

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1176/PUN/2015

निर्धारण वर्ष / Assessment Year : 2008-09

Laxmi Civil Engineering Services Pvt. Ltd.,
1148 E, Sykes Extension,
Kolhapur – 416001

.... अपीलार्थी/Appellant

PAN: AAACL5602N

Vs.

The Asst. Commissioner of Income Tax
(Central) Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1244/PUN/2015

निर्धारण वर्ष / Assessment Year : 2008-09

The Asst. Commissioner of Income Tax
(Central) Circle, Kolhapur

.... अपीलार्थी/Appellant

Vs.

Laxmi Civil Engineering Services Pvt. Ltd.,
1148 E, Sykes Extension,
Kolhapur – 416001

.... प्रत्यर्थी / Respondent

PAN: AAACL5602N

Assessee by : S/Shri M.K. Kulkarni and S.N. Puranik
Revenue by : Shri S.B. Prasad, CIT

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| सुनवाई की तारीख / Date of Hearing : 16.05.2019 | घोषणा की तारीख / Date of Pronouncement: 31.07.2019 |
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

The cross appeals filed by assessee and Revenue are against order of CIT(A)-1&2, Kolhapur, dated 01.06.2015 relating to assessment year 2008-09 against order passed under section 143(3) r.w.s. 153A(b) of the Income-tax Act, 1961 (in short 'the Act').

2. The cross appeals filed by assessee and Revenue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.1176/PUN/2015 has raised the following grounds of appeal:-

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A) Kolhapur was not justified in sustaining the disallowance made by the A.O. of Rs.2,47,716/- invoking the provisions of S.14A of the Act r.w.r. 8D. The Ld. CIT(A) failed to appreciate the quantum of interest free funds available with the appellant company. The judgment of the Hon'ble jurisdictional Bombay High Court in CIT v. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) was squarely applicable to the facts of the case. The disallowance be deleted.*
- 2) *On the facts and circumstances of the case and in law and on careful perusal of the order passed by the A.O., it reveals that the prerequisites of such disallowance in S. 14A have been ignored which mandate that the A.O. to record satisfaction that the interest-bearing funds have been used to earn tax-free income. The satisfaction to be recorded must be based upon credible and relevant evidence and onus to prove that interest bearing funds have been used, lie squarely on the shoulders of Revenue. The A.O. failed to discharge the onus that lay upon her. The disallowance made by the A.O. and sustained by Ld. CIT(A) be quashed and set aside.*

4. The Revenue in ITA No.1244/PUN/2015 has raised the following grounds of appeal:-

- 1) *On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred while allowing the assessee appeal or eligibility of Miscellaneous Receipts of Rs.2,82,54,726/- without controverting the facts enumerated by the AO in his order and further erring in treating*

the said receipts as Profits and gains derived from eligible business as required by Section 80IA(4) of the Act.

2) *The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.*

5. First, we shall take up the appeal of assessee, wherein the only issue raised is against disallowance made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') at ₹ 2,47,716/-.

6. The learned Authorized Representative for the assessee pointed out that the assessee company had made investment in shares of Dimension Construction Pvt. Ltd., which was its subsidiary. As such, the plea of assessee before the authorities below was that it was an investment for business purpose and not for earning exempt income. Further claim was that investment was made out of non-interest bearing funds. The assessee had also not received any dividend from the said concern and in this regard, it was pointed out that when there is no income at all which was tax free, then there cannot be any expenditure attributable to such earning of income. The written submissions filed before the Assessing Officer in this regard are reproduced at pages 52 and 53 of assessment order. The Assessing Officer however, rejecting the plea of assessee noted that the assessee had debited interest and financial charges to the tune of ₹ 2.07 crores (approx.) which consisted of interest payment of ₹ 1.06 crores. The Assessing Officer thus, was of the view that in case no investment was made and the funds were utilized for repaying said interest, burden would be less. Consequently, the Assessing Officer worked out the disallowance under section 14A of the Act read with Rule 8D of the Rules at ₹ 2,47,716/-.

7. The CIT(A) upheld the same, against which the assessee is in appeal.

8. The learned Authorized Representative for the assessee also drew our attention to the Profit and Loss Account placed at pages 157 to 162 of Paper Book to point out that no dividend income has been earned by assessee. He further placed reliance on the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Chettinad Logistics (P.) Ltd. (2018) 95 taxmann.com 250 (SC), wherein Special Leave Petition was dismissed against the High Court ruling that section 14A of the Act could not be invoked where no exempt income was earned by assessee in the relevant assessment year.

9. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below.

10. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is whether any disallowance can be made under section 14A of the Act read with Rule 8D of the Rules in the year when no income is earned, which is exempt from tax. We find that the issue now stands covered by latest decision of Hon'ble Supreme Court in CIT Vs. Chettinad Logistics (P.) Ltd. (supra) that in the absence of exempt income, no disallowance is to be made under section 14A of the Act. In view thereof, we find merit in the plea of assessee and we delete the disallowance made under section 14A of the Act read with Rule 8D of the Rules at ₹ 2,47,716/-. The grounds of appeal raised by assessee are thus, allowed.

11. Now, coming to the appeal filed by Revenue, wherein the issue is against eligibility of claim of deduction under section 80IA(4) of the Act on Miscellaneous receipts of ₹ 2,82,54,726/-.

12. Brief facts relating to the issue are that the assessee was engaged in contractor works, wherein it was taking contracts for water supply scheme, irrigation, roads, etc. from Central and State Government, Municipal Corporation, etc. Search and seizure operation was carried out under section 132 of the Act on 15.06.2010 at the residential as well as business premises of assessee. The case of assessee was taken up for scrutiny after issue of notice under section 153A of the Act. In response thereto, the assessee stated that it had already filed the return of income for the instant assessment year on 30.09.2008, which may be treated as filed in response to notice under section 153A of the Act. During the course of search, cash of ₹ 2.73 crores was found at various premises, out of which cash of ₹ 2.61 crores (approx.) was seized along with some portion of jewellery. The directors of assessee company in the statements recorded under section 132(4) of the Act admitted to unaccounted income of ₹ 29,15,76,000/- for different assessment years, which is tabulated under para 7.1 of assessment order. There is no dispute before us regarding the aforesaid issue. However, the Assessing Officer during assessment proceedings noted that the assessee had claimed deduction under section 80IA(4) of the Act amounting to ₹ 4.70 crores. In reply, the assessee pointed out that the aforesaid deduction was made in original return of income for assessment years 2005-06 to 2008-09 and in the reply to notice under section 153A of the Act, the assessee had filed letter requesting to treat original return of income already filed as return in response to notice issued under section 153A of the Act. Upto instant assessment year, the assessee had filed returns of income. However, for the later years, returns of income were not filed and the said deduction was claimed in the return filed under section 153A of the Act. The assessee pleaded that it was engaged in the development of infrastructure facilities within meaning of section 80IA(4) of the Act and

assessments for assessment years 2005-06 to 2007-08 were completed under section 143(3) of the Act. The issue of deduction claimed under section 80IA(4) of the Act was ultimately allowed by Tribunal for assessment years 2005-06 and 2006-07 and by the CIT(A), Kolhapur for assessment year 2007-08. The assessee pleaded that the said issue could not be re-agitated during 153A proceedings on the ground that assessee was not developer but work contractor. In this regard, reliance was placed on different decisions of Hon'ble Bombay High Court and various Tribunals. The learned Authorized Representative for the assessee then before the Assessing Officer referred to various amendments to section 80IA(4) of the Act with special emphasis on the amended provisions w.e.f. 01.04.2000 by the Finance Act, 1999, under which earlier section 80IA of the Act was substituted with new section 80IA(4) of the Act. Under the amended provisions, the assessee emphasized that it is entitled to claim deduction as it was the developer of project. The Assessing Officer was of the view that the assessee was a contractor as the only income arising in the hands was profit arising out of contracts. Relying on the proviso under the said section, which was introduced on the same day i.e. 01.04.2000, the Assessing Officer pointed out that enterprise had to satisfy three conditions; it should be owned by the company; it would have entered into an agreement with the Government or Local Authority and it had started operating and maintaining the infrastructure facilities on or after 01.04.1995. The Assessing Officer then, went through the details of each of the project undertaken by assessee, which are enlisted at pages 25 to 30 of assessment order and came to the conclusion that the assessee was a contractor employed by the respective Government Authorities to undertake identified work. The Assessing Officer also observed that in case the logic given by assessee was extended, then all sub-contractors would also be termed as 'developer'. From the details

of work receipts and the TDS deducted thereon, the Assessing Officer vide para 10.1 observed that the assessee was a contractor only because the nature of work in the TDS certificate was clearly of contract. Further, the assessee had to pay VAT which was mandatory for the contractor as per Sales Tax Act. In the case of developer, there was no liability to deduct TDS as well as pay VAT. The Assessing Officer thus, denied the claim of deduction under section 80IA(4) of the Act at ₹ 4,70,46,716/-. Relying on Third Member decision in the case of B.T. Patil & Sons Belgaum Construction Pvt. Ltd. reported in 126 TTJ(Mumbai)(TM) dated 26.10.2009, the assessee was denied the said deduction though the claim of assessee was that the issue stands covered by the decision in the case of ABG Heavy Industries Ltd. & Ors. Reported in 322 ITR 323 (Bom), judgment dated 15.02.2010.

13. Further, vide para 15 onwards at page 47 of assessment order, the Assessing Officer noted that assessee company had shown various Miscellaneous receipts in Profit and Loss Account, on which the assessee had claimed deduction under section 80IA(4) of the Act. The Assessing Officer observed that prima facie these receipts were not coming from business activities of assessee. It was further observed by him that because of the fact that income was not coming from business, the assessee had shown these receipts separately as Miscellaneous receipts. The assessee was asked to explain how these receipts were eligible for the aforesaid 80IA(4) deduction. The breakup of Miscellaneous receipts is tabulated at pages 48 and 49 of assessment order. After considering the explanation with regard to different items of Miscellaneous receipts, which is reproduced at pages 49 to 51 of assessment order, the Assessing Officer observed as under:-

“15.4 The above submission of the assessee has been considered but not accepted because of the following reasons:-

- (i) *The head such as Discount Received account, Commission from sub-contractor, other deduction sub contract, VAT Tax Refund Goa, VAT Tax Refund M.S., other income, other interest, material deduction Sub contract, VAT Rem received, profit on sales of vehicle, liquidated damages, excess provision of FBT are prima facie nothing to do with the business which is entitled for deduction u/s 80IA(4).*
- (ii) *Similarly sundry creditors balance write off is also not entitled for any deduction.*
- (iii) *Further Work / Labour Insurance are not part of the business for which deduction under sec. 80IA(4) is available.*
- (iv) *As regarding Bank interest and other interest are concerned, these have nothing to do with the Business of the assessee thus not entitled for deduction under sec.80IA(4).*
- (v) *The income disclosed during search in respect of advance / cash has been discussed separately elsewhere on this order and such undisclosed income is not entitled for deduction under sec.80IA(4).*

14. The Assessing Officer vide para 15.5 at page 51 of assessment order observed that without prejudice to the fact that the assessee was not entitled for deduction under section 80IA(4) of the Act on infrastructure development, the assessee was also not entitled to any deduction under section 80IA(4) of the Act from income from other sources shown as Miscellaneous receipts. Consequently, sum of ₹ 2,82,54,726/- was considered as income from other sources, which was not entitled to deduction under section 80IA(4) of the Act as it was not business income. The total receipts under business income were ₹ 3,10,49,166/- and relief of ₹ 27,94,440/- was given by Assessing Officer as interest on loan and IT refund was shown as income from other sources by assessee on which, no deduction was claimed under section 80IA(4) of the Act.

15. The CIT(A) first decided the issue of entitlement of claim of deduction under section 80IA(4) of the Act, in turn, relying on the decision of Hon'ble Bombay High Court in the case of ABG Heavy Industries Ltd. & Ors. (supra), wherein the Hon'ble High Court had held that the assessee did not have to develop entire project in order to qualify for deduction under section 80IA(4) of

the Act and also took note of the fact that for assessment years 2000-01 and 2001-02, where the Third Member Larger Bench of Tribunal has decided the issue against assessee. However, the Hon'ble Bombay High Court had overruled all the contentions of Third Member of Tribunal in assessee's own case, for not allowing deduction under section 80IA(4) of the Act. The CIT(A) further took note of the fact that decision of Hon'ble jurisdictional High Court in the case of ABG Heavy Industries Ltd. & Ors. (supra) was later approved by the Hon'ble Supreme Court and in view of the law, the assessee company was held to be entitled to relief as developer. The CIT(A) also held that Explanation introduced by Finance Act, 2007 and 2009 was not applicable to the facts of the case. The CIT(A) also took note of the contention of assessee that the order of Assessing Officer in not following the decision of Tribunal in assessee's own case was contrary to the law of land and without jurisdiction and also the issue was settled by the Hon'ble jurisdictional High Court in the case of ABG Heavy Industries Ltd. & Ors. (supra). The CIT(A) after going through various judicial precedents on the issue held the assessee to be entitled to claim the aforesaid 80IA(4) deduction, wherein the assessee had developed the infrastructure facilities as per the agreement with State Government. The CIT(A) allowed all the grounds taken on this issue.

16. The Revenue is in appeal against the order of CIT(A) and has raised the issue that the CIT(A) had erred while allowing the assessee's appeal of eligibility of Miscellaneous receipts at ₹ 2,82,54,726/-, without controverting the facts enumerated by the Assessing Officer in his order and further erred in treating the said receipts as profits and gains derived from eligible business.

17. The learned Departmental Representative for the Revenue pointed out that under the provisions of section 80IA(1) of the Act, it is mentioned that

profits and gains derived from such business are to be allowed as deduction. In this regard, reliance was placed on the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Sterling Foods (1999) 237 ITR 579 (SC) and Pandian Chemicals Ltd. Vs. CIT (2003) 262 ITR 278 (SC). Our attention was drawn to Paper Book 6A and the details in Paper Book 6A and pointed out that all the items were not directly derived from industrial undertaking. He further stated that there was no merit in plea of assessee of direct nexus between income and the business undertaking. Our attention was drawn to bank interest of ₹ 1,17,218/- which was not business receipt in the hands of assessee.

18. The learned Authorized Representative for the assessee at the outset pointed out that he was not pressing the claim of receipt of ₹ 1,61,021/- and was only pressing its claim of 80IA(4) deduction on balance receipts of ₹ 2,80,93,705/-. Referring to Paper Book 6A, the learned Authorized Representative for the assessee submitted that Notes in respect of each of the receipts be taken into consideration. First of all, he talked about bank interest received of ₹ 78,85,014/-. In this case, he stressed that bank deposits were for Tender deposits, security for bank guarantee, etc. and the said deposits were inextricably linked to the business of assessee. Hence, the income from same i.e. interest on bank deposits was nothing but income derived from infrastructure development. In this regard, he placed reliance on the decision of Hon'ble Supreme Court in CIT Vs. Chambal Fertilizers & Chemicals Ltd. (2018) 95 taxmann.com 314 (SC). He also referred to the decision of Hon'ble High Court of Rajasthan in Chambal Fertilizers & Chemicals Ltd. Vs. CIT (2018) 95 taxmann.com 313 (Raj). He further placed reliance on the decision of Hon'ble Bombay High Court in Temma Exchangers Manufacturers Pvt. Ltd. Vs. ACIT (2017) 158 DTR (Bom) 100, wherein interest on bank deposits was held

to be profits and gains of business derived from business of industrial undertaking and it had distinguished the decision of Apex Court in CIT Vs. Pandian Chemicals Ltd. 318 ITR 420 (SC). The next reliance was on the judgment of Hon'ble Bombay High Court in CIT Vs. Jagdishprasad M. Joshi (2009) 318 ITR 420 (Bom), CIT Vs. Shah Alloys Ltd. (2017) 396 ITR 711 (Guj) and CIT Vs. Eltek SGS (P) Ltd. (2008) 76 CCH 249 (Del).

19. Another point which was raised in respect of bank interest was that most of the bank deposits were made from borrowed funds, which carry interest and accordingly, net interest was to be treated income attributable to assessee. However, as against interest received of ₹ 78,85,014/-, there was outgo of interest at ₹ 2.21 crores and there was net interest outgo of ₹ 1.42 crores. Hence, no income could be said to have been generated out of these deposits.

20. Now, coming to next receipt i.e. commission from sub-contract of ₹ 1,61,021/-, which was not pressed by assessee. Further head was other income of ₹ 4,35,000/-, which was Miscellaneous receipt from Department, for Bodhegaon Maintenance Bill. This was subject to the receipt relating to business.

21. The next part of Miscellaneous receipt was Sales Tax Refund of ₹ 14,50,489/-. The learned Authorized Representative for the assessee pointed out that VAT payments were part of expenses and in case any part of VAT was refunded, then it was business receipts and was similarly shown in the hands of assessee.

22. Coming to next item i.e. VAT reimbursement on work contract, it was pointed out that as per contract agreement, VAT liability was payable by contractee over and above the contract price. VAT paid by assessee was debited to Profit and Loss Account and same was reimbursed by the Department as per contract agreement, hence no impact on the profits of business.

23. The learned Authorized Representative for the assessee referred to next head i.e. Other deduction from sub-contractors at ₹ 1,20,04,233/-, details of which were placed at pages 94 to 105 of Paper Book and material deduction from sub-contractors at ₹ 10,15,398/-. The plea of assessee in this regard was that any recoveries whether on account of material or otherwise were in the nature of reimbursement of expenditure debited in the books to recover from sub-contractors. Since the expenditure had been claimed and allowed against income from business of infrastructure activities, recoveries would have to be treated as income from business, in fact the receipts are not income. It was pointed out to the learned Authorized Representative for the assessee that the details of bank interest of ₹ 1,17,218/- were not available. The learned Authorized Representative for the assessee fairly pointed out that it was not pressing 80IA deduction on the aforesaid interest amount of ₹ 1,17,218/- along with commission from sub-contractors of ₹ 1,61,021/-.

24. The learned Departmental Representative for the Revenue placed heavy reliance on the order of Assessing Officer.

25. We have heard the rival contentions and perused the record. The assessee had claimed 80IA(4) deduction in the return of income claiming it to be as infrastructure facility, engaged in the development of infrastructure.

However, the Assessing Officer denied the said claim in the hands of assessee, though the Tribunal had settled the issue and also the issue was settled in favour of assessee by the Hon'ble jurisdictional High Court in the case of ABG Heavy Industries Ltd. & Ors. (supra). The Assessing Officer however, did not accept the same. The CIT(A) on the other hand, directed the Assessing Officer to allow the claim of aforesaid deduction in the hands of assessee, against which the Revenue is not in appeal. The grievance of Revenue is only in respect of allowing the said deduction on Miscellaneous receipts of ₹ 2,82,54,725/-. The breakup of Miscellaneous receipts is as under:-

| <i>Sr. No.</i> | <i>Ledger</i> | <i>Amount</i> |
|----------------|--|------------------------------|
| 1 | <i>Bank Interest received</i> | <i>78,85,014.50</i> |
| 2 | <i>Commission from Sub-Contract</i> | <i>1,61,021.00</i> |
| 3 | <i>Other Income</i> | <i>4,35,000.00</i> |
| 4 | <i>Sales Tax Refund</i> | <i>14,50,489.00</i> |
| 5 | <i>VAT Reimbursement</i> | <i>53,03,571.00</i> |
| 6 | <i>Other Deduction from Sub-Contractors</i> | <i>1,20,04,233.00</i> |
| 7 | <i>Material Deduction from Sub-Contractors</i> | <i>10,15,398.00</i> |
| | <i>Total Miscellaneous Income</i> | <i>2,82,54,726.50</i> |

26. In the first instance, the assessee has not pressed its claim of 80IA(4) deduction on commission from sub-contractors of ₹ 1,61,021/- and interest income of ₹ 1,17,218/-, hence the same is denied to the assessee.

27. Now, coming to head-wise breakup of Miscellaneous receipts on which 80IA(4) deduction has been claimed by assessee. The first such item is bank interest received of ₹ 78,85,014/-. We have already in the paras above have held that no deduction is to be allowed on bank interest of ₹ 1,17,218/-. With regard to balance interest income earned by assessee, the assessee has furnished the details in this regard along with copy of ledger account at pages 68 to 87 of Paper Book 6A. The explanation of assessee is that the bank deposits were for Tender deposits, security for bank guarantee (performance

guarantee, etc.). In other words, bank deposits were for obtaining the Tenders, which was the first step in infrastructure development activity. The said bank deposits were thus, inextricably linked to the business activity carried on by assessee. Consequently, interest earned on bank deposits was business receipt in the hands of assessee and was to be considered as income derived from business infrastructure development, on which the assessee was entitled to claim 80IA(4) deduction.

28. The Hon'ble Supreme Court in latest decision of 2018 has dismissed Special Leave Petition filed by Revenue in CIT Vs. Chambal Fertilizers & Chemicals Ltd. (supra) against the decision of Hon'ble High Court of Rajasthan in Chambal Fertilizers & Chemicals Ltd. Vs. CIT (supra). The Hon'ble High Court had held that interest earned on short term deposits of money kept apart for purposes of business had to be treated as income earned on business and could not be treated as income from other sources and was held to be eligible for deduction under section 80IA(4) of the Act.

29. The Hon'ble Bombay High Court in Temma Exchangers Manufacturers Pvt. Ltd. Vs. ACIT (supra) has in turn, relying on earlier decision of the Hon'ble Delhi High Court had pointed out that there was difference in language of two sections i.e. 80HH and 80IA of the Act. The words used in section 80HH of the Act are 'profits and gains derived from industrial undertaking' as against the words used in 80IA of the Act i.e. 'profits and gains derived from any business of an industrial undertaking'. The Hon'ble Bombay High Court held that interest on fixed deposits would be profits and gains derived from any business of industrial undertaking. The Hon'ble Delhi High Court in CIT Vs. Eltek SGS (P) Ltd. (supra), which is relied upon by the Hon'ble Bombay High Court in Temma

Exchangers Manufacturers Pvt. Ltd. Vs. ACIT (supra) on such difference in the language of section had distinguished the decision of Hon'ble Apex Court in Pandian Chemicals Ltd. Vs. CIT (supra). The learned Departmental Representative for the Revenue on the other hand, had placed reliance on the principle laid down in Pandian Chemicals Ltd. Vs. CIT (supra), which has been distinguished by the Hon'ble Delhi High Court and similar is the position as far as CIT Vs. Sterling Foods (supra) is concerned.

30. In the facts of present case, where the assessee had made the aforesaid bank deposits for tender deposits and security deposits and for guarantees were inextricably linked to the business of assessee and other deposits could not be said to be investment of surplus funds, but on the other hand, was a pre-condition for obtaining bank guarantee / security deposits for running day-to-day activities of business of infrastructure development and hence, were eligible for claim of deduction under section 80IA(4) of the Act.

31. Now, coming to next head which is Sales Tax Refund of ₹ 14,50,489/-. Under the scheme of Maharashtra VAT Act, VAT / sales tax is paid by assessee or deducted by the contractee from RA bills and the same is debited to Profit and Loss Account. However, excess amounts, if any, after calculating the net liability is credited to Profit and Loss Account; where sales tax / VAT has direct link to the business activity of infrastructure development, the receipts were eligible business receipts in the hands of assessee and entitled to the claim of 80IA(4) deduction. Accordingly, we hold so.

32. The next item is under the Miscellaneous receipts is VAT reimbursement at ₹ 53,03,571/-. In this regard, the learned Authorized Representative for the assessee explained that as per contract agreement in respect of work of

Jalochi and Khadkpurna, VAT liability was payable by the contractee over and above contract price. Such VAT paid was debited to Profit and Loss Account. However, the same was reimbursed by the Department as per contract agreement and as such VAT reimbursement was part of contract price irrespective of the fact that there was no impact on profits derived from business of assessee. Thus, we find merit in the claim of assessee that there is no merit in excluding the said receipts which were in fact reimbursement of amount deducted / paid, on which the assessee is entitled to claim 80IA(4) deduction.

33. Now, coming to other items i.e. Other deduction from sub-contractors of ₹ 1.20 crores and material deduction of ₹ 10,15,398/-. These were in the form of recoveries from the sub-contractors on account of material difference or other accounts i.e. diesel, transport charges, rent for machinery, etc. and were in the nature of reimbursement of expenditure, which was already debited to the books of account. Once the said recoveries are made from the sub-contractors, which were against expenditure claimed by assessee, were part of its carrying on of business activity, then the recoveries were to be treated as income from business of infrastructure development and there is no merit in taxing them separately. The assessee is entitled to the aforesaid deduction claimed under section 80IA(4) of the Act.

34. The last item which needs to be adjudicated is the other income of ₹ 4,35,000/-. The assessee claims that it represents Miscellaneous receipts from the Department for Bodhegaon maintenance bill. In view of the nature of receipts being relatable to the business activity carried on by the assessee, there is merit in the claim of assessee of deduction under section 80IA(4) of the

Act and the same cannot be denied to the assessee on the aforesaid receipts. Accordingly, we hold so and direct the Assessing Officer to allow the claim of assessee except on the amounts of ₹ 1,60,121/- and ₹ 1,17,218/-. Thus, to that extent appeal of Revenue is allowed. The grounds of appeal raised by Revenue are thus, partly allowed.

35. In the result, the appeal of assessee is allowed and the appeal of Revenue is partly allowed.

Order pronounced on this 31st day of July, 2019.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 31st July, 2019.
GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1&2, Kolhapur;
4. The CIT-I/II, Kolhapur / CIT (Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune