

आयकर अपीलार्थ अधकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
Ms MADHUMITA ROY, JUDICIAL MEMBER

अपील सं./ITA No.1910/Ahd/2017
& ँनधाकरण वर्ष/Asstt. Year:2013-2014

Gujarat Urban Development Co. Ltd., 6 th Block, 5 th Floor, "Udyog Bhavan" Sector 11 Gandhinagar 382011. PAN: AABCG 1330R	Vs.	D.C.I.T, Gandhinagar Circle, Gandhinagar.
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(Applicant)	(Responent)
Assessee by :	Shri S.N. Soparkar & Shri Parin Shah, A.Rs
Revenue by :	Shri Krishna Murari,CIT. D.R

सुनवाई का ताराख/Date of Hearing : 14/06/2019
घोषणा का ताराख /Date of Pronouncement: 25/06/2019

आदेश/O R D E R

PER Ms MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal preferred by the assessee is directed against the order passed by the Learned Commissioner of Income Tax(Appeals) Gandhinagar, Ahmedabad (in short "Ld.CIT (A)"), dated 15.06.2017 arising out of the order dated 29.01.2016 passed by the D.C.I.T, Gandhinagar under section 143(3) of the Income Tax Act, 1961(herein after referred to as ò the Actø) for the Assessment Year 2013-14.

2. The main challenge in this appeal is against the order passed by the "Ld.CIT (A)" in confirming denial of deduction of Rs.3,01,63,284/- claimed

u/s.80IA (4) of the Act in concurring with the AO that appellant a buffer agency granted work contract to local bodies on behalf of the Government of Gujarat, not carrying any eligible business, is not a developer of infrastructure facility.

3. At the time of the hearing of the instant appeal the Ld. authorized representative of the assessee fairly submitted before us that the issue is covered against the assessee by number of orders including the order passed by the Co-ordinate Bench in assessee's own case in ITA No/185/Ahd/2017 for Assessment Year 2011-12. A copy of the same has been submitted before us.

4. On the contrary the Ld.DR, relied upon the order passed by the authorities below:

5. We have heard the rival submission made by the respective parties, we have also perused the relevant materials available on record including the order passed by the Co-ordinate Bench; the relevant portion whereof is as follows:

"...3. Though the assessee has taken three grounds of appeal, but its grievances revolves around a single issue vide which it has challenged disallowance of claim amounting to Rs. 1,97,04,7127- under section 80IA(4) of the Income Tax Act, 1961.

4. The Id.DR at the outset submitted that identical issue was involved in earlier years, and in the immediately preceding year i.e. Asstt.Year 2011-12. The Tribunal has confirmed the disallowance vide its order in ITA No. 19727Ahd/2014. The Id.counsel for the assessee was unable to controvert to this contentions of the Revenue. Copy of order of the Tribunal in ITA No. 19727Ahd/2014 dated 28.8.2014 has been placed on record. The discussion made by the Tribunal on this issue reads as under:

"6. We find that the Tribunal in assessee's own case, vide a consolidated order dated 19.03.2014, has held as under:-

"10.1. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s. 143(3) of the Act was framed vide order dated 10/12/2010, thereby the AO disallowed the claim of the assessee made u/s.80IA(4) of the Act. Against this, the assessee filed an appeal before the Id. CIT(A), who after considering the submissions of the assessee, rejected the appeal.

11. Ground Nos.1, 2 & 3 are inter-connected and, therefore, the same are decided together.

11.1. The Id.Sr.counsel for the assessee submitted that the assessee is a Developer and, therefore, he is entitled for deduction u/s.80-IA(4) of the Act.

11.2. On the contrary, Id.CIT-DR/Sr.DR submitted that the order of the Id. CIT(A) is justified. He drew our attention towards the decision of the Id.CIT(A) as contained in para-5.1 of his order. After some argument, Id.Sr.counsel for the assessee fairly conceded that the issue is decided against the assessee by the Hon'ble Jurisdictional High Court rendered in the case of *Katira Construction vs. Union of India* reported at (2013) 352 ITR 513 (Guj.).

12. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Id. CIT(A) has given a finding on fact, which reads as under:-

"5.1. I have considered the facts of the case, the submissions, the assessment order, the amendment in the law and the decisions of the courts. The following pertinent observations are made after considering these: -

There is no doubt that the appellant works as a nodal agency for implementation of various works undertaken/decided by the government.

The appellant bears no risk whatsoever of the cost or success of the projects.

The appellant gets a fixed percentage of the money spent on the project. Supposedly, on a project originally estimated at Rs.100 crore, the actual cost over runs to any amount may be even Rs.500 crore; the assessee loses nothing. In fact its own allocation increases and it gains. Similarly, it doesn't get any benefit when it saves cost or is more efficient.

*In fact, the grants for the projects is not its revenue income at all. In fact, in various decisions the grants which are utilized for specified projects have been held to be not income but diversion of funds at source. The decisions include that of Hon'ble IT AT, Ahmedabad Bench in the case of *Gujarat Safai Kamdar Vikas Nigam vs. ACIT, Gandhinagar Circle, Gandhinagar* (ITA No.3232/Ahd/2008, order dated 17/04/2009, and *Gujarat State Disaster Management Authority vs. ACIT, Gandhinagar Circle*. In the entirety of facts and circumstances, the appellant is doing the work of a concern engaged in work which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by it. Here it is to be noted that as per the amended Explanation below section 80IA(13) with retrospective effect from 1.4.2000; the work should not be of the nature (emphasis supplied) of contract and not only contract. Here the project costs and source thereof not being revenue of the appellant, it being not affected by the actual cost and efficiency of work, the assets created and the source not being of the appellant at any stage and it being entitled to a fixed remuneration for its professional services; it clearly is falling in the excluded category as per the amended Explanation below section 80IA(13); and therefore, not eligible for deduction.*

The decision of the Hon'ble Mumbai High Court in the case of CIT vs. ABG Heavy Industries Ltd. 322 ITR 323 is not on the issue of whether the activity of the concern is of the nature of a works contact. The decision of honorable Supreme Court in the case of Gujarat Industrial Development Corporation 227 ITR 414 is also not applicable as in that case the question was not whether the appellant was doing the activities in its own right or as a nodal agency as in the present case. Similarly, the facts and question are distinguishable in other cases cited by the appellant. The appellant is held not eligible for deduction claimed u/s.80IA(4) and the decision of the AO is upheld. The first two grounds of appeal are therefore, dismissed."

12.1. We find one of the objections of the Id.CIT(A) was that the assessee does not bear any risk and consequences arising from the project. In view of the ratio laid down by the Jurisdictional High Court rendered in the case ofKatira Construction Ltd. Union of India(supra), we do not find any infirmity in the order of the Id. CIT(A), therefore ground Nos.1 to 3 of the assessee's appeal are rejected."

7. Facts being identical, respectfully following the precedent, we dismiss these additional grounds of appeal of the assessee."

5. There is no disparity of the facts, and therefore, following the order of Co-ordinate Bench of the Tribunal (supra), we do not find any merit in the appeal of the assessee. It is dismissed.

6. In the result, appeal of the assessee is dismissed...''

Respectfully relying upon the same, we find no reason to interfere with the order passed the authorities below. The assessee's appeal is thus found to be devoid of any merit, hence dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 25/06/2019 at Ahmedabad.

**-Sd-
(PRAMOD KUMAR)
VICE PRESIDENT**

**-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

(True Copy)

Ahmedabad; Dated 25/06/2019
Manish