

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

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2513/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Assistant Commissioner of Income Tax,
Circle – 1, Kolhapur

.....अपीलार्थी / Appellant

बनाम / V/s.

Mahalaxmi Infra Projects Ltd.,
223/3, S-1(B), Malati Towers,
Tarabai Park, Kolhapur

PAN : AADCM2170P

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 18-03-2021
घोषणा की तारीख / Date of Pronouncement : 24-03-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 21-08-2017 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur [‘CIT(A)'] for assessment year 2014-15.

2. The assessee raised three grounds amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in holding that the assessee is eligible for deduction u/s. 80IA(4) of the Act in the facts and circumstances of the case.

3. The assessee claimed deduction u/s. 80IA(4)(i)(a)&(b) of the Act to an extent of Rs.20,80,89,446/-. It was submitted that the said deduction is available to any enterprise carrying on the developing or operating and maintaining or developing, operating and maintaining an infrastructure facility. Further, it was submitted that the said deduction is available to the assessee from A.Ys. 2003-04 to 2010-11 and an order of ITAT, Pune Benches in assessee's own case for the said A.Ys. 2003-04 to 2010-11 is binding on the Revenue as there was no stay of operation of order of ITAT by the Hon'ble High Court of Bombay. According to AO, the assessee's main business is infrastructure construction i.e. construction of dams, roads, bridges, lifts, irrigation projects, transmission lines, hydro power projects etc. and the contract, profit and loss account shows receipts on account of civil contracts from Government agencies and other concerns, sale of wind energy and other income of the nature of interest, dividend, miscellaneous receipts etc., held the assessee is a works contractor. Regarding the order of ITAT he held that an appeal is pending before the Hon'ble High Court of Bombay and considering the explanation to section 80IA(4) of the Act proceeded to disallow above said amount by treating the assessee is not eligible to claim deduction u/s. 80IA(4) of the Act. The CIT(A) considering the submissions of assessee held the assessee is eligible for claiming deduction u/s. 80IA(4) of the Act and accordingly deleted the

addition made thereon by the AO which is reflected in Para No. 7 of the impugned order.

4. In order to avoid repetition and make the issue precise we note that the assessee filed orders of ITAT in paper book from Page Nos. 1 to 135 wherein we find orders for A.Ys. 2004-05 to 2010-11, 2011-12 to 2012-13 and 2013-14, the latest being A.Y. 2013-14 which is at Page No. 132 of the paper book wherein this Tribunal held the assessee is entitled for claiming deduction u/s. 80IA(4) of the Act. The relevant portion of which at Para Nos. 4 and 5 in ITA No.2169/PUN/2016 for A.Y. 2013-14 order dated 30-07-2018 is reproduced here-in-below for ready reference:

“4. Both sides heard. Orders of the authorities below perused. The solitary issue raised in the appeal by the Revenue is against allowing assessee’s claim of deduction u/s. 80IA(4) of the Act. From the documents on record we observe that the issue of assessee’s eligibility for claiming deduction u/s. 80IA(4) has cropped up year after year since assessment year 2003-04. The Tribunal for the first time in ITA No. 433/PN/2007 for assessment year 2003-04 by placing reliance on the decision of Hon’ble Bombay High Court in the case of Commissioner of Income Tax Vs. ABG Heavy Industries Ltd. (supra) held the assessee eligible for claiming deduction u/s. 80IA(4) of the Act. Thereafter, the Tribunal in subsequent assessment years following the decision of Co-ordinate Bench in assessee’s own case in ITA No. 433/PN/2007 (supra) has been allowing benefit of deduction u/s. 80IA(4) of the Act to the assessee.

5. The facts in the assessment year under appeal are identical. We do not find any reason to interfere with the findings of Commissioner of Income Tax (Appeals) in following the order of Tribunal in assessee’s own case and to allow assessee’s claim of deduction u/s. 80IA(4) of the Act. Accordingly, grounds raised by the Revenue in appeal are dismissed being devoid of any merit.”

5. The ld. DR, Shri Deepak Garg relied on the order of AO.

6. We note that there was no dispute by the ld. DR the facts involving the issue on hand are identical to A.Ys. 2004-05 to 2010-11, 2011-12 to 2012-13 and 2013-14 and no order placed on record by the Revenue

contrary to the findings of this Tribunal or reversing or modifying order of ITAT by the Hon'ble High Court of Bombay. Therefore, we hold that the assessee is entitled for claiming deduction u/s. 80IA(4) of the Act and we do not find any infirmity in the order CIT(A) and it is justified. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on 24th March, 2021.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th March, 2021.

RK

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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