

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

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

आयकर अपील सं. / ITA Nos.557 & 558/PUN/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s.Rajdeep Infrastructure, Rajdeep House, Near Bhide Hospital, Savedi, Ahmednagar – 414 003 PAN : AAHFR2945Q	Vs.	ITO, Ward-2, Ahmednagar/ ACIT, Ahmednagar Circle, Ahmednagar
Appellant		Respondent

Assessee by None (written submissions)
Revenue by Shri S.P. Walimbe

Date of hearing 22-10-2021
Date of pronouncement 22-10-2021

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee arise out of the separate orders dated 14-11-2017 & 20-11-2017 passed by the CIT(A)-2, Pune in relation to the assessment years 2013-14 and 2014-15 respectively. Since some of the issues raised in these appeals are common, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y.2013-14 :

2. The only issue raised in this appeal is against the denial of deduction u/s.80IA(4) of the Income-tax Act, 1961 (hereinafter also called 'the Act') amounting to Rs.2,08,79,508/-.

3. Briefly stated, the facts of the case are that the assessee claimed to be engaged in the business of developing, maintaining and operating an infrastructure facility on BOT basis for Indore Municipal Corporation, under which it constructed foot-over bridges and road signages in the IMC area. Deduction u/s.80IA(4) of the Act was claimed. On perusal of agreement between the assessee and Indore Municipal Corporation, the Assessing Officer noted that the assessee was basically required to install the signages and maintain them. He refused to accept the activities done by the assessee as falling within the domain of 'infrastructure facility' and accordingly denied the claim. The ld. CIT(A) echoed the assessment order.

4. We have heard the ld. DR and gone through the relevant material on record. The assessee has filed written submissions and requested for disposal of the appeals accordingly. We have taken into consideration the written submissions. It has been categorically admitted in the written submissions that similar issue came up for consideration before the Tribunal for earlier years, namely, A.Y. 2010-11 to 2012-13 and the Tribunal decided it against the assessee. Reference has been made to relevant pages of the Tribunal order in this regard. It has further been mentioned that

appeals against the Tribunal order for the two years are pending for admission before the Hon'ble Bombay High Court. In view of the foregoing written submissions, it is clear that the instant issue has been decided by the Tribunal in earlier years against the assessee. Respectfully following the precedent, we uphold the impugned order.

A.Y. 2014-15 :

5. The first issue raised in this appeal is similar to that of the preceding year by which the claim of deduction u/s.80IA to the tune of Rs.1,65,77,965/- was denied. The assessee has filed written submissions for this year as well by clearly admitting that the Tribunal has decided such issue against the assessee in the earlier years. In view of the above position, we uphold the impugned order on this score and dismiss this ground of appeal.

6. The only other issue raised in this appeal is against the confirmation of disallowance u/s.43B amounting to Rs.12,48,168/-. The AO observed that interest on Advertisement Tax of Rs.12,48,168/- was outstanding as on 31-03-2014 which was not paid before the due date of filing the return. Invoking the provisions of section 43B, he made the disallowance, which came to be affirmed in the first appeal.

7. Having heard the ld. DR and gone through the written submissions filed on behalf of the assessee, it is seen that the AO disallowed Advertisement Tax u/s.43B for the A.Y. 2012-13. However, the Tribunal accepted the assessee's claim and deleted the disallowance vide its order dated 07-01-2020 in ITA No.1176/PUN/2017. The ld. DR was fair enough to admit that the disallowance made in this year on account of interest on Advertisement tax would make no difference to the legal position as against the disallowance made in the preceding year towards Advertisement tax only. In view of the submission and respectfully following the precedent, we overturn the impugned order on this score and delete the disallowance made u/s.43B of the Act.

8. In the result, the appeal for the A.Y. 2013-14 is dismissed and that for the A.Y. 2014-15 is partly allowed.

Order pronounced in the Open Court on 22nd October, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 22nd October, 2021
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune
4. The PCIT-2, Pune
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	22-10-2021	Sr.PS
2.	Draft placed before author	22-10-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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