

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 1872, 1873, 1874 & 1875/Hyd/2019 A.Yrs: 2007-08, 2009-10, 2010-11 & 2011-12		
Madhucon Projects Ltd., Hyderabad.  PAN - AABCM 4757A	Vs.	Dy. Commissioner of Income-tax, Central Circle - 3, Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri P. Murali Mohan Rao
Revenue by:		Shri Ravi Kiran
Date of hearing:		21/10/2021
Date of pronouncement:		06/01/2022

**ORDER**

**PER L.P. SAHU, A.M.:**

These appeals filed by the assessee are directed against CIT(A) - 12, Hyderabad's separate orders dated 11/10/2019 for AYs 2007-08 and 2009-10 to 2011-12 involving proceedings u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 ; in short "the Act on the following grounds of

appeal, which are common in all the appeals, except the quantum of additions made:

*"1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*

*2(a) The, Ld. CIT(A) erred in confirming the disallowance made of Rs.50,00,000/-.*

*(b) The Ld. CIT(A) ought to have appreciated that the disallowance of Rs. 50,00,000/- towards inflation of expenditure has been made on suspicions and surmises.*

*(c) The Ld. CIT(A) ought to have appreciated that the payment of Rs. 50,00,000/- has been made to sub-contractors through banks only against RA Bills raised by them.*

*(d) The Ld. CIT(A) ought to have appreciated that the payment of Rs. 50,00,000/- is covered by TDS which has been duly credited in to Government Account.*

*(e) The Ld. CIT(A) ought to have appreciated that the Assessing Officer has made the disallowance of Rs. 50,00,000/-by merely relying on the statements of employees recorded at the time of search, there being no corroborative evidence for the same and that the disallowance has been made in contravention of CBDT's Instruction in F.No.286/2/2003-IT (Invn.)*

*(f) The Ld.CIT(A) has erred in holding that instruction No.286/2/2003IT (Invn.) is not relevant to the appellant's case.*

*(g) The Ld. CIT(A) ought to have appreciated that the Assessing Officer has not brought any evidence on record that the expenditure of Rs. 50,00,000/- is not actually incurred by the appellant company.*

*(h) The Ld. CIT(A) ought to have appreciated that drawing of cash from bank account of the sub-contractors by the employees of the appellant company cannot be a reason for making the disallowance.*

*(i) The Ld. CIT(A) ought to have appreciated that search assessments have been duly completed in the hands of the sub-contractors, to whom the impugned payment has been made, in which the payments made by the assessee have been accepted as "Turnovers" of the sub-contractors for the year under consideration.*

*(j) The Ld. CIT(A) ought to have appreciated that transfer of funds by the sub-contractor companies to the appellant company cannot be equated with or compared to their turnovers in a particular Asst. Year.*

*(k) The Ld. CIT(A) ought to have appreciated that the impugned payment of Rs. 50,00,000/- has already suffered taxation in the hands of the sub-contractor companies and therefore, taxing the same in the hands of the appellant company tantamount to double taxation.*

*(l) The Ld. CIT(A) grossly erred in holding that the appellant had withdrawn the surplus funds from the banks through its trusted employees and had inflated the sub-contract payments.*

*(m) The Ld. CIT(A) erred in holding that the management of the assessee company had used the sub-contractors for siphoning of funds by using their employees for withdrawing the cash through self-signed cheques.*

*3(a) The Ld. CIT(A), having allowed the grounds raised before here in respect of deduction u/s 80-IA of the Act for the assessment year under consideration vide Para no.7.1 of her order, erred in dismissing the additional ground nos.19 & 20 taken in respect of additional*

*deduction u/s 80-IA of the Act on the additional income computed on account of additions made in the assessment.*

*(b) The Ld. CIT (A) ought to have appreciated that it is an established position of law that every assessee who is qualified for deduction u/s 80-IA of the Act, is eligible for the deduction not only from the Business Income admitted in the its return of income but also from the business income which has been enhanced on account of additions made in the assessment by the Assessing Officer.*

*(c) The Ld. CIT(A) ought to have allowed the deduction u/s 80-IA of the Act to the extent of RS.38,01,47,551/- (Rs. Rs. 50,00,000/- + Rs.37,51,47,551/-) for the year under consideration.*

*4. The appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”*

2. Briefly the facts as taken from AY 2007-08 being ITA No. 1872/Hyd/2019 are that a Search and seizure operations u/s. 132 of the LT. Act, 1961 were carried out in the case of M/s. Madhucon Projects Limited and its groups of cases on 04.03.2011. Accordingly, notice u/s. 153A of the LT. Act, 1961 was issued by the AO on 13.01.2012. The assessee had filed original return of income for AY 2007-08 on 31.10.2007 declaring an income of Rs. 47,27,22,240/-. The assessee later filed a revised return of income after claiming 80IA and declared income of Rs. 8,71,79,894/-.

2.1 Before the current search, there was a search in the case of the assessee on 20.10.2005. For the A.Y. 2007-08, the assessment was completed u/s. 143(3) of the IT Act, 1961 on 31-12-2009, assessing the income at Rs.56,83,45,275/-. The assessee preferred an appeal before CIT(A). The CIT(A) in his order dated 04-02-2011 gave partial relief. The assessee as well as the department preferred appeal before ITAT, Hyderabad. The Hon'ble ITAT, Hyderabad in its order dated 28.12.2012 disposed off both the appeals. The income of the assessee was arrived at Rs. 19,31,97,724/-, consequent to giving effect to the order of the ITAT, Hyderabad.

2.2 Notices u/s. 143(2) & 142{1) along with questionnaire were issued by the AO on 27.11.2012. After examining the material on record and the information furnished, assessment was completed by the Assessing Officer u/s. 143(3) r.w.s. 153A of the income Tax Act, 1961, making the following additions / disallowances, in all the appeals under consideration:

Sl.No.	Nature of addition/ disallowance	2007-08	2009-10	2010-11	2011-12
1.	Inflated expenditure by way of sub-contract payments	5000000	390200000	435620600	84500000
2.	Disallowance of claim u/s 80IA	375147551	47,85,90,697	756529257	852813200
3.	Cash withdrawal from the		3,00,00,000	220000000	

	bank account of M/s Madhucon land developers.				
4	Disallowance of loss on shares				9940000
5	Excess cash found				13,00,000

3. When the assessee preferred appeals before the CIT(A) against the orders of AO for impugned AYs., the CIT(A) upheld the additions towards i) inflated expenditure by way of payment to sub-contractors and disallowance of claim u/s 80IA of the Act on this inflated expenditure also.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. The issue before is whether the assessee is eligible to get the deduction u/s 80IA on the enhanced expenditures made to sub-contractors. Briefly the facts relating to this issue are that the AO observed that an amount of Rs. 50 lakhs in AY 2007-08 was withdrawn from the bank account of M/s Maa Highways maintained at Axis Bank, Begumpet, Greenlands by Sri Raju Mangrulkar vide Instruction No. 914303. In the light of the detailed observations in his assessment order on this issue, the AO treated the said amount of Rs. 50 lakhs as inflated expenditure by way of sub-contract payments and added the same to the returned income of the assessee.

6. The CIT(A) after considering the submissions of the assessee as well as remand report of the AO, upheld the addition made by the AO and also not accepted the additional ground raised by the assessee in respect of claim of deduction u/s 80IA of the Act. However, the CIT(A) vide para 7.1 at page No. 22 held that the claim of the assessee u/s 80IA has been allowed in respect of the profits earned by the assessee.

7. Before us, the Id. AR of the assessee submitted that the AO has made the addition on the ground that the assessee has inflated its expenditure by way of payments to sub-contractors and, therefore, the same was disallowed u/s 37(1) of the Act. He submitted that the addition made under the head "profits and gains from business or profession". He, therefore, submitted that the addition made by the AO is covered by the CBDT Circular No. 37/2016, dated 2<sup>nd</sup> November, 2016 that the assessee is eligible for deduction u/s 80 IA of the Act. He, therefore, contended that the CIT(A) is not justified in denying deduction u/s 80IA on the inflated expenditure as held by the AO.

7.1 He relied on the paper book containing pages 1 to 63 dated 19/10/2021, which are assessment orders of the sub-contractors to whom the payments have been made for

different assessment years, the details of which are as under:

Left space intentionally

S.No.	Particulars	Page No.
1.	Copy of Assessment order for the AY 2007-08 in the case of sub contractor - MAA High ways	1 - 10
2.	Copy of Assessment order in the case of - MAA High ways for the AY 2009-10	11-16
3.	Copy of Assessment order in the case of - Ragini Constructions for the AY 2009-10	17-22
4.	Copy of Assessment order in the case of - Varalaxmi Constructions for the AY 2009-10	23-26
5.	Copy of Assessment order in the case of - Sree Nagendra Constructions for the AY 2009-10	27-31
6.	Copy of Assessment order in the case of - MAA High ways for the AY 2010-11	32-37
7.	Copy of Assessment order in the case of Varalaxmi Constructions for the AY 2010-11	38-42
8.	Copy of Assessment order in the case of - Ragini Constructions for the AY 2010-11	43-47
9.	Copy of Assessment order in the case of - Sree Nagendra Constructions for the AY 2010-11	48-52
10.	Copy of Assessment order in the case of - MAA High ways for the AY 2011-12	53-58
11.	Copy of Assessment order in the case of - Ragini Constructions for the AY 2011-12	59-63

7.2 Referring to the above, he submitted that the amounts disallowed by the AO have been taken as turnover by the concerned recipients/sub-contractors and those sub-contractors turnover has been accepted by the revenue authorities in the assessments made and copies of the assessment orders are available in the paper book as quoted supra. He, therefore, pointed out that once the turnover is accepted by the revenue authorities, the same would be the expenditure of the payer. He, therefore, submitted that the assessee is eligible to get deduction u/s 80IA in the facts and circumstances of the case of the

assessee. The Id. AR of the assessee submitted that there is no dispute about the payments made to the sub-contractors and TDS has also been deducted on the payments made to them and the recipients have offered it as their turnover and corresponding TDS credits have been given to the sub-contractors. He, therefore, submitted that disallowance made by the AO was in the nature of business expenditure of the assessee, which is eligible for deduction u/s 80IA of the Act as the assessee is engaged in the eligible business for getting deduction u/s 80IA of the Act. He further submitted that even the payments were not made to the sub-contractors, the profit will be automatically enhanced, which is eligible for deduction u/s 80 IA of the Act. He submitted that considering the both the situations as submitted above, the assessee will get benefit u/s 80IA on both counts.

8. The Id. DR, on the other hand, strongly relying on the orders of revenue authorities, submitted that the assessee is not eligible for claiming deduction under Chapter VI-A u/s 80IA against the addition made by the AO, as the issue has been elaborately dealt by both the lower authorities in their orders. He contended that the assessee is engaged in the malpractice for siphoning the amounts by way of inflating the expenditure and making payments to group companies. The cash has been withdrawn by the employees of the assessee company from the sub-contractors accounts.

He, therefore, submitted that there is a direct nexus between the inflated expenditure from the other companies. He submitted that during the course of search proceedings, statements were recorded by the search team in which the employees of the assessee company have accepted that inflated monies were withdrawn from the sub-contractors bank account. He submitted that the assessee has opened bank accounts in Delhi and Hyderabad for smooth controlling of the bank accounts of the sub-contractors. He submitted that in view of the detailed findings of the lower authorities in their orders, the assessee is not eligible for claiming deduction u/s 80IA on the inflated expenditure as these expenses are bogus in nature. He, therefore, requested the Bench that the order of the CIT(A) is to be upheld on this count.

9. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We observe that search was conducted on the assessee and its group cases on 04/03/2011 and further search was conducted on 07/03/2011 as per para No. 6 of the assessment order and the statements recorded by the search team, which have been recorded by the AO in his order. For deciding the issue before us, first we have to see the assessment order on the basis of which the additions made by the AO as per para 11, which is reproduced below for the sake of clarity:

*“11. During the previous year relevant to the AY 2007-08, it is observed that an amount of Rs. 50 lakhs was withdrawn from the bank account of M/s Maa Highways maintained at Axis Bank, Begumpet, Greenlands by Sri Raju Magrulkar vide Instrument No. 914303. In light of the detailed narrations in the preceding paragraphs, this amount of Rs. 50 lakhs is treated as inflated expenditure by way of subcontract payments. Accordingly, the same is added.”*

9.1 The basis for making the addition as noted above, the AO has made the addition only on the basis of inflated expenditure by way of subcontract payments, which is in the nature of disallowance u/s 37(1) of the Act. On the above order of the AO, we find that nowhere mentioned that it is other than the business expenditure of the assessee. We observe from the arguments and paper book submitted by the assessee quoted supra, the amounts received by the sub-contractors have been offered as their turnover and the turnovers had been accepted by the revenue authorities. Therefore, it clearly shows that the payments made by the assessee to sub-contractors is a business expenditure of the assessee.

9.2 We accept the arguments advanced by the Id. AR of the assessee that the Board's Circular No. 37/2016 dated 02/11/2016 is applicable to the case of the assessee. For the sake of clarity, we reproduce the contents in the Circular as under:

**CIRCULAR NO.37/2016 [F.NO.279/MISC./140/2015/ITJ]  
80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS  
AND GAINS FROM INFRASTRUCTURE DEVELOPMENT  
UNDERTAKINGS - CHAPTER VIA DEDUCTIONS ON ENHANCED  
PROFITS**

**CIRCULAR NO.37/2016**

**[F.NO.279/MISC./140/2015/ITJ], DATED 2-11-2016**

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i)	If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:
	1 Income-tax Officer-Ward 5(1) v. Keval Construction [2013] 33 taxmann.com 277 (Guj.)
	2 Commissioner of Income-tax-IV, Nagpur v. Sunil Vishwambharnath Tiwari [2016] 63 taxmann.com 241 (Bom.)
(ii)	If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was

	<i>taken by the court in the following case:</i>
☐	<i>Principal CIT, Kanpur v. Surya Merchants Ltd. [2016] 72 taxmann.com 16 (All.).</i>

*The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.*

*3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.*

*4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn/not pressed upon. The above may be brought to the notice of all concerned.*

9.3 On perusal of the said Circular, it is clear that at times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. The assessee is also eligible to claim for deduction u/s 80IA on the profit earned from its business. The issue before us is also regarding the enhancement of the profit of the assessee which is covered by the said Circular quoted supra and, therefore, the assessee is eligible to claim deduction u/s 80IA of the Act. Considering the totality of the facts and circumstances of the case,

we set aside the order of the CIT(A) and direct the AO to allow the assessee's claim of deduction u/s 80IA of the Act on the enhanced expenditure towards the payment to sub-contractors, which was disallowed by the AO and confirmed by the CIT(A) in all the appeals under consideration. All other grounds raised by the assessee in all the appeals, were not pressed before us, therefore, the same are dismissed as not pressed.

9.3 In view of our above observations, we allow the grounds raised by the assessee with regard to inflated expenditure by way of sub-contract payments in all the appeals under consideration.

10. In the result, all the appeals under consideration are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 6<sup>th</sup> January, 2022

**Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER**

**Sd/-  
(L. P. SAHU)  
ACCOUNTANT MEMBER**

Hyderabad, Dated: 6<sup>th</sup> January, 2022.

*kv*

*Copy to :*

<i>1</i>	<i>Madhucon Projects Ltd., Plot No. 1129/A, Madhucon House, Road No. 36, Jubilee Hills, Hyderabad - 500 033</i>
<i>2</i>	<i>DCIT, Central Circle - 3, Hyderabad.</i>
<i>3</i>	<i>CIT(A) - 12, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT(Central), Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>