

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 870/Hyd/2019
Assessment Year: 2015-16

Naolin Infrastructure Pvt. vs. Asst. Commissioner of
Ltd., Hyderabad. Income-tax, Circle – 16(1),
Hyderabad.

PAN – AAFCP 5359K

Appellant

Respondent

Assessee by: Shri T. Chaitanya Kumar
Revenue by: Shri Rajat Mitra

Date of hearing: 24/09/2019
Date of pronouncement: 27/09/2019

ORDER

PER SMT. P. MADHAVI DEVI, J.M.:

This is an appeal filed by the assessee against the order of CIT(A) – 4, Hyderabad dated 15/03/2019 dismissing the assessee's appeal for non-appearance before him and also for not filing any evidence in support of its claim.

2. Brief facts of the case are that the assessee company filed its original return of income for the AY 2015-16 on 30/09/2015 admitting total income of Rs. 96,18,660/-.

2.1 During the course of assessment proceedings u/s 143(3) of the Act, the assessee was required to furnish certain information. The AO observed that the assessee is engaged in the business of execution of infrastructure projects, which includes roads, power and other related contractual works. The assessee had claimed deduction u/s section 80IA of the Act. AO observed that the assessee had purchased used

machinery from M/s RR Enterprises, Secunderabad. He observed that as per explanation 2 of section 80IA of the Act, where any plant or machinery or any part thereof, which has been previously used for any purpose has transferred to a new business and the total value of machinery so transferred does not exceed 20% of the total value of the machinery, only then, can deduction u/s 80IA be allowed. Since the value of the machinery is more than 20% in the case of the assessee, the assessee was asked as to why the deduction claimed u/s 80IA should not be disallowed, Assessee's representative had admitted that the company had no objection for such disallowance. Taking the same into consideration, the assessment was completed by making disallowance of the assessee's claim of deduction u/s 80IA of the Act.

3. Thereafter, the assessee filed an appeal before the CIT(A), which was dismissed by the CIT(A) on the ground that the assessee has not appeared before him inspite of service of notices for hearing on 14/12/2018, 18/02/2019 & 08/03/2019. Further, he also observed that assessee has not filed any evidence to substantiate its claim that the disallowance u/s 80IA should not be made.

4. Against the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. The order of the Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law to the extent it is prejudicial to the assessee.

2. The learned Commissioner of Income tax (Appeals) has erred in confirming the action of the assessing officer without giving any further opportunity.

3. The learned Commissioner of Income tax (Appeals) has erred in confirming the action of the assessing officer in not allowing deduction an amount of Rs

77,92,708/- u/s 80IA of the I.T act, without giving any further opportunity.

4. The learned Commissioner of Income tax (Appeals) has erred in holding that the 20% value of the machinery has purchased was used machinery from R.R Enterprises without giving any further opportunity.

5. The learned Commissioner of Income tax (Appeals) has erred in charging interest an amount of Rs 16,20,300/- ix] s 234B of the I.T act and an amount of Rs 1,46,828/ - u/s 234C of the I.T act.

6. The learned Commissioner of Income tax (Appeals) has erred in determining the total income at Rs 1,74,11,370 as against the income of Rs 96,18,660/-

7. Any other ground that may be urged at the time of hearing.”

5 After hearing both the parties, we find that the assessee has not filed any evidence before the AO or CIT(A) to substantiate its claim that the value of plant and machinery purchased by it was not its new unit which is eligible for deduction u/s 80IA earlier used by M/s RR Enterprises and also that its value is not more than 20% of the total value of the plant and machinery. Ld. Counsel for the assessee submitted that the assessee has evidence to prove or substantiate its claim of deduction u/s 80IA and sought further opportunity to file relevant evidence. Though during the course of hearing, we announced that the appeal should be remanded to the file of CIT(A), after going through the facts on record, we find that since the assessee has not filed any evidence either before the AO or before the CIT(A), we deem it fit and proper to remand the appeal to the file of the AO with a direction to reconsider the issue in accordance with law after examining the material/evidence filed by the assessee. The assessee is directed to furnish all the relevant material before

AO and cooperate with the AO for speedy completion of the assessment proceedings.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 27th September, 2019.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 27th September, 2019.

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Copy forwarded to:

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2. *ACIT, Circle – 16(1), Hyderabad.*
3. *CIT(A) – 5, Hyderabad.*
4. *Pr. CIT – 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*