

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member)

**I.T.A. No. 1698/Kol/2018
Assessment Year: 2014-15**

DCIT, Circle-8(2), Kolkata.....Appellant

Vs.

**M/s. SPML Infra Limited.....Respondent
[PAN: AADCS 2469 K]**

Appearances by:

Sh. Supriyo Pal, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.

Sh. S.K. Tulsian, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : June 15th, 2020

Date of pronouncing the order : July 10th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax (Appeals)-3, Kolkata dated 12.06.2018 ('CIT(A)' for short) passed u/s 251 of the Income Tax Act, 1961 ('the Act' for short) on the following grounds:

"1. "That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.97,76,407/- under Rule 8D(2)(ii)"

2. "Whether on the facts and in the circumstances of the case and in laws, the Ld. CIT(A) erred in law as well as on facts in allowing the deduction u/s 80-IA of the IT Act. Whereas the assessee company is simply a contractor who merely executed work contract on the basis of quoted tender funded by the Government/Semi-government organization and hence not entitled to the deduction u/s 80-IA within the scope of Explanation below sub-section 13 to 80-IA of the Act"

3. "That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing to allow the payment for employees contribution to PF/ESI of Rs. 1,75,70,461/- which were paid before due date of filing or return whereas section 36(i)(va) clearly state that the payment will be allowed on payment on or before the due date"

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in laws as well as in facts that disallowance u/s 14A cannot be made for the purpose of computing Book profit u/s 115JB of the IT Act, 1961"

5. That the appellant reserves the right to amend, alter or add to any grounds) of appeal before or at the time of hearing of the appeal."

2. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, we hold as follows.

3. Ground no. 1 is against the deletion of an addition made by the AO u/s 14A of the Act read with Rule 8D(2)(ii) of the Income Tax Rules, 1962 ('the Rule' for short). The Id. CIT(A) relied on the decision of Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities & Power Ltd.* reported in [2009] 313 ITR 340 (Bombay) order dated 09.01.2009 and as the assessee had interest free funds in excess of investments, the disallowance made under Rule 8D(2)(ii) of the Rule by the AO was deleted by the Id. CIT(A). In view of the above, we find no infirmity in this decision of the Id. CIT(A). Thus, ground no. 1 of the Revenue is dismissed.

4. Ground no. 2 is on the deduction allowable u/s 80-IA of the Act. The Id. CIT(A) in his order held as follows:

"The Hon'ble ITAT in ITA Nos. 1291-1292/Kol/2013 for Asst. Yr. 2006-07 & 2009-10 has allowed the claim of the appellant for deduction u/s. 80-IA(4). The salient points with regard to allowability of deduction us. 80-1A which emerges from the above order is as follows:

i. In a case where a person makes the investment and himself executes the development work i.e. carries out the civil construction work he will be eligible for tax benefit u/s. 80-IA of the Act.

ii. "Works contract" used in Explanation to section 80-1A(13) means a contract of developing infrastructure by merely employing labour and making no investments.

iii. However, if under a contract, the contractor employs his capital and enterprise in addition to labour, then the said contract does not constitute a works contract under the Explanation to section 80-IA(13) and the contractor shall be eligible for deduction U/S 80-IA.

iv. Even if an assessee is merely developing the infrastructural facility (without operating and maintaining the same), it is entitled to deduction u/s 80-IA.

v. Merely because the transferee had paid for the development of infrastructure facility carried out by the assessee, it cannot be said that the assessee did not develop the infrastructure facility. If the interpretation done by the Assessing Officer is accepted, no enterprise carrying on the business of only developing he infrastructure facility would be entitled to deduction under section 80-IA (4).

vi. As regards the observation of the AO that the assessee is executing the contract of civil construction at the predetermined rate, and hence it is a works contract the Hon'ble I IA I has observed that "the assessee was responsible for overall development of the infrastructure facility It was merely provided with the site 'which it had to develop into an infrastructural facility by deploying his resources i.e. material, plant A machinery, labour, supervisors etc. It was responsible for any damage/loss caused to any property or life in course of execution of the works. It was even responsible for remedying of the defects in the works at its cost ".

vii. The assessee vide the agreements has clearly demonstrated the various risks undertaken by it. The assessee was to furnish a security deposit to the Employer and indemnity the employer of any losses/damage caused to am property/life in course of execution of works, further, it was

responsible for the correction of defects arising in the works at its cost. Thus, it cannot be said that the assessee had not undertaken any risk.

viii. The assessee was not a works contractor simpliciter and was a developer and hence Explanation to section 80-IA(13) does not apply to the assessee.

On perusal of the above order it is seen that the Hon'ble ITAT in the case of the assessee has discussed as to what are the ingredients for allowing deduction u/s 80-IA. It has been held that the appellant is not a mere works contractor. In this case it is observed that the appellant has been carrying out similar projects with similar functional responsibilities. Respectfully following the above findings of the Hon'ble ITAT I am of the considered opinion that the assessee is a developer, and not merely a works contractor and is eligible for deduction u/s. 80-IA. Accordingly, the claim for deduction u/s. 80-IA(4) is hereby allowed."

5. As this view is consistent with the decision of the Tribunal in assessee's own case for the AY 2006-07 to 2010-11, we uphold the same and dismiss this ground of the Revenue.

6. Ground no. 3 is against the issue of disallowance of employees' contributions to PF & ESI. This is covered in favour of the assessee by the judgement of the Hon'ble Supreme Court in the case of *CIT vs. Alom Extrusions Ltd.* [319 ITR 306]. Therefore, we uphold the decision of the Id. CIT(A) and dismiss this ground of the Revenue.

7. Ground no. 4 is on the issue of disallowance u/s 14A while computing book profits u/s 115JB of the Act. This is also covered in favour of the assessee by the decision of the Hon'ble Delhi Tribunal, Special Bench in the case of *Vireet Investment Pvt. Ltd.* [2017] 82 taxmann.com 415 (Delhi-Trib.). Thus, we uphold the decision of the Id. CIT(A) and dismiss this ground of the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 10th July, 2020.

Sd/-
[S.S. Godara]
Judicial Member

Dated: 10.07.2020
Bidhan

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. ***DCIT, Circle-8(2), Kolkata***
2. ***M/s. SPML Infra Limited, 22, Camac Street, A-Block, 3rd Floor, Kolkata-700 016.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches