आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./**I.T.A.No.365/Chny/2016**
निर्धारण वर्ष/**Assessment Year: 2012-13**

Shri R. Dhanasekaran, R-3, TNHB Shopping Complex, Shastri Nagar, 1st Avenue, Adyar, Chennai 600 020.	Vs.	The Assistant Commissioner of Income Tax, Non Corporate Circle – 15(1), Chennai 600 034.
[PAN: ADXPD7168E]		
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी**/**Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri N. Devanathan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri J. Pavitran Kumar, JCIT
सुनवाई की तारीख/ Date of hearing	:	17.09.2019
घोषणा की तारीख /Date of Pronouncement	:	11.10.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-15, Chennai dated 16.12.2015 relevant to the assessment year 2012-13. The grounds raised in the appeal of the assessee are that the ld. CIT(A) has erred in confirming the disallowance of deduction under section 80IA of the Income Tax Act, 1961 ["Act" in short] as well as confirmation of disallowance under section 40A(3) of the Act.

2. Brief facts relating to the disallowance of deduction claimed under section 80IA of the Act of ₹.1,84,58,220/- are that the assessee is engaged in the execution of certain civil works contracts done with the Chennai Corporation. On verification of the particulars furnished by the assessee, the Assessing Officer has observed that the assessee was merely a 'works contractor' who executed various civil works but not a 'developer' as stipulated under section 80IA(4) of the Act. Since the assessee has shown himself as contractor as per Form 26AS and TDS certificate. It was further observed that the agreements executed by the assessee with the clients are 'contract agreements' and not 'development agreements'. Since the provisions of section 80IA of the Act shall not apply to a person who executes works contract entered into with the undertaking or enterprises, the Assessing Officer disallowed the claim of deduction under section 80IA of the Act and brought to tax. On appeal, by following the decision of the Tribunal in assessee's own case for the assessment year 2009-10 and 2010-2011, the ld. CIT(A) confirmed the disallowance claimed under section 80IA of the Act.

3. On being aggrieved, the assessee is in appeal before the Tribunal. At the time of hearing, the ld. DR has submitted that the issue involved in this appeal is squarely covered against the assessee by the decision of the Tribunal and pleaded that the same should be followed.

4. On the other hand, the ld. Counsel for the assessee could not controvert the submissions of the ld. DR.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including case law. Similar ground on identical facts was subject matter in appeal in assessee's own case for the assessment year in I.T.A. Nos. 620/Mds/2013 & 360/Mds/2015 vide order dated 06.11.2015, wherein, the Tribunal has observed as under:

> *"8. We have considered the elaborate submissions made by both the parties and also perused the materials available on record. We have also gone through all the case laws cited by both the parties. We find that the provisions of Section 80IA(4) of the Act when introduced afresh by the Finance Act, 1999, the provisions under section 80IA(4A) of the Act were deleted from the Act. The deduction available for any enterprise earlier under section 80IA(4A) are also made available under Section 80IA(4) itself. Further, the very fact that the legislature mentioned the words (i) "developing" or (ii) "operating and maintaining" or (iii) "developing, operating and maintaining" clearly indicates that any enterprise which carried on any of these three activities would become eligible for deduction. Therefore, there is no ambiguity in the Income-Tax Act. We find that where an assessee incurs expenditure on its own for purchase of materials and towards labour charges and itself executes the development work i.e., carries out the civil construction work, it will be eligible for tax benefit under section 80 IA of the Act. In contrast to this, a assessee, who enters into a contract with another person including Government or an undertaking or enterprise referred to in Section 80 IA of the Act, for executing works contract, will not be eligible for the tax benefit under section 80 IA of the Act. At this stage, we deem it appropriate to reproduce hereunder section 80IA of the "Act" providing deduction in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development which reads as follows:-*
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> > *80IA. (1)Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in*

accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.
(2) …………………..
(2A) …………………
(3) …………………..
(4) This section applies to—

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility 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 (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:

Provided that where an infrastructure facility is transferred on or after the 1st 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;

(5) ………………
(13) …………….

**Explanation. - For the removal of doubts, it is hereby declared that nothing contained in this section 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 sub-section (1).*
**It introduced by Finance (No.2) Act, 2009 w..e.f. 1.4.2000*

A perusal of the statutory provisions makes it clear that it does not provide a blanket deduction i.e. in order to succeed in a claim of deduction; the concerned assessee has to derive profits and gains from any business referred to in sub-section 4. Further, sub-section 4 prescribes applicability of clause i.e. the case in which the deduction provision would apply. It is in this sub-section that the legislature has enumerated the nature of the undertakings, their activities in contributing raising of infrastructure. Further, in the explanation attached to the sub-section, the legislature has also entrusted the meaning of the infrastructure facilities. In our opinion, an assessee while claiming deduction has to satisfy all conditions in sub-section 4(1)(a) or (b) or (c). It is mandatory for the assessee to first satisfy sub-section clause i(a), then (b) then (c), then proviso and so on. In case the concerned assessee fails in any one of the clauses, even if it satisfies the other part of the sub-section, the claim has to be rejected. Now we proceed to decide as to whether the assessee proprietorship concern satisfies sub-section 4(i) of the "Act" or not. For the said subsection, a reading of the provision makes it unambiguous that the concerned claimant has to be an enterprises carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility and it has to be owned by a consortium of such company or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act. Admittedly, the assessee is a proprietorship. As we notice from the relevant statutory provision, the enterprise in the nature of proprietorship nowhere finds mention in the mandate of the legislature. Although it was emphasized from the definition of the word 'body' in the Law Lexicon which reads as follows:

"Statutory definition, includes partnership, Financial Services and Markets Act, 2000 (c.8), S. 367(2) (Stroud, 6th Edn., 2000, Supplement, 2003).

It also includes group of bodies, partnership of enterprise card on by one or more persons or bodies and a body which is substantially the same at or successor, to, another body, Government Resources and Accounts Act, 2000 (c.20), S. 17(7) (Stroud, 6th Edn., 2000, Supplement, 2003). The main-central or principal part [Art. 110 (2), Const.]; physical or material frame of a man or animal; gang of thieves etc."

8.1 In our opinion, the said definition being a general preposition does not help the assessee's case. It is a trite preposition of law while interpreting a statute and more so a fiscal statue, neither the judicial forum concerned can insert its own words nor it can take away any from the statute. As it is seen, the earlier portion of the statutory provision prescribes a company registered in India or a consortium of such companies or by an authority or corporation or any other body established or constituted and so on. In our view, the latter part is liable to be read in the light of the earlier part by following the principles of ejusdem generis.

8.2 Further, it was noticed that in the case of M/s. Ramky Infrastructure Ltd vs. DCIT, in ITA No.472/Hyd/2009 & others the Hyderabad bench of the Tribunal vide order dated 17.07.2013 observed in his order in para 14 following the earlier order of the Tribunal in the case of NCC-ECCI(JV) vs. ITO in ITA Nos. 124 & 125/Hyd/2009 vide order dated 17.06.2013 inter alia that word 'owned' in sub-clause (a) on clause (1) of sub-section (4) of section 80IA of the Act referred to the enterprise. In other words, the enterprises carrying on development of the infrastructure facilities should be owned by a company or consortium of companies. The infrastructure facilities need not be owned by a company. It was held that the word 'ownership' is attributable only to the enterprise carrying on the business which would mean that only companies are eligible for deduction under section 80IA(4) and not any other person like new HUF Firm etc. Hence, we hold that the assessee fails to satisfy the applicability clause of the provision as envisaged under section 80IA(4)(i) of the "Act".

9. So far as catena of the judgments submitted by the AR of the assessee, we notice that they only pertain to section 80IA(4)(i)(b) i.e. regarding the issue of contractor viz-a-vis developer. Hence, we do not deem it appropriate to decide on the said issue since the assessee does not fulfill the condition enumerated in the first part of the statutory provision.

10. Consequently, in the light of our above discussions, the appeals of the Revenue in ITA No.620/Mds/2013 and ITA No.360/Mds/2015 are allowed."

5.1 Respectfully following the above decision of the Tribunal in assessee's own case for earlier assessment years, the ground raised by the assessee in the present appeal stands dismissed.

6. The next ground raised in the appeal of the assessee relates to disallowance of expenses of ₹.17,80,436/- claimed as deduction. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash payments on a single day to the single party, i.e., M/s. New Bharat Electricals & Enterprises of ₹.90,826/-, ₹. 6,78,600/- to PSK Blue Metal and ₹.10,000/- to Raghvendra Blue Metal. Moreover, the assessee has also made cash payment to New Bharath Foundations on three occasions at ₹.3,89,600 on 05.10.2011, ₹.4,15,650/- and ₹.1,95,760/- totalling to ₹.10,01,010/-. Accordingly, in view of the provisions of section 40A(3) of the Act, the Assessing Officer disallowed the same and brought to tax. On appeal, the ld. CIT(A) confirmed the disallowance made under section 40A(3) of the Act.

6.1 The assessee carried the matter in appeal before the Tribunal.

6.2 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee is a Civil Contractor & Engineer, running propriety firm in the name of New Bharat Foundation and New Bharat Electrical & Enterprises engaged in the

business of civil contract and real estate. The assessee is engaged in the execution of certain civil works contract done with the Chennai Corporation, Sholinganallur Town Panchayat, Department of Atomic Research, Kalpakkam and for Chennai Port Trust. During the year under consideration, the assessee has made cash payments to various parties on a single day, which attract the provisions of section 40A(3) of the Act and accordingly the Assessing Officer disallowed the entire amount. On appeal, it was the submission of the assessee that the payments were made by the assessee in a remote place where there is no banking facility and thus, the instance of payment would fall under the exempted provisions of Rule 6DD. However, the assessee has not furnished any details of payments made where there is no banking facility exists. Accordingly, the ld. CIT(A) confirmed the disallowance made under section 40A(3) of the Act. Before the Tribunal, the ld. Counsel for the assessee has reiterated the submissions as was made before the ld. CIT(A). However, the assessee has not furnished any details/evidence to say that the various payments made to the firms, which are located in remote area where banking facilities are not existed. The provisions of section 40A(3) of the Act restrict payment or aggregate of payment made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeding ₹.20,000/-. Moreover, in the case of N. Mohammed Ali v. ITO [2016] 65 taxmann.com 189 (Madras), the Hon'ble Jurisdictional High Court has held that where the

assessee made cash payments in excess of ₹.20,000/- for purchase of crackers, in absence of even names of agencies or agents or retailers living in villages to whom the said payments were made on a day-to-day basis, the impugned disallowance made by the authorities below under section 40A(3) of the Act should be confirmed. In view of the above, we confirm the disallowance of expenses made to New Bharat Electricals & Enterprises, PSK Blue Metal and New Bharat Foundations to the extent of ₹.17,70,436/-. However, we direct the Assessing Officer to allow the payment made to Raghvendra Blue Metal of ₹.10,000/-, which is less than the monetary limit stipulated under section 40A(3) of the Act. Accordingly, the ground raised by the assessee is partly allowed.

7. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced on the 11th October, 2019 at Chennai.

Sd/-	Sd/-
(S JAYARAMAN)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 11.10.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.