

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.469/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer,
Ward 2(1), Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. CRG Infratech Pvt. Ltd.,
221, G-15/1, Bagi Complex,
Gadhinglaj, Dist- Kolhapur,
Pin-416 502
PAN: AADCC9087F

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.478/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

M/s. CRG Infratech Pvt. Ltd.,
G-15/16, Bagi Complex,
A/p. Gadhinglaj, Dist- Kolhapur,
Pin-416 502
PAN: AADCC9087F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 2(1), Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 03.09.2019

घोषणा की तारीख / Date of Pronouncement : 04.09.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These cross appeals preferred by the Revenue as well as assessee emanates from the order of the Ld. CIT(Appeals)-2, Kolhapur dated 06.12.2016 for the assessment year 2013-14 as per the grounds of appeal on record.

2. These cases were heard together. Since issues common, facts are similar, these cases are being disposed of vide this consolidated order. First we would take up Revenue's appeal in ITA No.469/PUN/2017 for adjudication.

ITA No.469/PUN/2017 (By Revenue) **A.Y.2013-14**

3. The brief facts of this case are that the assessee is a domestic company engaged in the business of development of infrastructure work such as water supply, water treatment system, irrigation projects etc. The Assessing Officer noted that the company is registered as a Class-I contractor with PWD Govt. of Maharashtra & Karnataka. In this case, the JCIT, Range-2, Kolhapur issued directions to the Assessing Officer u/s.144A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') directing him to examine the allowability of claim u/s.80IA of the Act to the assessee as he was a contractor and therefore, prima facie he was not eligible for any deduction under that section. The Assessing Officer then in compliance with the

directions u/s.144A of the Act took up the assessment proceedings and called for various details. The Assessing Officer noted that the assessee has executed various contracts taken from Zilla Panchayat and Gram Panchayat, Engineering Department in Karnataka State at Beniwad, Belgavi, Bagalkot and Kogonoli etc. Most of the contracts are fixed price contracts. The Assessing Officer discussed and analyzed the explanations to Section 80IA(4) introduced in 2007 and 2009 w.r.f. 01.04.2000 and held that the assessee is a works contractor and therefore not eligible to claim deduction u/s.80IA of the Act. The Assessing Officer was of the view that the deduction u/s.80IA is allowable only to developers of infrastructural projects and not to contractors who only undertake business risk by way of executing fixed price contracts.

3.1 On the other hand, the case of the assessee was that he is a developer of infrastructural projects as all of them have been awarded to him by the Central or State Govts. The assessee made detailed written submissions before the Assessing Officer which have been reproduced in Para 8 pages 5 to 12 of the assessment order. However, this contention of the assessee did not find favour with the Assessing Officer who disallowed the claim of deduction u/s. 80IA(4) of the Act.

4. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(Appeals). That before the Ld. CIT(Appeals), the assessee filed detailed written submission which are there on record. In those written submissions, the assessee highlighted the facts that they are developing, operating and maintaining infrastructure facility and is having ownership of the enterprise by a company registered in India. There is agreement with Central or State Govt., local Authority or statutory body and that the start of operation and maintenance of the infrastructure facility on or after 1st April,

1995. These contentions were even analyzed by the Hon'ble Bombay High Court in the case of CIT Vs. ABG Heavy Industries Ltd & Ors, (2010) 37 DTR (Bom.) 233. This was also followed by the Pune Bench of the Tribunal in the case of M/s. Laxmi Civil Engg. Services (P) Ltd. Vs. Addl. CIT, Range-2 in ITA No. 766/PN/2009, ITA No.254/PUN/2008, ITA No.431/PUN/2007 and ITA No.435/PUN/2007 for the assessment years 2006-07, 2005-06, 2003-04 and 2004-05 dated 08.06.2011. In this decision, the Tribunal has held as follows:

“5. We heard both the parties and perused the orders of the revenue. The contentious issues before us are (i) whether the contractor is synonymous with the developer within the meaning of section 80IA (4)(i) of the Act; (ii) whether the condition placed in clause (c) is applicable to the case of a developer, who is not carrying on business of operating and maintaining the infrastructural facilities. In our opinion, the answer to these questions are provided by the judgment of the Bombay High Court in the case of ABG Heavy Engg. Ltd (supra). In this regard, we perused the above cited para-22 of the said judgment and for the sake of completeness; the said paragraph is reproduced as under:

*“22. under Clause (iii) of sub-section (4A) of Section 80-IA, one of the conditions imposed was that the enterprise must start operating and maintaining the infrastructure facility on or after 1st April, 1995. The same requirement is embodied in sub-clause (1) of sub-clause (4) of the amended provisions. It was urged that since the **assessee was not operating and maintaining** the facility, he did not fulfill the condition. The submission is fallacious both in fact and in law.*

That the assessee was maintaining the facility is not in dispute. The facility was commenced after 1st April 1995. Therefore, the requirement was met in fact. Moreover as a matter of law, what the condition essentially means is that the infrastructure facility should have been operational after 1st April, 1995. After Section 80-IA was amended by the Finance Act, 2001, the section applies to an enterprise carrying on the business of (1) developing; or (ii) operating and maintaining ; or (iii) developing, operating and maintaining any infrastructure facility which fulfills certain conditions. Those conditions are (1) ownership of the enterprises by a company registered in India or by a consortiums; (ii) an agreement with the central or State Government: local authority or statutory body; and (iii) The start of operation and maintenance of the infrastructure facility should commence after 1st April 1995. The requirement that operation and maintenance of the infrastructure facility should commence after 1st April, 1995 has to be harmoniously construed with the main provision under which deduction is available to an assessee who develops or operates and maintains, or develops, operates and maintains an infrastructure facility.

A harmonious reading of the provisions in its entirety would lead to the conclusion that the deduction is available to an enterprise

which (i) develops; or operates and maintains; or (iii) develops; maintains and operates that infrastructure facility. However, the commencement of the operation and maintenance of the infrastructure facility should be after 1st April, 1995. In the present case the assessee clearly fulfilled this condition.”

Before the amendment that was brought about by Parliament by Finance Act; 2001 we have already noted that the consistent line of circulars of the Board postulated the same position. The amendment made by Parliament to S.80-IA(4) of the Act, set the matter beyond any controversy by stipulating that the three conditions for development;, operation and maintenance were not intended to be cumulative in nature”

6. The above judgment of the Hon'ble High court is delivered in the case of ABG Heavy Engg. Ltd (supra), who is a contractor for the JNP Trust and that contractor assessee is found to be an eligible developer for making claim of deduction u/s section 80IA (4) of the Act. From the above, it is evident that the person who only develops the infrastructure do not have the occasion to operate and maintain the infrastructure. It is further evident that the harmonious reading is necessary and mandatory in view of High Court's judgment in the case of an enterprise carrying on, business or developing which is the case of the assessee, all the conditions referred to clause (i) of section 80IA (4) should refer to the conditions as applicable to the developer. In other words, the developer who is only developing the infrastructure facilities since he does not operate and maintain Infrastructural facilities, cannot be expected to fulfil the condition at sub-clause © which is an impossibility and the requirements to fulfil the said condition shall amount to absurdity and therefore uncalled for. Therefore, we find requirement of harmonious reading of sub- clauses © vis-a-vis of clause (i) of section 80IA(4) of the Act. Thus, the discussion in High Court's decision in paragraph-22 extracted above, is directly applicable to the facts of the case and eventually is entitled for the deduction under section 80IA(4) of the Act. Accordingly, the modified ground, which is common in all the four appeals, is allowed in favour of the assessee.

7. In the result, all four appeals of the assessee are allowed.”

5. The Ld. CIT(Appeals) after considering the written submissions of the assessee and assessment order held as follows:

*“5. **DECISION:** I have carefully considered the matter and perused all material on record. During the course of the appeal hearing, the AR did not press ground 2 and the same is therefore dismissed as not pressed. The 3rd ground is against levy of interest u/s.234B. Levy of interest is mandatory and consequential and the AO is therefore directed to rework the interest if any leviable after giving effect to my directions in this order. The only effective ground of appeal is against the denial of deduction u/s. 80IA(4) claimed by the appellant.*

5.1 The case of the appellant is that this issue is now covered in his favor by various judgments of the Hon'ble ITAT Pune Bench as well as the Hon'ble Bombay High Court more specifically in the case of ABG Heavy Industries Ltd. I have perused all the decisions cited by the

appellant in his favor and find that the matter in principle is covered in his favor by the decisions cited by the appellant. More specifically I find that the decisions of the Hon'ble ITAT Pune Bench in the case of B T Patil & Sons, Laxmi Civil Engineering Pvt. Ltd have ruled that the deduction u/s.80IA(4) is available to those assesseees who have entered into contracts for development of prima facie deserves to succeed. However I specifically called for the details of the infrastructural projects undertaken by the appellant and recognized as income during the year. The details of the same are as under:

| <i>Sr. No.</i> | <i>Name of work</i> | <i>Agreement with</i> | <i>Nature of work</i> | <i>Amount</i> |
|----------------|---------------------|--|--|---------------|
| 1. | BENNIWAD | The Adhyaksha Gram Panchayat, Benniwad, Tal. Hukkeri | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 1,10,52,246/- |
| 2. | KOGNOLI | The Adhyaksha Gram Panchayat, Benniwad, Tal. Hukkeri | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 43,47,646/- |
| 3. | BASSAPUR | Executive Engineer, P.R.E Division, Chokidi | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 62,93,601/- |
| 4. | JAINAPUR | Executive Engineer, P.R.E Division, Chokidi | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 47,57,683/- |
| 5. | KANAGALA | Executive Engineer, P.R.E | Construction of Jackwell, | 2,97,08,199/- |

| | | | | |
|-----|-----------------|--|---|-----------------------|
| | | <i>Division, Chokidi</i> | <i>Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | |
| 6 | <i>BATKURKI</i> | <i>Executive Engineer, P.R.E Division, Chokidi</i> | <i>Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | <i>2,79,15,439/-</i> |
| 7 | <i>KAULAGE</i> | <i>The Adhyaksha Gram Panchayat, Benniwad, Tal. Hukkeri</i> | <i>Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | <i>60,54,161/-</i> |
| 8. | SARJAPUR | Laxmi Civil Engg. Services P. L. Kolhapur in respect of work of Executive Engineer, P.R.E Division, Gadag | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 3,62,04,111/- |
| 9. | BENWAD | Laxmi Civil Engg. Services P. L. Kolhapur in respect of work of Executive Engineer, P.R.E Division, Gadag | Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line | 67,50,732/- |
| 10. | <i>KOKATNUR</i> | <i>Executive Engineer, P.R.E Division, Chokidi</i> | <i>Construction of Jackwell, Treatment Plant, Tanks,</i> | <i>10,20,52,862/-</i> |

| | | | | |
|-----|------------|---|---|----------------|
| | | | <i>providing and Erection of pumping Machinery providing laying pipe line</i> | |
| 11. | HALINGALI | <i>Executive Engineer, P.R.E Division, Bagalkot</i> | <i>Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | 84,84,002/- |
| 12. | JAKNUR | <i>Executive Engineer, P.R.E Division, Bagalkot</i> | <i>Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | 88,10,208/- |
| 13. | MADHABHAVI | <i>Executive Engineer, P.R.E Division, Chokidi</i> | <i>Construction of Jackwell, Treatment Plant, Tanks, providing and Erection of pumping Machinery providing laying pipe line</i> | 5,27,200/- |
| | | | <i>Total</i> | 25,29,58,090/- |

It is seen from the above table that the appellant has recognized income of Rs.25,29,58,090/- from a total of 13 projects. I also examined the contracts signed by the appellant for these projects. It is seen that out of the above 13 contracts, 11 contracts have been signed between the State Govt and the appellant himself for development of infrastructural projects. However in case of projects listed at sl. Nos. 8 & 9 above, it is seen that the projects have been actually awarded by the State Govt to Laxmi Civil Engg. Services Pvt Ltd, which Inturn has subcontracted the same to the appellant. On facts therefore it is clear that projects at 81 nos 8&9 of the above table are in the nature of sub contracts awarded to the appellant and therefore would be hit by the explanation to sec 80IA introduced w.r.e.f 01/04/2000. This explanation to Sec. 80IA(4) introduced by the Finance Act,2009 w.r.e.f 01/04/2000 states that nothing contained in Sec. 80IA(4) shall apply in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the- Central or State Government) and executed by the undertaking or enterprise referred to in clause (i) of Sub -Sec.(4) of Sec. 80IA(4) of the Act.

Moreover, the appellant himself has argued in his written submissions that a mere sub contractor would not be eligible to claim a deduction u/s 80IA(4). On facts therefore it is clear that projects at sl nos 8&9 in the table above are not eligible for a deduction u/s 80IA(4). However Uteappellant qualifies to claim a deduction for the balance 11 projects undertaken during the year. I am therefore of the opinion that profits only from two projects viz Sarjapur and Bendwad being in the nature of sub contracts are not eligible for deductions u/s. 80IA(4). In this connection, the appellant submitted as under (which included a without prejudice working of profits from these 2 projects):-

The assessee has executed two works i.e. Sarjapur and Bendwad for which agreement directly with any govt authority is not entered with. Rather the assessee had entered into agreement with Laxmi Civil Engineering Services Private Limited which in turn. has entered into agreement with Executive Engineer, P.R.E. Division, Gadag (for Sarjapur) and Executive Engineer, P.R.E. Division, Chikodi (for Bendwad).

As such the assessee is entitled for the deduction under Section. 80-IA of the Act.

Without prejudice to anything, if your honour decided to disallows the claim of assessee u/s. 80-IA(4) of the income Tax Act 1961, in respect of these works, the profit earned from these works is calculated as under:

(Amounts in Rs.)

| Particulars | Sarjapur | Bendwad |
|-------------------------------|---------------------------------------|-------------------------------------|
| 1. Sales (Contract Receipts) | 3,62,04,111.00 | 67,50,732.00 |
| 2. Expenses as per Schedule | <u>3,06,81,704.00</u> 55,22,407.00 | <u>57,20,959.00</u> 10,29,773.00 |
| 3. Profit (1-2) | | |

However, this profit is subject to the proportionate allocation of Office and Administration, Finance and Depreciation Expenses. I therefore hold that profits of Rs.55,22,407 from Sarjapur Project and Rs.10,29,773 from the Bendwad Project totaling to Rs.65,52,180/- are not eligible for a deduction u/s.80IA(4). However, I also find that almost the entire PBT in the P & L A/c of Rs.2,27,85,045/- (net of indirect expenses) has been claimed as deduction u/s.80IA(4) which as per Form 10CCB is Rs.2,26,24,763. I therefore direct the AO to reduce the proportionate indirect expenses on a pro rata basis from the profits of the ineligible projects. The action of the AO disallowing the deduction u/s.80IA(4) is in principle upheld to the extent of profits from the Sarjapur and Bendwad projects amounting to Rs.55,22,407 & Rs.10,29,773 totaling to Rs.65,52,180. However, for the exact quantum of disallowance, the AO is directed to reduce the indirect expenses on a pro rata basis from these two profit figures. Accordingly, ground 1 is partly allowed.”

The Ld. CIT(Appeals) out of the thirteen projects allowed deduction u/s.80IA(4) of the Act to the assessee for eleven projects undertaken during the year except for projects in Sl. No.8 and 9 i.e. **Sarjapur and Benwad.**

6. We have perused the case records and have given considerable thought to the findings of the Ld. CIT(Appeals). The Ld. CIT(Appeals) has analyzed the scope and activities of the assessee in view of the judgment of the Hon'ble Bombay High Court in the case of CIT Vs.ABG Heavy Industries Ltd & Ors. (supra.) followed by the decision of Pune Bench of the Tribunal in the case of M/s. Laxmi Civil Engg. Services (P) Ltd. Vs. Addl. CIT, Range-2 (supra.). Therefore, we are of considered view that the order of the Ld. CIT(Appeals) is well reasoned and therefore does not call for any interference.

7. In the result, **appeal of the Revenue in ITA No.469/PUN/2017 is dismissed.**

ITA No.478/PUN/2017 (By Assessee)
A.Y.2013-14

8. The assessee filed cross appeal in ITA No.478/PUN/2017 for assessment year 2013-14 against the decision of the Ld. CIT(Appeals) in not providing deduction on the two projects mentioned at Sl. No. 8 & 9 i.e. **Sarjapur and Benwad.**

That once we have upheld the order of the Ld. CIT(Appeals), the cross appeal of the assessee pertaining to non granting deduction for projects at Sarjapur and Benwad becomes infructuous, hence, is liable to be dismissed. We order accordingly.

9. In the result, **appeal of the assessee in ITA No.478/PUN/2017 is dismissed.**

10. In the combined result, **both the appeal of the Revenue and appeal of the assessee for assessment year 2013-14 are dismissed.**

Order pronounced on 04th day of September, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th September, 2019.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

| | | Date | |
|----|--|------------|----------|
| 1 | Draft dictated on | 03.09.2019 | Sr.PS/PS |
| 2 | Draft placed before author | 03.09.2019 | Sr.PS/PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 5 | Approved draft comes to the Sr. PS/PS | | Sr.PS/PS |
| 6 | Kept for pronouncement on | | Sr.PS/PS |
| 7 | Date of uploading of order | | Sr.PS/PS |
| 8 | File sent to Bench Clerk | | Sr.PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R | | |
| 11 | Date of dispatch of order | | |