आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.Nos.162 & 163/Viz/2015, 470/Viz/2016, 509/Viz/2017 & 193/Viz/2018**
(निर्धारण वर्ष**/Assessment Year:2009-10, 2011-12 to 2014-15 respectively)**

Asst.Commissioner of Income Tax Circle-2(1) Guntur	Vs.	M/s Transstroy (India) Ltd. Guntur **[PAN : AABCT4226B]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं**./I.T.A.Nos.193/Viz/2015, 430/Viz/2016, 529/Viz/2017 and 248/Viz/2018**
(निर्धारण वर्ष**/Assessment Years:2011-12 to 2014-15 respectively)**

M/s Transstroy (India) Ltd. Guntur **[PAN : AABCT4226B]**	Asst.Commissioner of Income Tax Circle-2(1) Guntur
(अपीलार्थी/ Appellant)	**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by	:	Shri D.K.Sonowal, DR
निर्धारिती की ओर से / Assessee by	:	Shri T.Chaitanya Kumar, AR
सुनवाई की तारीख / Date of Hearing	:	07.06.2019
घोषणा की तारीख/Date of Pronouncement	:	19.07.2019

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the revenue and cross appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Guntur for the Assessment Year (A.Y.) 2009-10, 2011-12 to 2014-15. For the sake of convenience, the appeals are clubbed, heard together and a common order is being passed as under.

I.T.A. 162/Viz/2015, A.Y.2009-10

2. Delay : This appeal filed by the revenue is with a delay of 1033 days. The revenue has filed condonation petition stating that due to certain administrative constraints and pressure of work, the issue relating to the disallowance u/s 40A(3) was not appealed while filing the original appeal. It is also submitted by the Ld.DR that the delay in filing the appeal was neither intentional nor willful, but it was only due to the circumstances beyond the control of AO and hence, requested to condone the delay.

3. After hearing the both the parties we are of the view that the reasons given by the AO for delay in filing the appeal are neither convincing nor satisfactory. The AO has to explain the reasons for delay on day to day

basis and in the instant case though there was a delay of 1033 days, the AO filed the general and vague explanation without giving specific reasons for delay without any evidence. Further, in the instant case, the revenue has already filed the appeal against the order of the Ld.CIT(A) covering various issues in the assessment order which was decided by the Tribunal in ITA No.292/viz/2012 dated 05.11.2012. Subsequently the revenue has also filed the Miscellaneous Application for recalling the order and then the Tribunal had recalled order and adjudicated on 01.12.2014. Once the appeal is filed against the order of the Ld.CIT(A) and adjudicated by the ITAT, there is no provision in the ITAT Rules for filing on more fresh appeal against the same CIT(A)'s order second time for the issues omitted to be contested in piecemeal or in multiple appeals against the same assessment order. The Ld.DR did not show any such provision in the Rules. However this appeal is barred by limitation and the reason given by the AO is neither convincing nor satisfactory for delay. Hence, the appeal is dismissed in limine.

Deduction u/s 80IA for A.Y.2011-12 to 2014-15

4. For the A.Ys.2011-2 to 2014-15 the common issue involved in Revenue appeals and the assessee appeals is the deduction u/s 80IA (4) of

the Act. The facts are identical for all the assessment years, hence extracted from the appeal of 2011-12. In this case, the assessee filed the return of income declaring Nil income on 29.09.2011. The case was selected for scrutiny and the assessment was completed u/s 143(3) on total income of Rs.119,10,62,940/-. For the assessment year under consideration, the assessee had claimed the deduction u/s 80IA(4) for a sum of Rs.115,77,09,274/- which was disallowed by the AO stating that the assessee has not satisfied the conditions laid down u/s 80IA(4) for granting the deduction. The grievance of the AO is that the works were allotted to the Joint Ventures(JV)/Consortiums for which the assessee was one of the constituents and the JV/consortium is giving the work to the assessee , which the assessee company is performing the works, hence the assessee is contractor and not eligible for deduction u/s 80IA.

5. During the assessment proceedings, the AO found that the assessee had claimed the deduction u/s 80IA for a sum of Rs.115,77,09,274/-. The AO issued the notice u/s 143(2) and 142(1), collected the information and observed that during the previous year relevant to the assessment year, the assessee had carried on the following projects.

Sl.No.	Name of the Project	Letter of Award Given to	Receipt Amount (Rs.)
1	Sagar C5	Sangyoung, Korea Transstroy, Transstroy-Sangyung (JV)	1,794,979,218
2	Sagar C6		2,074,673,705
3	Sagar C8 & C9		2,435,931,815
4	Irrigation – Chagallu	NavayugaTransstroy (JV)	443,490,938
5	Irrigation – Komarambhim	NavayugaTransstroy (JV)	516,965,448
6	ORR	OJSC – Transstroy (JV)	1,344,522,609
7	AP01	OJSC – Transstroy (JV)	1,120,020,125
8	PranahitaChevella	Transstroy (India) Limited	1,335,702,588
9	Tirunelveli-Turicorin Project	Transstroy (I) Ltd. – OJSC (Consortium)	1,189,363,581
10	Jagityal – Peddapalli Project	Transstroy-OJSC (JV) (Consortium)	849,988,553
11	Tirupati-Tirupathani-Chennai Project	Transstroy (I) Ltd-OJSC (Consortium)	904,562,470
12	Dindigul-Theni-Kumil Project	Transstroy (I) Ltd-OJSC (Consortium)	517,212,430
13	Trichy-Karaikudi Project	Transstroy (I) Ltd-OJSC (Consortium)	578,200,148

5.1. The AO further observed that it has formed the Joint Venture / Consortium for participating in bidding process and the assessee is one of the constituents of Joint Venture / Consortium. JV/Consortium has entered in the bidding process with the government and the government has allotted the project works to JV/ Consortium on successful bidding and the JV has also formed a Special Purpose Vehicle (SPV) (a company) for execution of the work for certain contracts. For example, the project

Bhopal Bypass Road was awarded to Transstroy (I) Ltd. – OJSC (Consortium) and the project was executed by M/s Transstroy Bhopal Bypass Tollways Pvt. Ltd., Similarly, Trichy-Karaikudi Project was awarded to Transstroy (I) Ltd. – OJSC (Consortium) and the project was executed by Transstroy Trichy – Karaikudi Tollways Pvt. Ltd. The AO also observed that the SPV has entered into the 'concessionaire agreement' with NHAI / Government in each case. The SPV, being a company incorporated under the Companies Act, 1956 is a separate entity and is assessable under the Income Tax Act as such. The AO observed that the contractual obligations are only between the JV/Consortium/SPV and the government bodies in the capacities of contractor and contractee, but not with the assessee. Therefore, the AO observed that the assessee has not entered into agreement with the Government for developing the project, hence, viewed that the assessee is not entitled for deduction u/s 80IA. The AO also observed that the deduction u/s 80IA is available in respect of the projects which are developed or developing, operating or maintaining any infrastructure facility which fulfills the conditions specified u/s 80IA(4) of the Act. The AO found that the assessee is a contractor executing contracts, neither developing nor building the infrastructure projects, hence, held that

the assessee has not satisfied the conditions laid in section 80IA for granting the deduction. Accordingly, held that the assessee is not entitled for deduction u/s 80IA and hence, disallowed the deduction claimed by the assessee u/s 80IA of the Act.

6. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) found that the assessee has carried on three types of project works namely SL.No.1-7 and 9&10 (of the table given in para No.5) are old projects and continued from earlier years. Total receipts of the projects in Sl.No1-7 and 9&10 are Rs.1176,99,35,992/- and the profit of these projects was Rs.117,83,08,299/-. The second type of project works were carried on by the assessee in his own name at Sl.No.8 i.e. Pranahita Chevella for Rs.133,57,02,588/- and profit of the project was Rs.8,23,81,947/-. The third type of projects at Sl.11-16 are the new projects taken up during the current assessment year. The total receipts of the impugned projects were Rs.225,70,02,817/- and the profits are Rs.14,48,02,806/-. The Ld.CIT(A) further observed that the assessee has carried out Pranahita Chevella project. The projects at Sl.1-7 and 9&10 are similar to that of the earlier assessment years, hence, the Ld.CIT(A)

following the order of this Tribunal in assessee's own case for the A.Y. 2006-07 allowed the appeal of the assessee in respect of the receipts at Sl.1-7, 9&10 and allowed the deduction u/s 80IA. In the case of Sl.No.8 also since the AO found that the project was carried on by the assessee allowed relief u/s 80IA(4) of the Act. With regard to Sl.11 to 16, the Ld.CIT(A) observed that the projects were new projects and the assessee company has taken up the projects during impugned assessment year and as per the Letter of Award (LoA) dated 30.04.2010, the JV got these contracts. As per letter of NHAI dated 19.05.2010, the JV has to incorporate SPV solely for the purpose of completion of projects. Therefore, the Ld.CIT(A) viewed that for these projects, NHAI specified that the projects were to be undertaken through SPV only, therefore, held that these projects are different from earlier years projects, where the works were awarded to JV / Consortium and were done by the assessee company. Though the projects were awarded to the JV as per LoA dated 30.04.2010, the assessee has carried out the projects as per the agreement between the assessee and the SPV to carry out the works as per NHAI letter dated 19.05.2010. The Ld.CIT(A) further observed that the SPV has filed the return of income without declaring any income and also without claiming the deduction u/s

80IA(4). Since the works were awarded to SPV, the Ld.CIT(A) held that only the SPV is entitled for deduction u/s 80IA(4) and the assessee is not entitled for deduction. Accordingly directed the AO to disallow the deduction u/s 80IA(4) of Rs.14,48,02,806/- and accordingly, the appeal was allowed partly.

7. Against the order of the AO, the revenue and the assessee have filed the cross appeals before this Tribunal for the A.Y.2011-12 to 2014-15.The disallowances made by the AO u/s 80IA(4) for the remaining assessment years are as under :

2012-13 Rs.130,20,84,944/-

2013-14 Rs.108,459,902/-

2014-15 Rs.274,37,42,025/-

Against the order of the Ld.CIT(A), the revenue has filed appeal challenging the deletion of addition and the assessee has filed the appeal disputing the addition confirmed by the Ld.CIT(A). The grounds raised by the revenue and the assessee in cross appeals for the A.Y.2011-12 reads as under:

(i) Grounds of Appeal - Revenue

1. *On the facts and circumstances of the case, the CIT(Appeals) failed to appreciate that the assesses has not produced any proof with regard to agreement with the Central Govt or state government or a local authority or any other statutory body for i) developing or ii) operating and maintaining or iii) developing, operating and maintaining a new infrastructure facility, as required to avail the deduction u/s 80IA(4) in spite of giving several opportunities to the assessee.*

2. *The CIT(Appeals) is not correct in relying on the ITAT orders for the asst. years 2006-07 to 2009-10 in the assessee's case and directing the AO to allow the deduction claimed u/s 80IA(4) for the asst. year 2011-12, without going through the merits of the case, wherein the ITAT is not justified in directing to aflow the deduction u/s.8OIA(4) particularly when the assessee company merely executed a work contract without being in the business of developing or operating and maintaining or developing, operating and maintaining any infrastructural facility and more specifically in view of the explanation to section 801A of the I.T. Act.*

3. *Any other ground that may be urged at the time of hearing.*

(ii) Grounds of appeal – Assessee :

1. *The order of the Commissioner of Income-Tax (Appeals), Guntur is erroneous both on facts and in law.*

2. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in refusing to allow the deduction u/s 801A of the I.T. Act though the appellant satisfied all the conditions mentioned in the said section.*

3. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in refusing an amount Rs 14,48,02,806/- to allow the deduction u/s 801A(4) of the I.T. Act though the appellant satisfied all the conditions mentioned in the said section.*

4. *The learned Commissioner of Income-Tax (Appeals) ought to have seen that the works involved are development of infrastructure facilities done S.P.V and satisfied all the conditions mentioned*

8. During the appeal hearing, the Ld.DR argued that as per the provisions of sub-section 4 of section 80IA of the Income Tax Act, it is mandatory requirement of the assessee to have an agreement with the Government of India or the Government of State or any Body / Corporate of the Government organization for developing, developing and operating or developing and maintain the infrastructure facility for claiming the deduction. In the instant case, the assessee has no agreement with the Government or Government organization for developing the infrastructure project. Neither the irrigation department nor Govt.of India or Govt. of AP or NHAI has awarded the projects to the assessee and it was awarded to

Consortium / JV/SPV and the works were carried out by the assessee. Since the agreement was entered into by the respective JV/consortium but not the assessee, the Ld.DR argued that the assessee is not entitled for deduction u/s 80IA. Similarly, the Ld.DR argued that the deduction u/s 80IA is allowed in the case of any enterprise carrying on the business of (i) developing or (ii) operating and maintaining (iii) developing, operating and maintaining any infrastructure facility and fulfils the conditions laid down u/s 80IA(4) as under :

(a) It is owned by a company registered in India or by a consortium of such companies (or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) It has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;

(c) It has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995

In the instant case, the Ld.DR argued that the assessee is merely executing the contracts, it is neither developing, operating nor maintaining any infrastructure facility. Hence, argued that the assessee is disentitled for deduction u/s 80IA and requested to set aside the orders of the CIT(A) and restore the orders of the AO.

9. On the other hand, the Ld.AR argued that the assessee is constituent of consortium / JV. For the sake of operational convenience and for participating in tenders the assessee has to promote the JV/consortium and entered into an agreement with JV/ Consortium and for participation and utilization of its technical expertise if any, as per the requirement of projects. The agreement entered with OJSC Corporation Transstroy to be considered as JV agreement and both the assessee and OJSC called as consortium by name Transstroy (India) Limited – OJSC Corporation Transstroy JV. The Consortium / JV is method of participation in bidding process for technical and financial evaluation of the respective projects. The assessee company accordingly formed the consortium / JV and participated in bidding process. The assessee had received LoA from NHAI on successful bidding of the various projects from NHAI and Govt. organizations and executed the concessionaire agreements. Transstroy-OJSC promoted and incorporated various concessionaires as a limited liability companies under the Companies Act, 1956 and such companies are part of the concessionaire agreement and the assessee company as a team leader along with other consortium members, shall undertake and perform

the obligations and exercise the rights of the selected bidder / consortium towards execution of the projects. The process of undertaking various works by the assessee company are summarized as under :

i) It participated in Tender Process as a Lead Member of Consortium;

ii) The assessee company is a Lead Member/Bidder and another consortium member is to provide Technical Support only;

iii) Received Letter of Award (LoA) for Development of highways/ Tollways under BOT/ DBFOT basis;

iv) As Team Leader / Bidder executed Concession agreement with NHAI/ Government company towards development of such projects;

v) Carrying the development activities which involve:
- Four laning from two laning
- Strengthening the roads under Design, Build, Finance, Operate and Transfer (DBFOT) or BOT basis

9.1. The Ld.AR argued that the assessee company is a developer and the activities carried on by it falls u/s 80IA(4)(i) of the Act, hence requested to allow the deduction u/s 80IA(4) of the Act. The assessee also submitted that the assessee's case is squarely covered by the decision of this Tribunal in ITA 540/Viz/2009 for the A.Y.2006-07 by an order dated 14.07.2011. For subsequent assessment years also, the ITAT has followed the orders and allowed the appeal of the assessee. Accordingly, argued that the assessee's case is squarely covered by the order of this Tribunal and the

facts are identical, hence requested to allow deduction u/s 80IA(4) and dismiss the appeal of the revenue.

10. We have heard both the parties and perused the material placed on record. Though the assessee has formed the consortium, joint ventures and special purpose vehicles for the purpose of bidding process, ultimately, the assessee has executed the works and claimed the deduction u/s 80IA(4) of the Act. Neither the consortiums nor the SPVs have executed the work. It is the assessee which has executed the work by using its technical ability, men, machines and the financial support. The deduction u/s 80IA(4) was not claimed by any of the consortiums or joint ventures or the SPVs. For the A.Y. 2011-12, the Ld.CIT(A) allowed the deduction u/s 80IA(4) following the order of this Tribunal for the A.Y.2006-07 in the assessee's own case. However, the Ld.CIT(A) disallowed the deduction claimed by the assessee in respect of the works undertaken by the assessee in respect of projects which were solely to be executed by the special purpose vehicles. The contention of the Ld.CIT(A) was that the LoA was given to SPV and it has to execute the work as per the work order/agreement. As per the LoA, the SPV is supposed to do the contract work. However, we have gone

through the LoA dated 19.05.2010, as per which the assessee has to form the SPV solely for the purpose of domiciling the project and furnish the irrevocable and unconditional Bank Guarantee of Rs.18.70 crores and the bid security shall remain in force till the completion of the project. LoA dated 19.05.2010 says that the SPV required to be incorporated for the purpose of domiciling the project and there is no bar on the assessee to execute the work. The assessee entered into agreement with the SPV for the purpose of executing the project. The fact remains that the SPV is only a paper organization and the sole responsibility was held by the assessee and the assessee had used the men, material and the resources for executing the work. The SPV has received the payment which has passed on the same to the assessee after deducting TDS of 2%. It is already held in the order of this Tribunal that the joint venture, consortium are formed for the purpose of bidding process and the assessee has executed the work. Similarly, the SPV also is the paper organization and no objection was raised by NHAI for executing the works by the assessee. Since the assessee had executed the works and claimed deduction u/s 80IA(4), there is no reason to reject the deduction claimed by the assessee in respect of the projects executed through SPVs also, since facts are identical to

JV/Consortium. The decision of Hon'ble ITAT relied upon by the Ld.CIT(A) also addressed the similar issue in the order for the A.Y. 2010-11 in para No.10 of the I.T.A. No.17/Viz/2010 dated 03.03.2015. In the cited order, the Hon'ble ITAT held that the benefit is to be given to the enterprise that carries on the business. In the instant case, there is no dispute that the assessee has carried on the business, though LoA was given to SPV. There was also an agreement between the assessee and the SPV to carry on the work by the assessee. Therefore, both the issues of works awarding to joint venture, consortium and the SPV are squarely covered by the decision of this Tribunal in the assessee's own case for the A.Y.2006-07. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal which reads as under :

> *"10. There is no dispute with regard to the nature of business or the activities undertaken by the assessees. The dispute is only with regard to the identity of a person to whom this benefit of deduction u/s 801A(4) can be allowed. We have carefully perused the provisions of section 801A(4) and we find that the benefit of exemption/deduction is to be allowed to any enterprise carrying on business of developing or operating and maintaining or developing, operating, maintaining any infrastructure facility subject to fulfillment of certain conditions. One of the condition is that the enterprise should be owned by a company registered in India or by a consortium of such companies or any other body established or constituted under any centre or any state Act. The other condition is that it has entered into an agreement with the Central Government or a State Government or local authorities or any other statutory body for developing, operating and maintaining or developing, operating & maintaining a new infrastructure facility. There is no dispute with regard to the fulfillment 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. If we read these provisions of sub-*

section 4 of 801A, we would find that this benefit of deductions is to be given to an enterprise who carry on the aforesaid classified business. The legislature have also used the word consortium of such companies, meaning thereby the legislature was aware about the object of formation of consortium and joint ventures. Generally the joint ventures or consortiums are formed to obtain a contract from the Government body for its execution by its constituents. If the constituents do not want to execute the work, there was no need to form a consortium. Therefore, mere formation of consortium for obtaining a contract should not debar the enterprises who in fact carried on the aforesaid classified business from claiming the deduction or exemption u/s 801A(4). For the sake of reference, we extract the provisions of section 801A(4) as under:

Section 801A(4): This section applies to

i) Any enterprise carrying on the business [of (i) developing or (ii)operating and maintaining or (ut) developing, operating and maintaining] any infrastructure faculty which fulfils all the following conditions, namely:-

(a) it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;]

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (,) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility,]

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995: ***Provided*** *that where an infrastructure facility is transferred on or after the Pt day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.*

[Explanation.—For the purposes of this clause, "infrastructure facility" means—

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway [inland port or navigational channel in the sea];]

(e)

[(ii) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March, [20051.]

Explanation.—For the purposes of this clause, "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service;

(II,) any undertaking which develops, develops and operates or maintains and operates an industrial park [or special economic zone] notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31 day of March, [2006]:

***[Provided** that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking:*

***[Provided further** that in the case of any undertaking which develops, develops and operates or maintains and operates and industrial park, the provisions of this clause shall have effect as if for the figures, letters and words "31 day of March, 2006'; the figures, letters and words "31 day of March, [2011]" had been substituted,]*

(iv) an [undertaking] which,--

……..

……..

(vi)……

11. Turning to the facts of the case, we find that 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 J.V. and consortium but the work was executed by the assessee and the other constituents. In case of joint venture agreement, 40% works were executed by the assessee and in case of consortium, the 100% work was executed by the assessee. Whatever bills were raised by the assessee for the work executed on J.V. 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 u/s 801A(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 section 801A(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, we are of the view that the assessee is entitled for the deductions u/s 801A(4) on the profit earned from the execution of the work awarded to JV and consortium. We accordingly set aside the order of the CIT(A) and direct the A.O. to allow the deductions."

10.1. The department did not place any evidence to show that the order of this Tribunal has been reversed by the jurisdictional High Court. Therefore, respectfully following the view taken by this Tribunal in the assessee's own case, we hold that the assessee is entitled for deduction u/s 80IA(4) on the projects executed by the assessee. Accordingly, the appeals

of the revenue are dismissed on this ground and the appeals of the assessee are allowed.

I.T.A. Nos.430/Viz/2016, 529/Viz/2017 and 248/Viz/2018, A.Y 2012-13, 2013-14 and 2014-15

11. The next common issue in the assessee's appeal for the A.Y. 2012-13 and 2013-14 is the interest received on bank guarantee and other non operating income. For the A.Y. 2012-13 the assessee has received the other income to the extent of Rs.7,28,56,747/-consisting of interest income from bank deposits of Rs.4,78,78,316/- and other non operating income of Rs.2,49,78,431/-. Similarly for the A.Y 2013-14 the assessee had admitted the interest income of Rs.7,84,50,189/- and other non operating income of Rs.3,00,09,713/-.The AO observed from the order of the Hon'ble Supreme Court in the case of Pandian Chemicals Ltd., 262 ITR 278 (SC) that the assessee is not entitled for deduction u/s 80IA(4) since, the other income declared by the assessee has no first degree nexus for earning the profits of the organisation. Since the word used in section 80IA(4) is 'derived' but not 'attributable to' the AO held that the assessee is not entitled for deduction and accordingly, assessed the same as other income separately and brought to tax.

11.1. In respect of bank deposits, the Ld.AR argued that the interest on bank deposits are received on the deposits placed for bank guarantees as margin money for the contracts. Since the assessee has received the interest on margin money, placed for obtaining bank guarantees, the same should be considered as the income derived from the undertaking for deduction u/s 80IA. Alternately, the Ld.AR has argued that the assessee has paid interest to the bank from their regular credit facilities, hence, the payment of interest should be deducted from the interest receipt and only the net amount required to be brought to tax.

12. On the other hand, the Ld.DR supported the orders of the Ld.CIT(A).

13. We have heard both the parties and perused the material placed on record. The Ld.AR submitted that the question in this case is whether the interest received by the assessee from bank guarantee is to be taxed as income from other sources or to be considered as income from undertaking for deduction u/s 80IA. Since the word used section 80IA(4) is 'derived' but not 'attributable to' the AO held that the assessee is not entitled for deduction. The word derived is narrower in sense and it does not cover the

income which has no direct nexus. Earning of interest on the bank deposit cannot be held to be derived from the business of the assessee. The decision of Hon'ble Supreme Court in the case of M/s Liberty India Vs. Commissioner of Income Tax [2009] 183 Taxman 349 (SC) and the Pandian Chemicals Ltd. vs Commissioner of Income-Tax 262 ITR 278 SC, (2003) held that only the first degree of income is allowable for the purpose of deduction u/s 80IA of the Act. The interest received from bank deposits cannot be held as business income for the purpose of deduction u/s 80IA(4) of the Act. Hence we , uphold the order of the ld.CIT(A).

13.1. Alternatively, the Ld.AR argued that only the net interest required to be taxed as income from other sources. The alternate argument made by the assessee has merit since the assessee stated to be made the deposits out of the credit facilities allowed by the bank and it has paid the interest. Therefore, we hold that only the net interest required to be taxed as income from other sources. This view is supported by decision in [2007] 15 SOT 715 (DELHI), in the ITAT Delhi Bench 'I' Deputy Commissioner of Income-Tax, Circle 2(1), New Delhi *v.*Himachal Exicom Communication Ltd. Therefore, we hold that only the net interest required to be taxed as income

from other sources after excluding the expenditure relateable to the income. Accordingly, the alternate ground of the assessee is allowed on this issue. Hence this ground of the assessee is allowed partly.

14. The next issue in this case is the other income received by the assessee. During the appeal hearing, the Ld.AR argued that the sums of Rs.2,49,78,431/- and Rs.3,00,09,713/- for the A.Y.2012-13 and 2013-14 were received on account of sale of scrap and is directly relatable to the industrial undertaking since the sale of scrap is generated out of purchase of raw material. Therefore argued that the Ld.CIT(A) has committed an error in disallowing the deduction u/s 80IA(4) in respect of sale of scrap and requested to allow the deduction.

15. On the other hand, the Ld.DR supported the orders of the lower authorities.

16. We have heard both the parties and perused the material placed on record. The sale of scrap is directly relatable to the business income derived from the industrial undertaking. The assessee has submitted that sale of scrap was generated out of the purchase of raw material, therefore,

the assessee required to purchase the raw material which is used in the assessee's business and the scrap is sold in the market, therefore, the same is directly relatable to the assessee's business, hence, we hold that the assessee is entitled for deduction u/s 80IA(IV) of the Act. This view also supported by the decision of Hon'ble Gujarat High court in the case of Commissioner of Income-tax. *v.* Nirma Ltd.[2015] 55 taxmann.com 125 (Gujarat) Accordingly, the appeal of the assessee relating to the income received on account of sale of scrap is allowed and the interest income is partly allowed.

17. The next issue for the A.Ys. 2013-14 and 2014-15 is the disallowance u/s 14A of the Act. For the A.Y. 2013-14, the AO disallowed a sum of Rs. 27,57,092/- u/s 14A r.w.Rule 8D of the I.T.Rules. Similarly for the A.Y. 2014-15, the disallowance was Rs.27,84,415/-. The Ld.AR submitted that for both the assessment years, the assessee has not received the dividend income, hence, the question of disallowance does not arise.

18. On the other hand, the Ld.DR supported the orders of the lower authorities.

19. We have heard both the parties and perused the material placed on record. In the instant case, the Ld.AR argued that the assessee has not earned dividend income and the department did not place any evidence to show that the dividend income was earned by the assessee in the impugned assessment years. On identical issue, this Tribunal in the case of Tulasi Ramachandra Prabhu Vs. ACIT vide I.T.A. No.288/Viz/2016 dated 29.05.2019 held that no disallowance is called for in the absence of dividend income following the decision of Hon'ble High Court Madras in the case of Redington (India) Ltd. Vs. ACIT reported in (2017) 77 taxman.com 257 (Mds.). For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal which reads as under.

> *"8. The second line of argument of the assessee was that there was no exempt income received by the assessee in the impugned assessment year, hence, there is no case for disallowance of expenditure relatable to section 14A of the Act. Now this issue is settled and this Tribunal in the case of ACN Infotech(India) Pvt. Ltd., Visakhapatnam vide I.T.A. No.79/Viz/2017 dated 28.11.2018 has held that in the absence of exempt income, there is no case for disallowance u/s 14A of the Act. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal, which reads as under :*
>
> > *"11. We have heard both the parties and perused the material placed on record. The assessee has made the investments in the company towards share capital and the AU has disallowed the expenditure relating to the investment made in the shares since the shares yield exempt income u/s 14A. However, the Ld.AR submitted that there was no exempt income earned by the assessee during the impugned assessment year. Thus, there is no case for disallowance under Rule 8D of IT Rules. The fact that there was no dividend income earned by the assessee is not in dispute. On the similar facts, this Tribunal in the case of Vasanta Traders Vs. ITO, Ward-2(1), Guntur by an order dated 04.05.2018 held that no*

disallowance is called for in the absence of exempt income. While delivering the ruling, the Tribunal has followed the decision of the coordinate bench of ITAT Hyderabad and the decision of Hon'ble Madras High Court in the case of Redington (India) Ltd. Vs. ACIT reported in (2017) 77 taxman.com 257 (Mds.). For the sake of clarity and convenience, we extract, relevant part of the order of this Tribunal in para No.5 which reads as under:

> *"5. We have heard both the parties and perused the material placed on record. The assessee made the investments of Rs.8,02,00,000/- in M/s Vasantha industries Ltd. It is undisputed fact that the assessee has not earned any income which does not form part of the total income. During the year under consideration, the assessee has not derived any dividend income. In the assesses own case, the Coordinate Bench of ITAT, Hyderabad cited supra following the decision of Hon'ble Madras High Court held that no disallowance is called for u/s 14A in the absence of exempt income.*
>
> *We find that the facts of the case before us are similar to the facts before the Hon 'file Madras High Court in the case of Redington (India) Ltd (cited Supra) and respectfully following the said decision, we allow the assessee's appeal and direct the AU to delete the disallowance made u/s 14A. Thus; assessee s grounds of appeal Nos.2, 3 & 5 are rejected and Ground of Appeal No.4 is allowed"*
>
> *Similar view was taken by this Tribunal in the case of M/s Rashtriya Ispat Nigam Ltd., Visakhapatnam for the assessment year 2004-05 in ITA No.13/Viz/2013 in para No.36 of the cited order. Since the facts are identical, respectfully following the view taken by Coordinate Bench, we hold that no disallowance is called for u/s 14A in the absence of exempt income. Accordingly, we confirm the order of the Ld.CIT(A) and dismiss the appeal of the revenue."*

Since the facts are identical, respectfully following the view taken by the coordinate bench, we hold that in the absence of the exempt income, there is no case for making the disallowance u/s 14A of the Act Accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee."

In the instant case, the assessee did not earn any dividend income and this fact was not disputed by the assessee. This Tribunal in the case law cited supra has held that in the absence of dividend income, there is no case for disallowance of interest u/s 14A and the department did not bring any other decision of Hon'ble jurisdictional High Court or Hon'ble Apex Court to support the case of Revenue. Therefore, respectfully following the view taken by this Tribunal, we hold that there

is no case for disallowance u/s 14A. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee.

Therefore, respectfully following the view taken by this Tribunal, the appeal of the assessee is allowed."

19.1. In the instant case, the assessee did not earn any dividend income and this fact was not disputed by the revenue. This Tribunal in the case law cited supra has held that in the absence of dividend income, there is no case for disallowance of interest u/s 14A. Therefore, respectfully following the view taken by this Tribunal, we hold that there is no case for disallowance u/s 14A. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee.

20. The next issue is the disallowance u/s 37(1) of the Act for expenses relating to corporate social responsibility under the head 'administrative expenses'. The assessee filed appeal for the A.Ys for the A.Y. 2013-14 and 2014-15 and the revenue filed appeal for the A.Y. 2012-13.The assessee has debited a sum of Rs.6,63,08,523/- for the A.Y.2013-14 and Rs.4,33,71,710/- for the A.Y.2014-15 and the AO disallowed the sum as not allowable u/s 37(1) of the Act. The Ld.CIT(A) upheld the additions made by the AO. For the A.Y.2012-13 the assessee had incurred sum of rs.1.75,48,327/-under

the head donations and subscriptions and the Ld.CIT(A) allowed the same CSR expenses holding that they are incurred for the purpose of business.

21. We have heard both the parties and perused the material placed on record. As per the provisions of section 37(1), Explanation 2, the expenditure incurred for the purpose of corporate responsibility is not an allowable expenditure. For ready reference, we extract relevant part of Explanation 2 to section 37(1) hereunder.

> *[Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.]*

Since the assessee had incurred the expenditure for corporate responsibility and the same is not allowable. We uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee for the A.Ys . A.Y. 2013-14 ,2014-15, set aside the order of the Ld.CIT(A) for the A.Y.2012-13 and confirm the addition made by the AO. Accordingly, the appeal of the Revenue is allowed for A.Y.2012-13.

22. In the result,

(i) The appeals of the revenue in I.T.A. Nos.162 & 163/Viz/2015, , 509/Viz/2017 & 193/Viz/2018 for the A.Y. 2009-10, 2011-12 to 2014-15 are dismissed and 470/Viz/2016 is partly allowed.

(ii) The appeals of the assessee in I.T.A. No.193/Viz/2015 for the A.Y.2011-12 is allowed and in I.T.A. Nos. 430/Viz/2016, 529/Viz/2017 and 248/Viz/2018 for the A.Y.2012-13, 2013-14 and 2014-15 are partly allowed.

Order pronounced in the open court on 19th July, 2019.

Sd/-	Sd/-
(वी.दुर्गा राव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिकसदस्य/JUDICIAL MEMBER	**लेखासदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 19.07.2019
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/ The Revenue –Asst.Commissioner of Income Tax, Circle-2(1), Guntur
2. निर्धारिती/ TheAssessee-M/s Transstroy (India) Ltd., 8-24-42, Tobacco Colony, Mangalagiri Road, Guntur - 522001
3. आयकर आयुक्त /The Commissioner of Income Tax, Guntur
4. आयकर आयुक्त(अपील)/ The Commissioner of Income-Tax (Appeals)-1,Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam