decision of Hon'ble Supreme Court in the case of Sun Engineering (supra), the A.O. has relied upon the decision of Hon'ble Rajasthan High Court in the case of Jai Steel (India) vs. ACIT (supra) to hold that assessee is not entitled to claim deduction under [section 80IA](#) for the first time in the returns filed in response to notice issued under [section 153A](#) for the relevant six years i.e., A.Ys. 2006-07 to 2011-12. The Ld. CIT(A) has also relied on the said decision of Hon'ble Rajasthan High Court to uphold the decision of the A.O. on this issue in so far as the A.Ys. 2006-07 to 2008-09 are concerned where the original assessments under [section 143\(3\)](#) had already been completed prior to the date of search. After going through the Judgment of Hon'ble Rajasthan High Court in the case of Jai Steel (India) vs. ACIT (supra), we find that the facts involved therein were materially different from the facts involved in the

present case as rightly pointed out by the Ld. Counsel for the assessee. First of all, the claim made by the assessee in the said case in the return filed in response to the notice under [section 153A](#) for the first time was that the Sales Tax incentive received by it was a capital receipt and the same being a subject matter of claim and not a regular allowable deduction as per the provisions of the Act, it was considered that the same required the initiation of claim and conclusion on the basis of facts and other judicial pronouncements. Moreover, no incriminating material was found in the said case before the Hon'ble Rajasthan High Court during the course of search and the absence of such incriminating material, it was held by their Lordships that the assessment or re-assessment under [section 153A](#) would not result in any addition and the assessment passed earlier may have to be reiterated. In this regard, Hon'ble Rajasthan High Court referred to the decision of Hon'ble Delhi High Court in the case of [CIT vs. Anil Kumar Bhatia](#) (2013) 352 ITR 493 (Del.) wherein it was held that where an assessment order has already been passed either under [section 143\(1\)\(a\)](#) or 143(3), the A.O. is empowered to reopen those proceedings and re-assess the total income taking note of the undisclosed income, if any, un-earthed during the search. While highlighting these observations of the Hon'ble Delhi High Court in the case of *Anil Kumar Bhatia* (supra), Hon'ble Rajasthan High Court however, appears to have not taken cognizance of the further observations made by the Hon'ble Delhi High Court in the same paragraph No.20 that all the stops having been pulled out, the A.O. under [section 153A](#) has been entrusted with the duty of bringing to tax the total income of the assessee whose case is covered under [section 153A](#), by even making re-assessments without any fetters, if need be.

4.1. Hon'ble Rajasthan High Court in the case of *Jai Steel (India) vs. ACIT* (supra) also did not accept the arguments of the assessee that the new claim can be made for the first time even in the return filed in response to notice under [section 153A](#) when the original assessment had already been completed by observing that if the same is taken to its logical end would mean that even in cases where the appeal arising out of the completed assessment has been decided by the Ld. CIT(A), ITAT and the High Court, on a notice issued under [section 153A](#) of the Act, the A.O. would have power to un-do what has been concluded up to the High Court. It was held that any interpretation which leads to

such conclusion has to be repelled and/or avoided. It is pertinent to note here that when any new claim is made by the assessee for deduction in response to the notice under [section 153A](#) which was not made in the original assessment proceedings as in the present case, the situation as contemplated by the Hon'ble Rajasthan High Court would not arise at all as there is no occasion in such case for the A.O. to un-do something which has been concluded up to the High Court as the assessee having not made any such claim during the course of original proceedings, there would not be any conclusion arrived at on the said issue even up to the High Court level arising from the original assessment proceedings. In our opinion, the decision of Hon'ble Rajasthan High Court in the case of *Jai Steel (India) vs. ACIT (supra)*, thus is not applicable to the fact situation involved in the present case and the reliance of the Ld. CIT(A) thereon to hold that the assessee is not entitled to make a new claim for deduction under [section 80IA](#) for A. Ys. 2006-07 to 2008-09 wherein the assessments had been originally completed under [section 143\(3\)](#) is clearly misplaced.

5. At the time of hearing before us, the learned CIT/DR has relied on the decision of Hon'ble Bombay High Court in the case of *CIT vs. Murali Agro Products Ltd.*, (I.T. Appeal No.36 of 2009 dated 29.10.2010) and that of the Hon'ble Delhi High Court in the case of [CIT vs. Kabul Chawla \(Income Tax Appeal No.707 of 2014 and others dated 28th August, 2015\)](#) in support of Revenue's case. It is, however, observed that the issue involved in both these cases was whether the A.O. was empowered to make additions to the total income of the assessee in the assessments completed under [section 153A](#) without there being any incriminating material found during the course of search and it was held in this context by the Hon'ble Bombay High Court as well as Hon'ble Delhi High Court that when the original assessments had already been completed prior to the date of search, the additions in the assessment under [section 153A](#) could be made only on the basis of materials gathered during the course of search. The issue involved in the case of [CIT vs. Murali Agro Products Ltd.](#), (supra) before Hon'ble Bombay High Court as well as [CIT vs. Kabul Chawla](#) (supra) before Hon'ble Delhi High Court thus was entirely different than the issue involved in the present case and the ratio of the said decisions cited by the learned D.R. is not applicable in the present case.

6. In the case of *ACIT vs. VN Devodoss 157 TTJ 165* cited by the Ld. Counsel for the assessee, the Chennai

Bench of this Tribunal had an occasion to decide a similar issue as involved in the present case. In this context, reliance was placed by the Tribunal on the provisions of [section 153A\(1\)\(a\)](#) which provide that where a search is initiated under [section 132](#), the A.O. shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years in the prescribed form and verified in the prescribed manner and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under [section 139](#). It was held by the Tribunal that it is because of this provision of law stated in [section 153A\(1\)\(a\)](#) that a statutory presumption is made that a return filed under [section 153A](#) is a return required to be filed under [section 139\(1\)](#) of the Act. The Tribunal also took note of the non- obstante clause contained in [section 153A](#) and held that said provision over-rides all other provisions stated in the Act in matters of filing of return of income consequent to a search and therefore, the return filed in pursuance of notice issued under [section 153A](#) is as good as a return filed under [section 139\(1\)](#). It was also held that where an assessee has filed its return of income as prescribed by law, even if as a consequence of search carried out under [section 132](#) and in consequence of notice issued under [section 153A](#), the assessee is obviously entitled for claiming corresponding deductions provided in law and the deduction claimed in return filed under [section 153A](#) cannot be denied on the ground that the claim was not made earlier. The Tribunal also relied on the decision of its Coordinate Bench in the case of [DCIT vs. Eversmile Construction Co. P. Ltd.](#), (supra) and held that the returns filed by the assessee under [section 153A](#) are to be treated as returns filed under [section 139\(1\)](#) by virtue of the law stated in [section 153A\(1\)\(a\)](#) and the assessee therefore, are entitled for deduction available under [section 80B\(1\)](#).

7. It is thus that the decision of Mumbai Bench of this Tribunal in the case of [Eversmile Construction Co. P. Ltd.](#), (supra) as well as the Chennai Bench in the case of [V.N. Devodoss](#) (supra) is based on the relevant provisions of law including especially that of [section 153A\(1\)\(a\)](#). In the case of [Hyderabad Chemicals Supplies Ltd.](#), (ITA.No.352/Hyd/2005 dated 21.01.2011) it was held that when the decision of the Tribunal is based on the relevant provisions of law, the same is to be followed over the decision of the non-jurisdictional

High Court that has been rendered without considering such statutory provisions that are directly relevant. We, therefore, follow the decision of the Chennai Bench of this Tribunal in the case of ACIT vs. VN Devodoss 157 TTJ 165 (supra) as well as the decision of Mumbai Bench in the case of [DCIT vs. Eversmile Construction Co. P. Ltd.](#), (supra) to hold that the assessee is entitled to claim deduction under [section 80IA](#) in the returns filed in response to the notices issued under [section 153A](#) for the relevant six years i.e., A.Ys. 2006-07 to 2011-12 including A.Ys. 2009-10 to 2011-12 where the assessments had been originally completed under [section 143\(3\)](#) prior to the date of search. We accordingly, reverse the decision of the Ld. CIT(A) rendered on this issue for A.Ys. 2006-07 to 2008-09 and uphold the same for A.Ys. 2009-10 to 2011-12. The appeals of the assessee for A.Ys. 2006-07 to 2008-09 involving this solitary issue thus are allowed whereas, the relevant ground of the Revenue's appeal on this issue for A.Ys. 2009-10 to 2011-12 are dismissed.”

In the above decision of the coordinate bench, the Tribunal has distinguished the facts of the said case from the facts of the cases, on which, the Id. DR before us has placed reliance upon, i.e., the decisions of Hon'ble Rajasthan and Mumbai High Courts. Considering the factual distinction made in the above decision of the coordinate bench, we are inclined to follow the decision of coordinate bench. Thus, we hold that the assessee can make a fresh claim in the return of income filed in response to notice issued u/s 153A. Accordingly, ground raised by the revenue in this regard is dismissed.

9.2 With regard to other issue, i.e. contracts awarded to JVs and whether the assessee can claim the same as a constituent of the above JVs, the coordinate bench of ITAT, Visakhapatnam in the case of Transstory (India) Ltd. (supra) held that the constituents of JVs are eligible to claim deduction u/s 80IA. For the sake of clarity, we reproduce the findings of the Bench in the said case, as under:

“Undisputedly the joint venture or the consortium was formed only to obtain the contract from the Government bodies. At the time of execution of the joint venture or the consortium, it has been made clear that work/project awarded to the joint venture would be executed by the joint venturers or the constituents. As per mutually agreed terms and conditions between them, it was also agreed that each party shall be responsible for the provisions of contract without limitation on resources required for the purpose of fulfilment of the scope and also solely responsible for the performance of its scope of work and shall bear all technical, commercial and facing risk involved in performing its scope of work. It was also agreed that none of the party shall assign its rights and obligations to any other party without written consent of other party. From a careful perusal of this joint venture agreement and the consortium agreement, it is evidently clear that the joint venture and the consortium was formed only with an object to bid contract. Once the project or contract is awarded to the joint venture or the consortium, it is to be executed by its constituents or the joint ventures in a ratio agreed upon by the parties. In the instant case in case of a joint venture agreement, the assessee was entitled to execute the 40 per cent of total work awarded by the Andhra Pradesh Government to the joint venture and in case of a consortium it was agreed that the entire work is to be executed by the assessee itself. Therefore for all practical purposes, it was the assessee who executed the work contract or the project awarded to the joint venture. No doubt the joint venture is an independent identity and has filed its return of income and was also assessed to tax but it did not offer any profit or income earned on this project/works awarded to it nor did he claim any exemption/deduction under s. 80-IA(4). These facts clearly indicates that the joint venture was only a de jure contractor but in fact the assessee was a de facto contractor.

There is no dispute with regard to the fulfilment of other requisite conditions. The dispute was only raised that the contract was awarded only to the joint venture and not to the assessee and therefore assessee is not entitled for deduction. Joint venture and the consortium was formed only to obtain the contract from the Government body and they in fact did not execute the work awarded to it. In a joint venture agreement or a consortium agreement, it was agreed that the awarded work had to be executed by the joint venturers or parties to the agreement in an agreed manner. The work was

awarded by the Andhra Pradesh Government and the KSHIP, a body of the State Government of Karnataka to the JV and consortium but the work was executed by the assessee and the other constituents. In case of joint venture agreement, 40 per cent works were executed by the assessee and in case of consortium, the 100 per cent work was executed by the assessee. Whatever bills were raised by the assessee for the work executed on JV and consortium, the joint venture and consortium in turn raised the further bill of the same amount to the Government. Whatever payment was received by the joint venture, it was accordingly transferred to their constituents. Therefore, the joint venture or the consortium was only a paper entity and has not executed in contract itself. They have also not offered any income out of the work executed by its constituents, nor did they claim any deductions under s. 80-IA(4). Therefore, in all practical purposes, the contract was awarded to the constituents of the joint venturers through joint venture and the work was executed by them. As per provisions of s. 80-IA(4), the benefit of deduction under this section is to be given only to the enterprise who carried on the classified business. Therefore, in the light of this legal proposition, the assessee is entitled for the deductions under s. 80-IA(4) on the profit earned from the execution of the work awarded to JV and consortium.”

Respectfully following the above decision, we dismiss the ground raised by the revenue in this regard.

10. As the facts and grounds are similar in all other AYs to that of AY 2010-11, but, the only difference is that in these AYs, the assessments were not completed u/s 143(3), hence, abated subsequent to search. Therefore, assessments are incomplete in these AYs at the time of search, these AYs are better footed to allow the deduction u/s 80IA(4). Therefore, following the decision in AY 2010-11 (supra), we dismiss the appeals filed by the revenue in all the other AYs under consideration.

11. In the result, all the appeals of the revenue are dismissed.

Pronounced in the open court on 15th February, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 15th February, 2019.

kv

Copy forwarded to:

1. *DCIT, Central Circle – 2(1), 3rd Floor, Posnett Bhavan, Tilak Road, Ramkote, Hyd.*
2. *M/s Megha Engg. & Infrastructure Ltd., S-2, TIE, Balanagar, Hyderabad.*
3. *CIT(A) - 12, Hyderabad*
4. *Pr. CIT (Central), Hyderabad*
5. *The DR, ITAT, Hyderabad*
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