

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 865/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

M. V. Omni Projects (India) Limited A-201, 202, Shivalik Yash, 132 Ft. Ring Road, Opp. Shashtrinagar BRTS Bus Stand, Ankur, Naranpura, Ahmedabad - 380013	बनाम/ Vs.	The Assisstant Commissioner of Income Tax Circle 2 (1)(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCM1155A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Jignesh Parikh, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mudit Nagpal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	25/01/2019
घोषणा की तारीख /Date of Pronouncement	25/03/2019

ORDER

PER MAHAVIR PRASAD, JM:

This appeal has been preferred by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad [in short 'CIT(A)'], appeal No. CIT(A)-2/258/AC. Cir. 2(1)(2)/2015-16 dated 25.01.2017 arising from the assessment order dated 30.11.2015 and following grounds have been taken by the assessee:

- “1. *Disallowing the claim of deduction of Rs.3,46,285/- by invoking the provisions of Section 36(1)(va) in respect of the employees’ contribution to Provident Fund & E.S.I.C. which was deposited late but before filing the return of income under section 139(1) of the Act;*
2. *Disallowing the legitimate and documented claim of deduction of Rs.7,61,34,236/- under section 80IA(4) of the Act.”*

2. Fact of the case are that the appellant company is incorporated under the Companies Act, 1956 engaged in the business of infrastructure development activities and of undertaking construction contracts.

3. So far ground no.1 is concerned for disallowing the claim of deduction of Rs.3,46,285/- u/s. 36(1)(va) in respect of the employees’ contribution to Provident Fund and E.S.I.C. is concerned, assessee has deposited this amount beyond the due date of the payment. In the case of CIT vs. Gujarat State Road Transport Corporation in Tax Appeal No. 637 of 2013 wherein in similar circumstances, Hon’ble Gujarat High Court held that PF & ESIC contribution credited by the assessee in the respective funds after due date same is required to be disallowed and to be added back to the total income of the assessee. Therefore, in view of the aforesaid judgment, this ground of appeal is dismissed.

4. Now, we come to next ground relating to disallowance under s.80IA of the Act, appellant in its statement of total income filed alongwith return of income during the FY 2012-13 relevant to AY 2013-14 has claimed deduction under s.80IA(4) of the Act amounting to Rs.7,61,34,236/- for infrastructure development. During course of assessment proceedings, it was noticed that assessee has claimed the deduction as a work contractor but not as a developer. As per the provisions of Section 80IA of the Act, the deduction is eligible for infrastructure development carried out by the developer and for not a contractor. In AY 2012-13, in assessee’s own case,

similar claim was disallowed by the co-ordinate bench in ITA No.1146/Ahd/2016 and operative para of the co-ordinate bench decision is reproduced hereunder:

“ The second issue relating to the disallowance of the claim of deduction of Rs.3,80,61,802/- u/s.80IA(4) of the Act is also covered in assessee's own case for AY 2008-09 against the assessee, as fairly submitted by the Ld.AR at the time of the hearing at the instant appeal. A copy of the said order passed by the Coordinate Bench of this Tribunal in ITA No.118/Ahd/2012 for AY 2008-09 dated 28.10.2015 has also been handed over to us by the Ld.AR. The relevant portion whereof is narrated hereinbelow;-

"5.1. We have heard both the parties and gone through the material available on record. So far as ground No.1 regarding disallowance of the claim of deduction u/s.80IA(4) of the Act is concerned, the similar ground was raised in ITA No.1083/Ahd/2010 for AY 2006-07 (in assessee's own case) and the Tribunal, vide its order dated 15/06/2012 in para-7, has decided this issue by observing as under:-

"7. We have perused the orders of authorities below and arguments from both the side. The assessee is a work contractor of the Railway department who has executed the cent-fact for supply of materials trenching, laying, testing, commissioning of 4 quad cables, installation and commissioning of gale, telephones and emergency posts, etc. for the work of provision of 4 quad cable in Rajkot-Varaval Section of Rajkot/Bhavnagar Divisions of Western Railways. The nature of the contract is civil which had been assigned by the Railway Department in part of already rail laid and no new railway line or telecommunication system has been executed by the assessee. Thus, the ld..CIT(A) has rightly confirmed the addition of the AO. We do not find any reason to revert the order of the CIT(A). Accordingly, the order of CIT(A) is confirmed and the assessee 's appeal is dismissed "

5.2. Therefore, respectfully following the aforesaid decision of the Coordinate Bench, taking a consistent view, for the same reasoning, this ground of assessee's appeal is rejected."

4. The Ld.DR supports the orders passed by the authorities below.

5. We have heard both the parties and perused the relevant materials available on record. We find that the facts are identical to the facts available in the instant case. We, therefore, respectfully following the said decision passed by the Co-ordinate Bench, taking a consistent view on the basis of the reasons assigned therein reject the particular issue raised by the assessee.

6. In the result, assessee's appeal is dismissed."

5. After hearing both the parties and going through the impugned order and the order of the co-ordinate bench, having parity with the co-ordinate bench decision, we dismiss this ground of appeal of the assessee.

6. In the result, appeal filed by the assessee is dismissed.

This Order pronounced in Open Court on 25/03/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 25/03/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।