

**IN THE INCOME TAX APPELLATE TRIBUNAL “F”
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 7270 & 7075/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2008-09 & 2013-14)

DCIT CC – 8(2), 6 th floor, Room No. 658, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s Unity Infraprojects Ltd. 1252, Pushpanjali Apartment, Old Prabhadevi, Mumbai-400 025
स्थायीलेखासं./जीआइआरसं./PAN No. AAACU4560E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपीलसं./ I.T.A. No. 139 & 140/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2008-09 & 2013-14)

M/s Unity Infraprojects Ltd. 1252, Pushpanjali Apartment, Old Prabhadevi, Mumbai-400 025	बनाम/ Vs.	DCIT CC – 8(2), 6 th floor, Room No. 658, Aayakar Bhavan, M. K. Road, Mumbai-400 020
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sushil Kumar Poddar & Mrs. Kavita Kaushik, DRs
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Rakesh Mohan, AR

सुनवाईकीतारीख/ Date of Hearing	:	02.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	19.02.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):

The present four (4) Appeals have been filed by the revenue and assessee against the order of Commissioner of Income Tax (Appeals)-50, Mumbai in short 'Ld. CIT(A)' dated 30.10.2017 for AY 2008-09 & 2013-14 respectively.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking appeal filed by the revenue in ITA No. 7075/Mum/2017 for AY 2013-14 as lead case.

3. The brief facts of the case are, assessee is engaged mainly in infrastructure projects of government and other agencies involving civil construction business viz. construction of airport terminals, flyover, bridges, stadiums and residential towers, etc.

Assessee filed its return of income on 30.11.13 declaring total income of Rs. 98,38,37,660/-. Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed relevant information as called for.

4. A search and survey operations were conducted in the case of assessee as well as M/s Steelcon Infratrade Pvt. Ltd. (earlier known as M/s Dev Steels) and certain evidences were gathered during search. In view of the above, assessee was specifically asked to furnish the documentary evidence for the purchases made from M/s Steelcon Infratrade Pvt. Ltd. In response, assessee filed copy of bills issued by M/s Steelcon Infratrade Pvt. Ltd. and other self-made documents. Further in a letter, assessee submitted that the information found during survey in the premises of M/s Dev Steels / M/s Steelcon Infratrade Pvt. Ltd. relating to M/s Unity Infraprojects Pvt. Ltd. and denied that it has taken any bogus purchase bills from the companies owned by Shri Devang K. Gandhi and further Shri Devang K. Gandhi gave a statement about giving accommodation entries to various

parties and subsequently Shri Devang K. Gandhi retracted his statement by filing an affidavit. In this respect, assessee relied on various case laws in support of its contentions. However, AO rejected the contentions of the assessee and made 100% addition of the purchases by considering it as bogus.

5. Further AO verified the deduction u/s 80IA(4) of the Act by which assessee has claimed deduction of Rs. 66,67,80,539/-. The assessee has undertaken the following projects during this year:-

Project Name	Total Turnover	Profit (PBT)
MCGM Tansa Piep Line	59,90,75,279	3,89,39,893
MICROTUNNELING PROJECT	9,52,61,792	57,25,234
NAGPUR MUNICIPAL CORPORATION	50,60,55,044	3,79,54,128
SARDAR SAROVAR NARMADA MIGAM LIMITED	57,27,71,604	4,00,94,012
WATER RESOURCES DEPT.-GOVT OF MP (HARSH I CANAL)	53,72,22,734	3,76,05,591
WATER RESOURCES DIVN., SHIVPURI (MAHUAR DAM)	60,64,94,635	4,85,19,571
SURATGARH SRIGANGANAGAR TOLL ROAD PRIVATE LIMITED	80,50,65,791	11,27,09,211
JIND HARYANA BORDER TOLL ROAD PVT. LTD	95,29,29,927	13,34,10,190
CHOMU MAHALA TOLL ROAD PVT LTD	1,19,16,71,432	16,68,34,000

SOLAPUR MUNICIPAL CORPORATION	59,98,49,447	4,49,88,709
Total	6,46,63,97,685	&6,67,80,539

6. When assessee was asked to substantiate the claim. In response, assessee submitted that it has claimed deduction u/s 80IA on 7 eligible projects, apart from the projects undertaken by the assessee during the earlier year on which deduction u/s 80IA(4) of the Act was claimed. Deduction u/s 80IA was also claimed on 3 new projects which were undertaken by the assessee during this year. Assessee also filed auditors report in Form 10CCB in support of its claim of deduction u/s 80IA of the Act. Further assessee submitted that it has claimed similar deductions in the earlier year from the AY 2003-04 to 2007-08 and 2009-10 and assessee has claimed deduction u/s 80IA(4) and 80IB of the Act in those assessment years. However, ITAT decided the issue in favour of the assessee. Further in AY 2008-09, Ld. CIT(A) decided the issue in favour of assessee.

7. AO considered the submission of assessee and rejected the claim of the assessee with the observation that assessee is only a

contractor and not a developer and to be a developer following factors has to be considered i.e. i) involvement of making investment, ii) shouldering technical risk, iii) liquidated damages and iv) employment of technical and administrative qualified team.

8. The above features were extracted by the AO by heavily relying on the decision of Hon'ble Bombay High Court in the Case of ABG Heavy Industries Ltd. (189 taxman 54 Bombay) and the decision of Division Bench of ITAT in the case of B. T. Patil & Sons, Belgaum Constructions Pvt. Ltd. reported in 59 SOT 61.

9. By referring to the works contract agreement and tender document, AO observed that the above said features were missing and therefore assessee is not falling under the eligible criteria of section 80IA of the Act and also he observed that assessee was compensated by the respective agencies by settling the running bills as and when it is raised by assessee. Therefore, AO treated the assessee as only works contractor and not a

developer and accordingly, he disallowed the claim made u/s 80IA of the Act.

10. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and submitted before him a detail submission.

In summary, assessee submitted that;

a) Assessee has submitted all the relevant document in support of purchases, which are not found to be improper.

b) AO made the addition based only on Shri Devang Gandhi statement, which Shri Devang Gandhi retracted.

c) It is submitted that assessee has filed all the supporting documents before AO i.e.

(i) Purchase Bills including the details like Name of site, Bill Number, Bill date, quantity and paid stamp

(ii) Delivery Challans including the details like Name of site, Bill Number, Bill date, quantity and Acknowledgment by the site

(iii) Weightment Slip with quantitative details of material ordered by the appellant company

(iv) Material Receipt Note to the respective site with the name of the site, quantity received, amount of the material. Further, the same is counter signed by the inspection officer and stores officer present at the site. The same clearly

evidences that the said document is prepared at the site where the material is delivered.

d) AO has not given reasons for rejecting the above said documents, which was submitted in support of purchases and now the onus is on AO to prove that the purchases are not genuine. For that proposition, assessee relied on Orient Trading vrs. CIT 91963) 49 ITR 723 (Bom) and Dr. R. L. Narang (174 taxmann 196).

e) Assessee distinguished the case law relied by AO in his order.

f) Assessee justified the profit declared by it at the range of 4.23%, which is within the industry norms.

g) Further, it submitted that its case should be adjudicated in line with the decisions of;

i) Smit Sheth (38 taxman.com 385)

ii) Shri Madhukant B. Gandhi vrs. ITO (ITA No. 1950/Mum/2009).

h) Further, it submitted that the entire income earned by them are eligible profit, which is deductible u/s 80IA(4) of the Act, any increase in profit due to disallowance will also deductible u/s 80IA(4) of the Act.

11. After considering the above submission, Ld. CIT(A) observed that assessee has failed to adduce the substantial evidence in support of purchases made by him from M/s Steelcon Infratrade Pvt. Ltd, despite AO giving sufficient amount of time to the assessee to adduce the genuineness of the purchases, the

assessee failed to adduce any evidence pertaining to the unexplained purchases. Accordingly, Ld. CIT(A) confirmed the disallowance of purchased, however he allowed the increase in profit by treating the increased profit eligible for deduction u/s 80IA(4) by relying on the decision of Jurisdictional ITAT in assessee's own case.

12. With regard to deduction u/s 80IA(4), assessee filed a detail submission before Ld. CIT(A), which is reproduced below:-

2. During the captioned assessment year, the appellant has claimed deduction under Section 80IA(4) of the Act on account of 10 projects namely the following-

Project Name	Total Turnover	Profit (PBT)
<i>MCGM TANSA PIPE LINE</i>	<i>59,90,75,279</i>	<i>3,89,39,893</i>
<i>MICROTUNNELING PROJECT</i>	<i>9,52,61,792</i>	<i>57,25,234</i>
<i>NAGPUR MUNICIPAL CORPORATION</i>	<i>50,60,55,044</i>	<i>3,79,54,128</i>
<i>SARDAR SAROVAR NARMADA NIGAM</i>	<i>57,27,71,604</i>	<i>4,00,94,012</i>
<i>WATER RESOURCES DEPT.- GOVT OF MP (HARSHI CANAL)</i>	<i>53,72,22,734</i>	<i>3,76,05,591</i>
<i>WATER RESOURCES DIVN., SHIVPURI (MAHUAR DAM)</i>	<i>60,64,94,635</i>	<i>4,85,19,571</i>

<i>SURATGARH SRIGANGANAGAR TOLL ROAD</i>	<i>80,50,65,791</i>	<i>11,27,09,211</i>
<i>JIND HARYANA BORDER TOLL ROAD</i>	<i>95,29,29,927</i>	<i>13,34,10,190</i>
<i>CHOMU MAHALA TOLL ROAD</i>	<i>1,19,16,71,432</i>	<i>16,68,34,000</i>
<i>SOLAPUR MUNICIPAL CORPORATION</i>	<i>59,98,49,447</i>	<i>4,49,88,709</i>
<i>Total</i>	<i>6,46,63,97,685</i>	<i>66,67,80,539</i>

3. Further, it is pertinent to note that the appellant has claimed deduction u/s 80IA of the Act for Suratgarh Toll Road Project, Jind Haryana Toll Road Project and Solapur Road Project for the first time in the captioned assessment year. Also, with respect to the other remaining projects, claim has is being continued from previous years..

4. During the course of assessment proceedings, with reference to the disallowance of such claims in earlier years (from A.Y. 2003-04 to A.Y. 2012-13), the AO sought explanation as to why the said claim should not be disallowed in the captioned assessment year too.

5. In response to the same, the appellant company had filed an elaborate reply emphasizing mainly on the fact that in the case of B.T.Patil & Sons Belgaum Construction Pvt. Ltd., the Division Bench has decided the matter in favour of the assessee relying on Hon'ble Bombay High Court decision in the case of ABG Heavy Industries Ltd and also that Hon'ble ITAT has decided this issue for 'A.Y. 2008-09 in favour of the appellant after considering the division bench order of B.T.Patil & Sons Belgaum Construction Pvt. Ltd. The AO has reproduced the entire submission of the appellant in the assessment order. The discussion on this issue

begins from page number 7 paragraph 5 of the assessment order.

6.*****

7. *Each of the above reasons are being addressed herewith:*

Reasons stated by the A.O. for disallowing deduction u/s. 80IA(4) of the Act is on merits. Hence, at the outset^ we would like to bring to the notice of your Honour that presently the issue of deduction u/s. 80IA(4) of the Act has been decided by the Hon'ble ITAT in favour of the assessee for A.Y. 2008-09. The copy of the said decision is enclosed in the paper book. In the said decision, Hon'ble Members had gone through the tender documents of each of the project and after ensuring that all the four criteria's as laid down in the Division Bench of B.T. Patil, are fulfilled in each of the project and thereafter arrived at a conclusion that the assessee is eligible for deduction u/s. 80IA(4) of the Act. With this background, rest of the reasons for disallowance are rebutted herewith.

The allegation of the A.O. is that the appellant is a contractor executing work contract as referred in Explanation to Section 80IA of the Act and is not a developer as all the criteria as laid down in the decision of B.T. Patil are not fulfilled in the instant case.

8. *The presence of following 4 criteria has been held as important by Hon'ble Division Bench of B.T. Patil in order to arrive at a conclusion that the assessee is a developer –*

** Involvement in making investment*

** Shouldering Technical Risk*

** Liquidated Damages*

** Employment of Technical and Administrative Qualified Team*

9. *So far as the criteria of "Liquidated damages" and "Employment of technical staff" are concerned, the learned A.O. after perusal of tender documents has stated in the assessment order that these two criteria are fulfilled.*

10. *With respect to other two criteria's i.e. "Involvement in making investment" and "Shouldering Technical Risk", the interpretation of AO widely differs from the interpretation as adopted by the appellant. According to the appellant, "Involvement in making investment" refers to providing security deposit, bank guarantee, paying interest of mobilization advance or advance for Plant & Machinery received from the principal agency, getting material or labour at its own cost etc. Whereas A.O. has observed that the appellant has raised running bills (RA Bills) to principal agencies and got the payment, to that extent investment is very limited. Further, A.O. observed whatever construction done by the assessee, the assessee can claim payment filing suit irrespective of the fact that whether the principal agency to earn or realize money from the facility. In this connection we would like to state that it is a common practice for undertaking any government contracts to raise running bills once work gets certified. This is the revenue for the assessee and it has no connection with the investment by the assessee. The investment is usually in the form of retention money, security deposits, bank guarantee, etc. Thus, the concept of Investment risk has been misinterpreted by A.O.*

11. *This aspect of "involvement in making investment" has been considered by the Hon'ble ITAT*

in its order dated 12.01.2015 for appellants own case for A.Y. 2009-10 in Page 10 onwards running from Paragraph 13 to 18 of the said order. The relevant part is reproduced for your honour's ready reference.

"13. It is crystal clear from the above clause that the financial risk has been undertaken by; the assessee. UIL has maintained a security deposit, maintained bank guarantees and retention monies with NFR, thus it placed NFR in a favourable position by undertaking a part of the financial risk. This criteria enhances the stand of the appellant for being the developer of the project so to shoulder financial risk involved in the project to be undertaken.....

15. It is clear from the above provisions that any advance given by NFR to UIL would be treated not as a payment of contract amount but as an interest bearing advance at a rate of 18% p.a. Thus UIL has also faced financial risk.....

17. From the above clause; we can gather that there was over all involvement of the assessee in the tendered project. Such involvement in the spheres of material, labour and technical arrangements to be made for the project strengthens the claim of appellant to be a developer of the infrastructure and not a mere works contractor.

18. From the above clause, we also gather that the assessee required to source the; material and men required to complete the project and no reimbursement of the same would be separately made by the NFR to UIL. This shows that UIL has been awarded a wholesome

project and not just construction work. UIL is legally bound to source quality material as per the material specifications laid down in the agreements and hence liable for any deviation. The above clause shows that UIL was not merely undertaking a construction contract because if it was, it would not be given the task to source the material but only be given task to provide labour. Hence UIL is a developer and not a contractor."

12. *Similarly second criteria of "Shouldering technical risk" have been interpreted differently by A.O. as against interpretation adopted by the appellant. In the view of the appellant, the "shouldering of technical risk" refers to adopting safety precaution at the time of execution of the contract. Whereas the A.O. is of 'the opinion that execution of work by the appellant has been done in accordance with design and specification provided by the principal agency and to that extent, technical risk has not been undertaken by the appellant. In government contracts, even if responsibility for 'design' has been undertaken by the assessee, there is always a clause in the tender document to get these designs approved from the principal agency. Thus, interpretation of whoever undertakes the design work, the risk thereof lays with the principal agency only, as the approval is taken from such agency. Thus, the interpretation of the A.O. that technical risk is not undertaken by the assessee for this reason is incorrect.*

13. *This aspect of "shouldering of technical risk" has also been considered by Hon'ble ITAT in its order dated 12.01.2015 for appellants own case for A.Y. 2009-10 on Page 12 Para 19 to 21 of the said order. The relevant part is reproduced for your honour's ready reference –*

"20. It is crystal clear from the above clauses that the duty of assessee company UIL to make sure appropriate safeguards are in place to ensure the safety of the labourers undertaking the job. Thus, UIL is simultaneously responsible for security measures too, hinting at the overall responsibility of the project rests within UIL.

21. The overall reading of these clauses indicate that the assessee was to bear all risk related to technical aspects and safety criteria's involved in the project."

14. Though the above remarks of the Hon'ble ITAT is with respect to project of Northern Frontier Railway (NFR), the same type of clauses are available in the tender documents of all the projects which are undertaken by the appellant and to that extent, it could be stated that the aspect of involvement in making investment / financial risk 85 shouldering of technical risk is present in all the projects and thus these criteria may please be treated as fulfilled. The copies of tender documents were furnished before the learned A.O. The same are produced for verification of your honour too.

15. The reference of Jodhpur ITAT in the case of Om metals was made by the appellant in the context of describing legislative history i.e. Explanation was first inserted vide Finance Act, 2007 w.e.f. 1.4.2000, which is also referred to "work contract" not being eligible for deduction u/s. 80IA (4) and after considering the said Explanation also Hon'ble Jodhpur ITAT had decided in favour of the assessee stating that infrastructure projects would be eligible for deduction u/s. 80IA(4). Though this decision is not directly applicable to the appellant company in the light of the amendment in the said Explanation vide Finance (No. 2) Act, 2009, this decision certainly have persuasive

value, in spite of the amendment, the legal position has not materially changed. Even in that decision, the relief has been granted to the assessee for the reason that overall responsibility has been taken over by the assessee, thus eligible to claim deduction and to that extent, it could be stated that the reliance on this judgement is not misplaced by the appellant.

16. *In the decision of Koya & Construction Co. Pvt. Ltd., the facts were that the assessee had undertaken design, developing, operating and maintaining, financial involvement and defects, correction and liability period etc. In such scenario, it was held by Hon'ble Hyderabad ITAT that it cannot be simply treated as "work Contract". The learned A.O. is of the opinion that since in the aforesaid case, design has been the responsibility of the assessee, which is not present in the instant case. Further, in that case, the assessee has undertaken, developing, operating and maintaining of project, whereas in the instant case, operating and maintaining has not been the responsibility of the appellant. Because of these reasons, this decision is not applicable to the appellant company.*

17. *In this respect, it is respectfully submitted that the Hon'ble ITAT has tried to make a point that by undertaking all these activities, the appellant has taken overall responsibility. Merely because in the instant case, design work has not been undertaken by the appellant, that itself does not debar the appellant from claiming deduction u/s. 80IA (4). It is the prerogative of the principal agency to -decide whether to award "designing" work also to the appellant. That alone cannot be the criteria to disallow the deduction u/s. 80IA(4).*

18. *We would further like to place reliance on the decision of the Apex Court decision in the case of Sun Engineering (198 ITR 297).*

19. *Thus the learned A.O.'s view to disallow deduction u/s. 80IA(4) merely for not undertaking "design" work is erroneous.*

20. *Further, deduction u/s. 80IA(4) is allowable if the infrastructure facility is Developed or operated and maintained or developed, operated and maintained. In the case of Koya 85 Construction (supra), the assessee had undertaken development, operation and maintenance, whereas in the instant case, the appellant has undertaken merely development of infrastructure facility, which is very much an activity eligible as deduction as contemplated in Section 80IA(4).*

21. *In view of the above, the reliance placed on the case of ITAT decision of Koya & Construction Co. Pvt. Ltd. Is very well placed and to that extent, we beg to differ from the view of the learned A.O. that the reliance is misplaced.*

22. *Further the A.O. has stated that the appellant is undertaking "work contract " that also is proved from the fact that the appellant is following accounting standard applicable for "work contract" and that the principal agency deducts tax u/s. 194 C, while making payment to the appellant. In this connection, it is stated that it is mandatory for the appellant company to follow Accounting Standard for Construction Contracts and its mandatory for Principal Agency to deduct tax failing which penal provisions would be attracted. However, merely because under certain provisions, Contract awarded by Government is treated as "work Contract", that cannot be a decisive factor decide the eligibility of the appellant to claim deduction u/s. 80IA(4). So far as,*

conditions prescribed u/s. 80IA(4) are fulfilled in terms of the principles laid down in the judicial pronouncements, the appellant is eligible to claim, irrespective of the nomenclature used for these type of contracts in the common parlance.

23. *Further, we would like to state that, the appellant company is in the business of construction of Infrastructure facility and is claiming benefit u/s 80IA(4) of the Act, since the past many years.*

24. *Further, the said deduction u/s 80IA(4) of the Act was disallowed in various assessment years, but the same was allowed by the appellate authorities. The below mentioned table highlights the above mentioned fact –*

<i>Sr. No</i>	<i>Assessment Year</i>	<i>Deduction claimed u/s 80IA</i>	<i>Deduction allowed u/s 80IA</i>	<i>Allowed before CIT(A)/ITAT</i>
1.	2004-05	Rs. 1,99,098	1,99,098	ITAT
2.	2005-06	Rs. 1,10,65,845	Rs. 1,10,65,845	ITAT
3.	2006-07	Rs. 9,73,68,452	Rs. 9,73,68,452	ITAT
4.	2007-08	Rs. 10,67,64,503	Rs. 10,67,64,503	ITAT
5.	2008-09	Rs.5,50,13,614	Rs.5,50,13,614	CIT(A)
6.	2009-10	Rs. 4,60,25,314	Rs. 4,60,25,314	ITAT
7.	2006-07 to 2012-13 - Block Assessment	Rs. 96,66,35,656	Rs. 96,66,35,656	Pending before ITAT

We request your goodself to kindly delete the disallowance made by the AO."

13. After considering the submission of assessee, Ld. CIT(A) deleted the disallowance made by the AO with the following observations:-

6.3.1 I have considered the stand of the A.O as well as the submissions of the appellant carefully. I have also gone through the assessment order, the AO has disallowed the deduction u/s 80IA(4) of the Act by holding that the appellant does not fulfill 2 of the 4 criteria laid down by the decisions relied by the appellant. The AO, vide para 5.4 of his order, has held that the appellant does employ technical and administrative personnel and is liable for liquidated damages. However, he was of the view that the appellant is not making investment and is not shouldering technical risk. In response to the same, the appellant has filed a written submission in the form of a chart before me highlighting the relevant clauses in the tender agreements for each of the projects undertaken by it evidencing that all the 4 criterias are fulfilled by it. The appellant has also produced the copies of the tender documents before me to explain the facts. The relevant chart showing various risk and other facts are explained as under:

<i>Project Name</i>	<i>Financial Risk</i>	<i>Technical Risk</i>	<i>Liquidated damages</i>	<i>Qualified Team</i>
<i>Suratgarh Sriganganagar Toll Road</i>	<i>Para 24.1 of the Concession Agreement - Concessionaire undertakes to achieve financial closure for the project cost within 180</i>	<i>Para 12.2 of the Concession Agreement - the concessionaire shall bear all the cost in order to maintain the smooth functioning of</i>	<i>Para 4.3 of the Concession Agreement - Concessionaire is liable to pay for the damages in case of delay of conditions precedent if the same are</i>	<i>Para 5. 5 of the Concession Agreement - Concessionaire ensures that the personnel engaged are properly trained</i>

	<p><i>days of the agreement or else damages per day is liable to be paid.</i></p> <p><i>Para 41.1- Concessionaire is liable to bear the increase in costs due to factors other than change in law</i></p> <p><i>Para 9.1 - Concessionaire shall for the purpose of performance obligations provide an irrevocable guarantee amounting to Rs. 11.2 crs</i></p> <p><i>Para 5.1 - Concessionaire at his own cost shall procure finance for and undertake the design, engineering, construction, etc.</i></p> <p><i>Para 10.6 - concessionaire shall bear all</i></p>	<p><i>the project during the construction period.</i></p> <p><i>Para 13.5.3 - the concessionaire shall have to borne the maintenance cost (also known as preservation cost) during the period of suspension.</i></p> <p><i>Para 16.3.2 - all the expenses incurred due to change in scope order during the construction period shall be borne by the concessionaire .</i></p> <p><i>Para 39 - the concessionaire shall be responsible for all defects and faults for a period of 120 days after completion of the project.</i></p>	<p><i>unfulfilled within a span of 180 days</i></p> <p><i>Para 17.8 - in case of delay in meeting the maintenance obligations, the authority shall be entitled to recover such damages from the concessionaire.</i></p>	
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	<p><i>costs and charges for the any special or temporary right of way required in connection to the site.</i></p> <p><i>Para 12.4.2 - if the concessionaire fails to achieve the project milestone within a period of 90 days, then the concessionaire shall be liable to pay damages at a rate of 0.1%.</i></p>			
<p><i>Solapur Municipal Corporation</i></p>	<p><i>Para 40.2 of section 5 of the tender document - rise or fall in costs shall not be compensated by the employer and shall be borne by the concessionaire .</i></p> <p><i>Para 43 of Section 5 - security deposit shall be provided to the employer and shall be valid for a period of 30 days from the end of the defect liability period.</i></p>	<p><i>Para'12 of Section 5 of the Tender document - all the damages pertaining to the property or any personal injury in during or in consequence to the project are shall be liable in the hands of the concessionaire</i></p>	<p><i>Para 41 of Section 5 of the tender document - the liquidated damages shall be borne in its entirety by the concessionaire himself and shall be deducted by the employer from the payments to be made to the concessionaire</i></p>	<p><i>Para 1 of Section 5 sub-clause F of the tender document - the concessionaire shall make his own arrangements for labour and staff</i></p>

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	<i>Further, security deposit shall also be provided in the case of unbalanced tenders.</i>			
<i>Chomu Mahla</i>	<p><i>Para 5.1 of the Concession Agreement - Concessionaire at his own cost shall procure finance for and undertake the design, engineering, construction, etc.</i></p> <p><i>Para 41.1- Concessionaire is liable to bear the increase in costs due to factors other than change in law</i></p> <p><i>Par a 24. 1 of the Concession Agreement - Concessionaire undertakes to achieve financial closure for the project cost within 180 days of the agreement or else damages per day is liable</i></p>	<p><i>Para 39 of the Concession Agreement - the concessionaire shall be responsible for all defects and faults for a period of 120 days after completion of the project.</i></p> <p><i>Para 12.2 -the concessionaire shall bear all the cost in order to maintain the smooth functioning of the project during the construction period.</i></p>	<p><i>Para 4. 3 of the Concession Agreement - Concessionaire is liable to pay for the damages in case of delay of conditions precedent if the same are unfulfilled within a span of 180 days</i></p>	<p><i>Para 5.5 of the Concession Agreement - Concessionaire ensures that the personnel engaged are properly trained</i></p> <p><i>Para 5.4 - concessionaire shall undertake and employ foreign personnel at their own cost.</i></p>

	<p><i>to be paid Para 9.1 - Concessionaire , shall for the purpose of performance obligations provide an irrevocable guarantee amounting to Rs. 6.71 crs Para 12.4.2 - if the concessionaire fails to achieve the project milestone within a period of 90 days, then the concessionaire shall be liable to pay damages at a rate of 0.1%.</i></p>			
<i>Jind Haryana Toll Road</i>	<p><i>concessionaire fails to achieve the project milestone within a period of 90 days, then the concessionaire shall be liable to pay damages at a rate of 0.1%. , Para 24.1 of the Concession Agreement - Concessionaire undertakes to achieve</i></p>	<p><i>Para 39 of the Concession Agreement - the concessionaire shall be responsible for all defects and faults for a period of 120 days after completion of the project. Para 12.2 - the concessionaire shall bear all the cost in order to</i></p>	<p><i>Para 4.3 of the Concession Agreement - Concessionaire is liable to pay for the damages in case of delay of conditions precedent if the same are unfulfilled within a span of 180 days</i></p>	<p><i>Para 5. 5 of the Concession Agreement - Concessionaire ensures that the personnel engaged are properly trained Para 5.4- concessionaire shall undertake and employ foreign personnel at their own cost.</i></p>

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	<p><i>financial closure for the project cost within 180 days of the agreement or else damages per day is liable to be paid</i></p> <p><i>Para 41.1- Concessionaire is liable to bear the increase in costs due to factors other than change in law</i></p>	<p><i>maintain the smooth functioning of the project during the construction period.</i></p>		
<p><i>Microtunneling Project</i></p>	<p><i>Para 31.1 of the tender document - the contractor is supposed to provide 5% of performance security in the form of bank guarantee within 21 days of the bid.</i></p> <p><i>Para 70 - the contractor shall bear all the costs in case any loss or damage is caused during the period of contract.</i></p> <p><i>Para 23.2 - the</i></p>	<p><i>Para 69 of the tender document - the contractor shall be liable to bear the cost of any defects post the completion of the project, in case the defect hasn't been rectified within the specific given time.</i></p> <p><i>Para 19.1 of the tender document - any loss or damage to physical property and personal injury shall be borne</i></p>	<p><i>Para 65 of the tender document - the contractor shall be held liable for the payment of any liquidated damages</i></p>	<p><i>Para 1 of the additional special conditions of the tender document - the contractor shall at his own cost make all arrangements for labour, and staff.</i></p> <p><i>Para 21.2- the contractor shall be responsible to hire the concerned staff in order to complete the project</i></p>

	<i>contractor shall be liable for the increase in cost that could have been avoided.</i>	<i>by the contractor</i>		
<i>Water resources department – Government of MP (Harshi Canal)</i>	<p><i>Para 2. 8 of the tender document - the contractor will have to provide a security deposit of 5%</i></p> <p><i>Para 2.35 - the contractor shall have to bear the cost in the case there is any escalation in the cost price.</i></p> <p><i>Para 4.3.37 - the contractor shall be held liable in the case of breach of contract</i></p>	<p><i>Para 4.3. 17 of the tender document - The contractor shall bear the damages for 12 months after the certificate has been issued.</i></p>	<p><i>Para 3.9 of the tender document - any damages incurred during the period of the contract shall in its entirety be borne by the contractor</i></p> <p><i>Para 4.3.2 - the contractor shall bear the entire liquidated damages.</i></p>	<p><i>Para 3. 16 of the tender document - the contractor at his own cost make arrangements for its labour force.</i></p> <p><i>Para 3.22- the contractor shall employ technical personnel at his own cost for the purpose of getting the work done.</i></p>
<i>Mahur Dam</i>	<p><i>Para 2.35 of the tender document - the contractor shall have to bear the increase in cost.</i></p> <p><i>Para 2.8 of the tender document - the security deposit</i></p>	<p><i>Para 4.3. 17 of the tender document - the contractor shall have to make good in case there are any damages to physical property or injury to personnel for 12 months</i></p>	<p><i>Para 3. 9 of the tender document - the contractor shall be solely liable for any damages caused during the completion of the project or post the completion of the project.</i></p>	<p><i>Para 2. 45 of the tender document- the tender shall be submitted with the declaration that the concessionaire hqs successfully carried out large works of this nature</i></p>

	<p><i>shall be 5 (five) percent of the amount of contract</i></p> <p><i>Para 4.3 the contractor shall have to pay a sum of 0.5% of the contract price in case of any delay in the completion of the project.</i></p>	<p><i>after completion of the contract.</i></p>	<p><i>and has adequate organization, machinery and experienced personnel to handle jobs of this type and magnitude. The technical staff should be available at site whenever required by engineer in charge.</i></p> <p><i>Para 3.22 of the tender document- the concessionaire will employ or produce evidence of having or has employed qualified technical person not below the rank of a Sub engineer/ graduate engineer from an institution recognised by the government of Madhya Pradesh and furnish all details to the engineer in charge in the</i></p>
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				following format.
<i>Nagpur Municipal Corporation</i>	<i>Para A5.1 of the tender document - the contract will have to give a performance security in the form of bank guarantee amounting to Rs. 1,01,00,000 within 15 days of receipt of work. Para A7 - apart from certain specified products, the concessionaire shall be liable to pay any amount pertaining to the increase in cost.</i>	<i>Para A6. 1.17 of the tender document - the concessionaire shall bear all the cost in order to clear the utilities after completion of the project</i>	<i>Para A6. 1.19 of the tender document - the concessionaire shall indemnify NMC for any damages, cost, charges, etc.</i>	<i>Para A6. 1.19 of the tender document -the contractor shall employ at his own cost the required personnel</i>
<i>Sardar Sarovar Narmada Nigam Limited</i>	<i>Clause 6 of the tender document - security deposit shall be submitted by the concessionaire amounting to Rs. 10% of the contract price. The security deposit shall be in the form of bank guarantee.</i>	<i>Clause 30 of the tender document - the contractor shall make good at his own expense the damages if any being incurred during a period of 24 months from the date of issue of certificate to the contractor. The contractor shall also be</i>	<i>Clause 56 of the tender document - the contractor shall be liable to pay a sum of 0.1% of the contract per day for delay up to the date of completion of the project as liquidated damages.</i>	<i>Clause 47 of the tender document - the concessionaire shall be wholly Liable for any compensation to be paid to his workmen under the workmen compensation act, 1923. The concessionaire is liable to pay</i>

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	<p><i>Clause 31 -the concessionaire at his own expense shall defend any action or other legal proceedings that may arise in the course of completion of the project due to some physical damage or personal injury.</i></p> <p><i>Clause 34 - the concessionaire shall indemnify the nigram against all actions, suits, claims or damages that may arise in the course of completion of the project.</i></p> <p><i>Clause 38 - price adjustments shall be applicable for only a certain period of time. For the period other than that is specified, the concessionaire shall have to bear the entire escalation cost.</i></p>	<p><i>liable to make good the damages during the completion of the project.</i></p>		<p><i>in his entirety for the employment of trained personnel.</i></p>
<i>MCGM Tansa Pipe Line</i>	<i>Para 20 of the tender</i>	<i>Para 44 of the tender</i>	<i>Para 65 of the tender document</i>	<i>Para 28 of the tender</i>

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	<i>document - the concessionaire shall pay a security deposit / performance security up to a sum of 2% of the contract price.</i>	<i>document - the concessionaire shall indemnify and keep them indemnified against all losses and claims for damage to physical property or personal injury. Para 70 - the concessionaire shall be responsible for the damages for 12 months after completion of the project.</i>	<i>-the concessionaire shall be required to compensate the employer in case of any delay during the process of work. Para 68a - the concessionaire shall have to make good at his own expense within such period for the defects caused during the esteemed project</i>	<i>document - the contractor shall at his own cost hire skilled and experienced labourers for the job to be carried out at the site at hand.</i>
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6.3.2 *I have considered the above chart and the tender agreements as submitted by the appellant. The said clauses as highlighted by the appellant indicate that all the 4 criteria as laid down by the decisions relied by it are fulfilled by the appellant. The AO has held that the appellant is not fulfilling the criteria of making investment and that the appellant is fulfilling the criteria of making investment and shouldering technical risk and thus, the appellant is entitled for deduction u/s 80IA(4) of the Act. The issue of allowability of benefit to the assessee u/s 80IA(4) was also considered by the Hon'ble ITAT in the appellant's own case in earlier assessment years (supra). Therefore, keeping in view of the totality of facts, and circumstance case, the issue being a covered matter in favour of the appellant, the A.O is directed to delete the*

disallowances made on this account and allow the claim of the appellant.

In the result, appellant's appeal is hereby allowed.

7. In the result, appeal is partly allowed.

14. Aggrieved with the above order, revenue as well assessee preferred their respective appeals before us. The revenue is in appeal with the following grounds:-

1. "On the facts & in the circumstance of the case & in law the Ld. CIT(A) has erred in granting deduction u/s 80IA(4) to the assessee in respect of addition made on account of unexplained/bogus purchases of Rs.41,04,746/- ignoring the proviso to section 69C of the Income Tax Act, 1961".

2. "On the facts & in the circumstance of the case & in law the Ld. CTT(A) has erred in granting deduction u/s 80IA(4) to the assessee in respect of addition made on account of unexplained/bogus purchases of Rs.41,04,746/- ignoring the fact that the income brought to tax u/s 69C is not derived from infrastructure activity".

3. "On the facts & in the circumstance of the case & in law the Ld. CIT(A) has erred in granting deduction u/s 80IA(4) of Rs. 66,67,80,539/- to the assessee ignoring the provisions of section 80IA(4) of the Income Tax Act, 1961".

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary.

15. The revenue is aggrieved because Ld. CIT(A) has given relief to the assessee u/s 80IA(4) of original claim as well as increased eligible profit due to disallowance of bogus purchase. The assessee is in appeal before us objecting for sustaining the disallowance of bogus purchase, even though there is no impact on taxable income.

16. Before us, Ld. DR with regard to ground no.1 submitted that there was a search and seizure operation undertaken in assessee as well as certain suppliers of bogus transaction and the biller Shri Devang K. Gandhi himself confirmed that it is accommodation entries and the biller retracted the statement after 13 months. According to him, such delay in retraction has no legal impact. Further, He submitted that assessee has not produced any evidence in support of the above said purchases to be treated as genuine. Further he supported the findings of Ld. CIT(A) on purchase being bogus and however, he objected to the findings of Ld. CIT(A) for allowing the above said addition u/s

80IA(4) of the Act by considering the same as part of eligible profit. He brought to our notice the findings of Ld. CIT(A) in page 15-16 of its order and further he submitted that it has no proof that the purchases made by the assessee are pertains to the eligible business of the assessee.

17. With regard to Ground No. 2 & 3, Ld. DR brought to our notice the detail findings of AO in its order and he submitted that assessee is only a work contractor and not a developer and he objected to the findings of Ld. CIT(A) in this regard. He further submitted that Ld. CIT(A) relied on the order of Jurisdictional ITAT and submitted that department has gone on further appeal before Jurisdictional High Court against the order of Hon'ble ITAT. Ld. DR vehemently supported the finding of AO that assessee is only a works contractor and it does not fulfil the eligibility criteria as given in section 80IA(4) of the Act.

18. On the other hand, Ld. AR of the assessee submitted that during the search operation and post search statement was recorded from the director and at that time the director could not substantiate the purchases. He further submitted that the AO

heavily relied on the statement of Shri Devang K. Gandhi, however Shri Devang K. Gandhi retracted the above given statement by filing a proper affidavit. He filed a copy of the above said affidavit. He further submitted that assessee was asked to substantiate the purchase and in this regard, assessee filed a ledger copy, invoices, delivery challan and payment mode, which is through banking channel. He brought to our notice para 2.4 of the order of Ld. CIT(A) to substantiate that the above said information were already submitted before AO and AO dismissed the above said documents without giving any reasons /findings. He further brought to our notice para 4.5 and 5.3.1 of the order of Ld. CIT(A) and Ld. CIT(A) dismissed the contention of the assessee, even though assessee has submitted the relevant information before the AO and Ld. CIT(A) failed to give proper reasons in his order. Further, he submitted that the whole addition is based only on statement of Shri Devang K. Gandhi and there are no other reasons for sustaining the addition. He further submitted that the quantity and value were already certified by tax auditor and by the Sales Tax Authorities. There is

no other evidence against the assessee nor any findings by the AO that the cash was withdrawn and came back to the assessee. He relied on the decision of Coordinate Bench of ITAT in the Case of M/s Concept Communication Ltd Vrs. DCIT (ITA No. 2800-2804/Mum/2016) and Dr. Amol Ramchandra Pawar vrs. ITO (ITA No. 934/PN/2014).

19. With regard to Ground No. 1 of department appeal, Ld. AR supported the findings of Ld. CIT(A) that the assessee is involved in only infrastructure development and the profit derived by the assessee is eligible profit, therefore assessee has claimed u/s 80IA(4) of the Act.

20. With regard to Ground No. 2 & 3, Ld. AR submitted that Hon'ble ITAT always held that assessee is eligible for deduction u/s 80IA(4) of the Act and further Ld. CIT(A) has independently analyzed the findings of AO and gave a clear finding that assessee's business is specific business as per section 80IA of the Act and it is eligible to claim deduction u/s 80IA(4) of the Act.

21. In the rejoinder, Ld. DR submitted that it is categorical admission by Shri Devang K. Gandhi and even in AY 2008-09, similar disallowances were made and it is in appeal before ITAT and further he opposed the submission of Ld. AR on the retraction of the statement of Shri Devang K. Gandhi. He submitted that the statement of Shri Devang K. Gandhi has been taken u/s 132(4) and it has got independent evidence value and in the retraction statement, it was stated that department exerted pressure which is not true, if so why Shri Devang K. Gandhi retracted after 1 year. Therefore, the reasons given in affidavit cannot be accepted. Even otherwise, assessee has not filed proper documents and details of transportation in support of the goods supplied by the parties.

22. With regard to deduction u/s 80IA, Ld. DR submitted that assessee does not have technical as well as business risk in the transaction carried on by the assessee and findings of Ld. CIT(A) is general about business risk, therefore, he vehemently opposed the findings of Ld. CIT(A).

23. Considered the rival submission and material placed on record, we notice from the records that AO made the addition on bogus purchases disregarding the documents submitted by the assessee in support of the purchases made. It is fact that the addition was confirmed by AO based on the statement of Shri Devang K. Gandhi and it is also a fact that assessee has already declared profit which is matching to industry average as well as assessee is carrying on eligible business and aware of the fact that its business is eligible to claim deduction u/s 80IA(4) of the Act, therefore in our view, it is not necessary for the assessee to engage in taking accommodate entry to the value of Rs. 40 lakhs in order to reduce the eligible profit. Considering the volume of the business of the assessee, the disallowance made by the AO has no impact on the profit nor it is necessary for the assessee to reduce any profit, which is eligible to be claimed u/s 80IA(4) of the Act. It is on record that assessee has already submitted the relevant documents in support of the purchases. Further, we notice that Ld. CIT(A) has not verified any of the above aspects and at the same time, we notice that Ld. CIT(A) allowed the

increase in eligible profit because of sustaining the disallowance made by the AO u/s 80IA(4) of the Act. Since, there is no impact on sustaining the bogus purchases on the taxable income, Ld. CIT(A) might not have given importance to verify the relevant documents submitted by the assessee before him as well as AO and since, assessee has already got the benefit from the order of Ld. CIT(A), therefore we choose not to disturb the findings of Ld. CIT(A).

24 Further, with regard to Ground No. 2, we notice that assessee has not carried on any other business other than business of infrastructure and we draw strength from the findings of Coordinate Bench in assessee's own case for AY 2009-10 that the assessee's business is eligible to claim deduction u/s 80IA(4) of the Act. Since there is no change in the activities of the assessee during this assessment year in reference to earlier assessment years. For the clarity, we are reproducing the findings of Coordinate Bench in earlier assessment year i.e. 2009-10:-

6. We have considered rival contentions, carefully gone through the orders of the authorities below and found from the record that the assessee is engaged in

developing infrastructure projects such as roads, dam, bridges, subways and buildings etc. The assessee company has carried out development work awarded by certain Govt Authorities, mentioned above and the assessee claimed deduction u/s.80IA on the profits derived from the construction and development of the above, however, the AO did not convince with the submission of the assessee and disallowed the same and in appeal the CIT(A) upheld the action of the AO, against which the assessee is in further appeal before us. Now, we shall take into consideration the facts whether the assessee is entitled to deduction u/s.80IA(4). We found that the works were allotted to the assessee company by the authorities on the basis of tenders filed by the assessee with respective departments fulfilling all the conditions of Section 80IA(4) of the Act. Section 80IA(4) of the Act is reproduced as under :-

“80IA (4A) This sec. applies to any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfils all the following conditions namely

(i) the enterprise is owned by a company registered in India or by a consortium of such companies;

(ii) the enterprise has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;

(iii)the enterprise starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995."

The position has been further explained by the Explanation inserted by the Fin.(No.2)Act, of 2009 with retrospective effect from 01.04.2001 and further amendments made from time to time. As per the Explanation nothing contained in the sub-section shall apply to any undertaking which executes a work contract awarded by any person (including Central or State Government).

7. From the record, we found that during the relevant A.Y., the assessee has claimed deduction u/s 80IA of the Act On account of 3 projects namely Northern Frontier Railway (NFR), Indira Sagar Project- PKG 60, Haryana State Roads and Bridges Development Corporation Ltd, (HSRDC totaling to Rs. 4,60,25,314/-

8. We have carefully gone through the tender bidding/documents executed re assessee for each of the project NFR Project was given by Ministry of Railways for construction of railway tunnel. Indira Sagar Project -PKG 60 was given by Government of Andhra Pradesh, Irrigation and CAD. Department for development of irrigation canals. HSRDC project was given by Haryana State Roads and Bridges Development Corporation Ltd. for widening and upgradation of Rai Nahara Bahadurgarh Road (MDR - 138) & Rohtak Kharkhoda Delhi border)SH-18). The assessee has claimed deduction u/s 80IA for HSRDC project for the first time in AY 2009-10. However, in respect of NFR and Indira Sagar Project Pkg 60, the assessee has been claiming deduction u/s 80IA since AY 2005-06 and AY 2006- 07 respectively, which has been allowed by Murnbai ITAT vide order dated 10.10.2014 (pertaining to AY 2003-04 to AY 2007-08). The AO disallowed the deduction claimed u/s 80IA of

the Act, heavily relying upon retrospective amendment of 2009 and the Third Member ruling of the Mumbai ITAT, in the case of B.T. Patil & Sons Belgaum Construction Pvt. Ltd. [SOT 171 (MUM.) (LB)](where the larger bench after considering the retrospective amendment of 2009, treated the assessee as a works contractor and thereby ruled against the assessee. By the impugned order, the Id. CIT(A) confirmed the action of the A.O.

9. The issue under consideration is whether the assessee is a work contractor or developer. To decide the same, it is imperative to analyze the benchmark ruling given by the Pune divisional bench vide order dated 28.02.2013 in the case of B.T. Patil & Sons Belgaum Constructions Pvt Ltd (ITA No. 1408 & 1409/PN/2003 AY 2000-01 & 2001-02), after drawing inference from the decision given by Hon'ble jurisdictional High Court in the case of ABG Heavy Industries Ltd., held as under:

- The opinion of the Third Member of the Mumbai ITAT in the case of B.T. Patil has been overruled by the Hon'ble Bombay High Court that even a contractor is a developer. Thus, the law as interpreted by the Third. Member of the Mumbai ITAT in the case of B.T. Patil is no longer good law.*

- The condition that the assessee company has to actually 'own' the infrastructure facility is not correct interpretation in order to claim deduction u/s 8QIA.*

- As long as the assessee company is undertaking/adhering to the following activities/responsibilities in respect of work executed, it cannot be said that, the assessee is merely a contractor and not a developer;*

i) Undertaking Financial risk by making investment

ii) Shouldering Technical Risk

iii) Liable for Liquidated Damages

iv) Employment of technical and administrative qualified team

• The 2009 amendment made to the 'Explanation' to Section 80IA is not applicable in a case where the assessee undertakes the above-mentioned responsibilities in respect of the work executed.

10. Applying the proposition laid down by Pune Bench of ITAT to the terms of tender /bidding documents of instant case, we found that assessee company had undertaken not only financial risk by making investment, but also undertook technical risk, liability of liquidated damages, employment of technical and administrative qualified team. After going through the tender /bidding documents executed by the assessee, we found that assessee has performed activities of shouldering financial risk, technical risk, undertakes liability of liquidated damages, employment of technical and administrative staff, etc. accordingly assessee is not to be treated as a contractor but a developer. When an assessee is closely associated with the execution including financial involvement, technical involvement, rectifying defects, responsible for correction, appointing staff, etc., assessee is to be treated as a developer and is accordingly eligible to claim deduction u/s 80IA of the Act.

11 . The tender bidding documents are placed on record as per Appendix 1 ,2 & 3 for all the three projects.

12. In respect of Northern Frontier Railway (NFR) project, the assessee has undertaken construction of tunnel from northern frontier railway constituted under Ministry of Railways. The precise work involved is construction of single line BG tunnel No. 1 between 29/940-km 31/875 in between station Sindhu Kumar Paras and Ambasa in connection with Kumarghat Agartala New Railway Line Project. For this project, the assessee has given guarantee period of maintenance for 6 months. The assessee had undertaken financial risk by making investment. The relevant para No. 14.4.2. of the tender/bidding document reads as under:-

"Paras 14.4.2 - The earnest money deposited by the contractors} with his/ their tender will be retained by the Railway as part of the security deposit for the due and faithful fulfillment of the contract by the contractor(s). The balance to make up the security deposit may be deposited by the contractors} in cash. Deposit Receipt. Pay Orders. Demand Drafts of any Scheduled Bank or in the form of irrevocable Bank Guarantee Bond from any Scheduled Bank or may be recovered by percentage @ deductions from the contractor's "on account bills". Provided a/so that in case of S defaulting contractors the Railway may retain any amount due to payment to the contractor on the pending "on account bills" so that the amounts so retained may not exceed 10% of the total value of the contract. The cash deposit recovered from the running account bills can be replaced by an irrevocable Bank Guarantee Bond from any scheduled Bank of equivalent amount in installments of Rs. 1 (one) lakh or more and the cash so recovered shall be refunded to the contractor. The entire security deposit shall be retained till expiry of maintenance period. The

contractor must ensure submission of the Bank Guarantee Bond well in advance suitably extended by the Bank to cover both the contract and maintenance period as provided in the agreement."

13. *It is crystal clear from the above clause that the financial risk has been undertaken by the assessee. UIL has maintained a security deposit, maintained bank guarantees and retention monies with NFR, thus it placed NFR in a favourable position by undertaking a part of the financial risk. This criteria enhances the stand of the appellant for being the developer of the project so to shoulder financial risk involved in the project to be undertaken.*

14. *As per the terms of tender documents (2.1) an advance against purchase of New machinery and equipment which are essentially required for the work Involving a substantial outlay, shall be paid by the Railway to the Contractor and shall be limited to 75% of the purchase price of such equipment or 10% of the contract value, whichever is less (2.2) The advance shall carry rate of interest of 18% per annum (2.4) The advance shall be payable only if the plant and equipments have been brought to site and hypothecated to President of India by a suitable bond and production of purchase vouchers by the Contractor. The plant and equipment shall also be insured for the full value and for the entire period they are required for the work, (2.5) The advance shall be recovered in installments through the on account bills when the value of work executed reaches 15% of the original value of the contract and in full by the time the value of work reaches 75% of the original value of the contract, (2.6) No advance shall be given against old plants and machinery & (2.7) Interest will be recovered on the advance outstanding for the period commencing from the date of payment of advance till the date of*

particular on account bill (through which recovery of principal in effected) and adjusted fully against such on account bills along with pro-rata principal recovery. In the event of any shortfall the same will be carried forward to the next on account bill and will attract interest at 18%.

15. *It is clear from the above provisions that any advance given by NFR to UIL would be treated not as a payment of contract amount but as an interest bearing advance at a rate of 18% p.a. Thus UIL has also faced financial risk.*

16. *Annexure 1(d) provided for sourcing of men and material. The relevant clause reads as under-*

'The Contractor shall at his own expense provide unless specified otherwise in schedule all materials including cement, reinforcement steel and dowel bars required for the works.'

The contractor shall make his own arrangement for all construction plants and equipment tools Including spare parts fuel and consumable stores and all labour required to ensure efficient and methodical execution of the work. The quoted rates shall be inclusive of all charges as such items. The quoted rates shall be inclusive of all charges as such items.'

17, *From the above clause, we can gather that there was over all involvement of the assessee in the tendered project Such involvement in the spheres of material, labour and technical arrangements to be made for the project strengthens the claim of appellant to be a developer of the infrastructure and not a mere works contractor.*

18. *From the above clause, we also gather that the assesses required to source the material and men*

required to complete the project and no reimbursement of the same would be separately made by the NFR to UIL. This shows that UIL has been awarded a wholesome project and not just construction work. UIL is legally bound to source quality material as per the material specifications laid down in the agreements and hence liable for any deviation. The above clause shows that UIL was not merely undertaking a construction contract because if it was, it would not be given the task to source the material but only be given the task to provide labour. Hence UIL is a developer and not a mere works contractor.

19. The assessee has also fulfilled the condition of shouldering technical risk. The clause with regard to

Safety precautions and liability of the contractor reads as under: -

" 2.8.1 The contractor at his own cost shall provide upon the works to the satisfaction of the Engineer in charge and at such places as he may nominate, proper and sufficient life saving, fire fighting and first aid appliances which shall at all times, be available for use,

2.8.2 All the safety precautions for open and underground excavation as per relevant 151 codes as well as 'safety manual' published NHPC, Delhi shall be observed by the contractor/tenderer.

2.8.3 Besides the above, the contractor/tenderer shall be bound to carry out the other instruction of the Engineer in charge which the Engineer in charge may deem necessary for safety arrangements.

2.8.4 The contractor responsibility for safe working shall not be conditioned by any

instructions as may be given to him by Engineer in charge and the contractor/tenderer shall on ascertain and adopt all necessary precautions.

2.8.5. The cost of all safety arrangements including cost of all labor and material tools and plants and shuttering/scaffolding/shoring wherever required is deem to have been included in various rates quoted in schedule of items rates and quantities and nothing extra is payable under this contract.."

20. It Is crystal clear from the above clauses that the duty of assesses company UIL to make sure appropriate safeguards are in place to ensure the safety of the labourers undertaking the job. Thus, UIL is simultaneously responsible for security measures too. hinting at the overall responsibility of the project rests within UIL.

21. The overall reading of these clauses indicate that the assesses was to bear all risk related to technical' aspects and safety criteria's involved in the project.

22. As per the terms of the contract, the assessee was also liable for liquidated damages. The relevant clauses read as under-

"In the event of any tenderer, whose tender is accepted refusing to execute the contract documents as therein before provided the Railway may determine that such tenderer has abandoned the contract and thereupon his tender and the acceptance thereof shall be treated as cancelled and the Rly. shall be entitled to forfeit the full amount of the earnest money and to recover the liquidated damages for such default.

23. In the tender document, the assessee was also made liable for requirement of programme and completion period which reads as under-

"If the work does not commence within specified date of starting or If at the subsequent time the rate of execution falls below the specific programme as indicated above the Railway Administration (Construction organization) will have the power to determine the end of the contract at any stage without incurring any liability on the part of the Railway Administration for any sort of compensation for the money Invested by the contractors) or the loss incurred by him/ them due to such termination of the contract. In all cases of incomplete work either by termination of contract by the Railway Administration under consideration stated above or due to failure on the part of the contractors) to complete the work within stipulated date of completion of the Agreement, the Railway shall be entitled to:

(i) Forfeit the whole or such portion of the security as it may consider and

(ii) Execute the work through any other agency at the risk and cost of the contractor to recover from the contractors) the cost of carrying out the work in excess of the sum which would have been payable according to the certificate of the Engineer to the contractors) under the terms of contract such certificate being final and binding upon the contractors) provided however that such recovery shall be made only when the cost incurred in excess is more than that Security Deposit proposed to be forfeited and shall be limited to the amount by which the cost incurred exceed the security Deposit proposed to be

forfeited. The amount thus to be forfeited or recovered may be deducted from the money then due or which at any time thereafter becomes due to the contractors) by Railway under this or any other contract or otherwise."

24 It Is crystal clear from the above clause that there was specific compensation in the case of breach of contract We found that NFR has surrendered almost the entire liability of developing the impugned project upon assessee Thus, assessee has taken up the entire project along with the obligations that go with it"

25. The terms of tender document with regard to employment of technical and administrative qualified team reads as under:-

"Proficiency of workmen - Annexure 4(a)

"Nozzleman shall have previous experience in the application of shotcrete on atleast two projects of comparable nature and shall work under immediate supervision of a foreman or instructor with at least five years of experience. Proficiency of workmen will be checked by Engineer-in-charge before allowing them to work."

Other technical requirements - Annexure 4(b)

"The Contractor shall be required to set up a Laboratory manned by a qualified technician and Geologist for conducting following test on the soil and rock samples. The cost for setting up laboratory and testing should be taken into account while quoting rate, no separate payment will be made for this. Following tests for assessing rock mass rating by Bieniawski's Method which is very important for deciding the methodology of tunneling and type of temporary

and permanent lining will be conducted as required by site in charge."

26. *The assessee company was also responsible for liability in respect of workers claim - Annexure 4(c) which reads as under: -*

"Contract Labour Act: The Contractor shall observe all the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and Central Rules 1971 or any statutory modifications or re-engagements thereof for the time being in force and any rules and regulations made there under in respect of all the persons directly or through petty contractors or subcontractors employed by him under this contract and shall indemnify the Railway from and against any claims under the Contract Labour (Regulation and Abolition) Act 1970 and Central Rules 1971 or any further rules and regulations framed thereunder, by or on behalf of any person directly or through petty contractors or sub-contractors employed by him or otherwise.

27. *It is crystal clear from the above clause that the overall responsibility of the labour issues involved during the execution of the above mentioned project is on the appellant. The appellant have to further indemnify the Railways in the case of any litigation arising in relation to laborers employed in the project*

28. *Furthermore the assessee company has the responsibility to employ qualified manpower to deal with the technicalities involved in the project and administer the working of the same. It also has to deal with complications involved with handling the immense labour employed at the work area.*

29. Similarly in Indira Sagar Project - PKG 60 which involve development of reservoirs, canals and other related infrastructure to take care of irrigation needs.

30. As per the tender document, the scope of work consisted of Design and Engineering of-Civil, Hydro-mechanical, electro-mechanical and instrumentation works related, to PSC/steel pipeline, pumping stations and related ancillary works. Construction of pumping station and appurtenant works. Fabrication, Supply, Inspection and testing, Transportation, Storage, Erection and commissioning of hydro-mechanical equipment Manufacture, Supply, Storage, Erection and equipment Manufacture/ Fabrication, Supply, delivery, reception, testing and commissioning of prestressed concrete pipes/milled steel water supply pipeline (buried and/or surface) with associated civil, control equipment and transient protection devices, electrical and instrumentation works. Installation, Testing and commissioning of the project. Operation and Maintenance of the project for a period of 3 (Three) years after successful commissioning of the project.

31. As per the terms of tender document, the assessee has paid security deposit of Rs. 1,32,50,000/- through DD. Thus by providing security deposit for executing the project, the assessee had undertaken financial risk by employing its own capital.

32. The assessee was also required to make its own arrangements for cement, steel and blasting material. Therefore, it has to employ its own funds for the same. The relevant para for sourcing own blasting material is as under:

“The contractor shall make his own arrangements to procure blasting materials. It shall be the responsibility of the contractor to store the materials in accordance with the rules of the

explosive Act or other rules framed by the Govt of India. He should possess/acquire proper license for transport, possession, and use of explosives and short firers licenses as per revised explosives Act, 1983. II”

From the above mentioned extracts of the tender document it is very clear that the appellant is responsible for the procurement of materials and their safety under his custody. He is also a well established and viable developer as the tender provides for the essential eligibility for being awarded the project. Thus, it clearly establishes the worthiness of the appellant to comply with the project requirements. The appellant has to procure materials at his own cost which denotes the involvement in Investment activity of the project

33. As per the terms of tender document, the assessee has to undertake his own study for the purpose of undertaking the infrastructure project. It is essential that such a study be conducted since there involves diverse process such as soil exploration, excavations, investigation etc.

34. As per the terms of tender document, the assessee was liable for liquidated damages by way of replacement of defective parts and materials. The assessee has been assigned the liability of maintenance of the project for a period of around 3 years which in itself is a long tenure, it is also noteworthy from the above passage that the appellant has the responsibility to attend the defective work found in the execution of the project and rectify the same at his own cost. Such a longer tenure of maintenance after the completion of the project critically states the role of the assessee being a developer of the said infrastructure involving construction and maintenance rather than a mere works contract which involves just labour work.

35. We also found that for executing the project, the assessee has employed technical and administrative qualified team. Thus the assessee was under obligation too to employ and deploy technically qualified team of workers working on the project both on site as well as off site.

36. Now coming to the last project i.e. Haryana State Road & Bridges Development Corporation Limited i.e. the assessee-has undertaken construction of roads from Haryana State Road & Bridges Development Corporation Limited, a Govt. of Haryana Undertaking. He work involved widening and upgradation of Rai Nahara Bahadurgarh Road (MDR -138) & Rohtak Kharkhoda Delhi border (SH-18).

37. We have carefully gone through the terms and conditions of the tender document executed between assessee and Haryana State Roads and Bridge Development Corporation Ltd. and found that the assessee has undertaken financial risk by making investment. The amount of performance security as per the conditions of the contract is 5% of contract price. This shows financial risk assumed by UIL.

38. As per clause 10.1, the assessee was to pay 5% of the contract price as performance security. As per sub clause 60.6(a) the assessee has to mobilize advance against bank guarantee up to 5% of the contract price at commencement of work. As per sub clause 60.6(b) the assessee was also to make equipment advance against bank guarantee up to 5% of the contract price against the new equipment.

39. The above clauses show that UIL has to procure interest bearing funds with respect to execution of the contract and so it has to assume financial risk also.

40. As per tender document executed by the assessee, the assessee has undertaken technical risk, the relevant clause reads as under:-

Defective Risks - Annexure 2(a)

"All defective works are liable to be demolished, rebuilt and defective materials replaced by the contractor at his own cost In the event of such works being accepted by carrying out repairs etc, as specified by the engineer the cost of the repairs will be borne by the contractor."

Measures and Precautions to be undertaken - Annexure

"The Contractor shall take all necessary measures and precautions and otherwise ensure that a the execution of the Works and all associated operations on site or off-site are carried out in conformity with statutory and regulatory requirements including those prescribed elsewhere in dt this document. The provisions specified in the Environment Management Plan Report shall be followed as guidelines.

The Contractor shall take all measures and precautions to avoid any nuisance or disturbance arising for the execution of the Works. This shall wherever possible be achieved by suppression of the nuisance at source rather than abatement of the nuisance once generated. All vehicles deployed for material haulage shall be spillage proof.

Haul roads shall be inspected at least once daily to clear any accidental spillage. In the event of any spoil, debris, wastes or any deleterious substance from the Site being deposited on any

adjacent land, the Contractor shall immediately remove all such material at no cost to the Contract and restore the affected area to its original state to the satisfaction of the Engineer."

41. *The assessee was under obligation to rectify loss or damage. The relevant clause reads as under: -*

"If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined to SU&' Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49 and 50."*

42. *As per the terms of tender document, the assessee was also liable for liquidity damages. The relevant clause reads as under:-*

"If the Contractor fails to comply with the Time for Completion for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the

relevant Section, subject to the applicable limit stated in the Appendix to Tender. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract,"

43. As per the tender document, the assessee has ensured provision for suitably qualified personnel to fill key positions as required during contract implementation, UIL also provided personnel for the key positions specified in Section VIII, Schedule C of Bid Documents satisfying the qualification and experience requirements. The relevant para is enclosed as Annexure 4.

44. In view of the above factual position which emerges from tender/bid documents/agreement that the assessee was not only having responsibility for shouldering the financial risk, technical risk but also liability of liquidated damages, employment of technical and administrative staff etc. In other words the assessee has substantiated through the terms and conditions of tender/bidding agreements as to how it is a developer and not merely a contractor.

45. In view of the above, we conclude that the assessee was a developer and not merely a contractor, therefore, eligible for the claim of deduction u/s 80IA of the Act with regard to all the three projects undertaken during the year under consideration.

46. Respectfully following the order of the Tribunal in assessee's own case for assessment years 2003-04 to 2007-08 vis-a-vis the findings recorded above, we do

not find any merit in the order of lower authorities for denial of claim of deduction u/s 80IA of the I.T. Act.,

25 Considering the above decision and discussion, all the activities carried on by the assessee are eligible to claim deduction u/s 80IA(4) of the Act. Therefore, we are inclined to accept the findings of Ld. CIT(A). Accordingly, ground raised by the revenue is **dismissed**.

26. With regard to Ground No. 3, we notice that the disallowance of expenses in the eligible business will increase the eligible profit. This profit if it is proved that it is earned only from eligible business, then such profit is eligible to be claimed u/s 80IA(4) of the Act. In the given case, assessee does not have any other business other than the eligible business u/s 80IA(4) of the Act and the chart below show that the assessee was already claiming deduction u/s 80IA(4) of the Act over the past assessment year:-

<i>Sr. No</i>	<i>Assessment Year</i>	<i>Deduction claimed u/s 80IA</i>	<i>Deduction allowed u/s 80IA</i>	<i>Allowed before CIT(A)/ITAT</i>
<i>1.</i>	<i>2004-05</i>	<i>Rs. 1,99,098</i>	<i>1,99,098</i>	<i>ITAT</i>
<i>2.</i>	<i>2005-06</i>	<i>Rs. 1,10,65,845</i>	<i>Rs. 1,10,65,845</i>	<i>ITAT</i>

3.	2006-07	Rs. 9,73,68,452	Rs. 9,73,68,452	ITAT
4.	2007-08	Rs. 10,67,64,503	Rs. 10,67,64,503	ITAT
5.	2008-09	Rs.5,50,13,614	Rs.5,50,13,614	CIT(A)
6.	2009-10	Rs. 4,60,25,314	Rs. 4,60,25,314	ITAT
7.	2006-07 to 2012-13 - Block Assessment	Rs. 96,66,35,656	Rs. 96,66,35,656	Pending before ITAT

27. The above /chart status shows that the assessee is into carrying eligible business and does not have any other activities, therefore the profit earned by assessee is eligible to be claimed u/s 80IA(4) of the Act and any increase in such profit due to disallowance will also be treated as eligible profit to be claimed deduction u/s 80IA(4) of the Act. The courts have held in the following cases that the increased profit due to disallowance is very much available for claiming deduction u/s 80IA(A) of the Act:-

- i) Sheth Developers 25 taxman.com 173 (Bom) &**
- ii) ACIT vrs. Mahalaxmi Infraprojects Pvt. Ltd. (2018) 63 ITR 671 (Pune Trib)**

28. Respectfully following the above decision, we are inclined to accept the findings of Ld. CIT(A) and the revenue has not brought on record any information relating to the activities of the assessee that it has carried on any other activities, which are not covered u/s 80IA(4) of the Act during this assessment year. Accordingly, ground raised by the revenue is **dismissed**.

ITA No. 7270/Mum/2017 (AY 2008-09)

29. Now we take up ITA No. 7270/Mum/2017 for AY 2008-09 filed by the revenue. Since the grounds raised in this assessment year are similar to that of AY 2013-14 filed by the revenue. Therefore, the conclusion drawn in above para no. 23 to 28 are applicable to this appeal as well. Accordingly, grounds raised by the revenue in this assessment year are **dismissed**.

ITA No. 140/Mum/2018 (AY 2013-14)

30. Now we take up ITA No. 140/Mum/2018 for AY 2013-14 filed by the assessee on account of confirming the addition made AO with regard to purchases made from M/s Steelcon Infratrade Pvt. Ltd.

31 As discussed in the above paragraphs, Ld. CIT(A) has not verified in detail with regard to various documents and submissions made by the assessee before him. Considering the fact that he is convinced with the submissions of the alternate plea of the assessee that assessee is carrying on eligible business on which profits of the business is eligible to claim deduction u/s 80IA(4) of the Act.

32 Before us, Ld. AR brought to our notice relevant facts which was submitted before Ld. CIT(A) that the addition was made mainly and relying heavily on the statement of Mr. Devang Gandhi and subsequently Mr. Devang Gandhi retracted his statement. In this respect, assessee has submitted before AO as well as Ld. CIT(A) the relevant documents in support of genuineness of the transactions.

33. After considering the overall facts in this case and Ld. CIT(A) has already gave the benefit of deduction u/s 80IA(4) of the Act and as such there is no impact of adjudication in this grounds raised by the assessee as assessee has already got the substantial relief, therefore we are inclined to accept the findings

of Ld. CIT(A) and we would like only to observe that AO has made disallowance of Rs. 40 lakhs on bogus purchases, whereas assessee has declared huge profit in the operation carried on by it and assessee is aware that any profit earned by the assessee is eligible to claim deduction u/s 80IA(4) of the Act. Therefore, there is no incentive for the assessee to avail any bogus purchases and also the amount involved is very small compare to profit declared by the assessee and it may not have impact in this assessment year. However, in other assessment year, it may be relevant to notice that the profit declared by the assessee is eligible to claim deduction u/s 80IA(4) of the Act and there is no necessity for the assessee to indulge in such activities. Accordingly, the grounds of appeal filed by the assessee are **dismissed** as the same are academic in nature.

ITA No. 139/Mum/2018 (AY 2008-09)

34. Now we take up ITA No. 139/Mum/2018 for AY 2008-09 filed by the assessee, in which assessee has raised ground no. 1 on reopening of assessment and Ground No. 2 & 3 are against addition on bogus purchases made from Lakhan Traders Pvt. Ltd.

and Gorhan Traders Pvt. Ltd. and Ground No. 4 related to disallowance of commission expenses @ 2% of the alleged bogus accommodation entries.

35 Before us, Ld. AR brought to our notice page no. 2 of the paper book in which AO communicated the reasons for reopening of assessment. He submitted that AO has issued the notice after 4 years after completing the assessment u/s 143(3) r.w.s 153A of the Act and submitted that AO has reopened this assessment with the borrowed satisfaction and non-application of mind. In this regard, he relied on the case of PCIT vrs. Saudiman Investment Pvt. Ltd. 93 taxman 153(Bom). He further submitted that AO reopened this assessment by change of opinion after completing the assessment u/s 143(3) r.w.s 153A of the Act. He further brought to our notice page no. 6 of the order of Ld. CIT(A) in which assessee has informed Ld. CIT(A) that the statement recorded by Mr. Ganpat Sanghvi, who gave statement that he has provided accommodation entries to 10 companies which is listed at page no. 6 of the order of Ld. CIT(A), as per which he has provided accommodation entries to Unity Infratrade

Pvt. Ltd., whereas the name of the assessee is Unity Infraproject Pvt. Ltd. Therefore, it is a case of mistaken identity. Ld. AR further submitted that it is the duty of the AO to verify whether such transactions were carried on with the assessee or to its sister concern. On merit, he submitted that whole addition is based on statement of Mr. Ganpat Sanghvi and there is no other material available on record. With regard to Ground no. 2, 3 & 4, Ld. AR submitted similar submission as made in AY 2013-14.

36. On the other hand, Ld. DR submitted that the case law relied by assessee are distinguishable on facts and with regard to reasons recorded by the AO, he submitted that the information received by AO is fresh material and a proper reason for reopening. He supported the findings of AO that assessee has taken accommodation entries from 2 parties and in this respect, he relied on **i) CIT vrs. Kelvinator 320 ITR 561 (SC) and ii) Raymond Wollen Mills Ltd. Vrs. ITO 236 ITR 34 (SC)**. With regard to mistaken identity, he submitted that assessee has not denied that it has made purchases from these parties.

37. Considered the rival submission and material placed on record. With regard to reopening, Ld. AR submitted that the reopening of assessment is bad in law. After considering the material on record, the assessment was reopened with the fresh material on record and this aspect was not considered during assessment proceedings u/s 143(3) r.w.s 153A of the Act. Therefore, there is no mistake in reopening the assessment.

38. With regard to disallowance of bogus purchase, we notice from the order passed by Ld. CIT(A) that Ld. CIT(A) accepted the findings of AO that assessee has made purchases from Lakhan Traders Pvt. Ltd. and Gorhan Traders Pvt. Ltd. as bogus purchases without verifying the documents submitted by the assessee and not verified whether it is necessity for the assessee to take such bogus purchase, even though its business is eligible to claim deduction u/s 80IA(4) of the Act. Since Ld. CIT(A) accepted the alternate plea of the assessee that it is eligible to claim deduction u/s 80IA(4) of the Act on increased profit due to disallowance of purchase. Since assessee has already got the benefit by availing deduction u/s 80IA(4) of the Act on the

difference of profit disallowed by the AO as deduction u/s 80IA(4) of the Act and similar to discussion in para 27 & 28. Therefore, adjudication on the grounds raised by the assessee will have no affect rather it is academic in nature. Therefore, appeal filed by the assessee is accordingly **dismissed** as infructuous.

39. In the net result, all the appeals filed by the revenue as well as assessee are **dismissed**.

Order pronounced in the open court on 19th Feb 2020.

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 19.02.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai