

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

**SHRI PARTHA SARATHI CHAUDHURY, JM
AND
DR. DIPAK P. RIPOTE, AM**

**ITA No. 2518 and 2519/PUN/2016
Assessment Years : 2012-13 & 2013-14**

The Asstt. C.I.T. (Central), Cir. Kolhapur

Appellant

Vs.

M/s. Laxmi Civil Engg. Services
Pvt. Ltd., 1148-E Ward, Sykes Extension,
Karveer, Dist. Kolhapur

PAN : AAACL5602N

Respondent

Appellant by : Smt. Divya Bajpai
Respondent by : Shri S.N. Puranik

Date of Hearing : 15-03-2022
Date of Pronouncement : 21-03-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These appeals preferred by the Revenue emanate from the consolidated order of the Id. Commissioner of Income Tax (Appeals)-11, Pune dated 09-08-2016 for the Assessment Years 2012-13 and 2013-14 as per the grounds of appeal on record.

2. That running into the entire grounds of appeal filed by the Revenue in both these cases, the only grievance stands for adjudication before us is whether the assessee is eligible for deduction u/s 80IA(4) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Both the parties before us, at the very outset conceded that the facts and circumstances and the issues involved in these appeals are absolutely identical and similar and therefore, after hearing the submissions of the parties herein, these appeals are taken up for hearing together and are being disposed of vide this consolidated order. It was also agreed that ITA No. 2518/PUN/2016 for A.Y. 2012-13 may be taken

as the lead case. The relevant background in this case is that the assessee is engaged in the business of developing infrastructure work such as water supply projects, water treatment system, irrigation projects, sewerage system and roads etc. The assessee has claimed deduction u/s 80IA(4)(i) of Rs. 17,63,93,520/- in A.Y. 2012-13 and Rs. 21,48,67,519/- in A.Y. 2013-14 in the return of income filed u/s 139(1) of the Act. It was explained to the Id. A.O that the assessee satisfied the conditions laid down u/s 80IA(4)(i) of the Act and therefore, deduction should be allowed. The Id. A.O however, held that the deduction u/s 80IA(4)(i) of the Act was available only to the developer and since the assessee was a contractor deduction u/s 80IA(4) of the Act was not available. Vide para 6 onwards, the Id. A.O has detailed his discussion regarding the conditions for grant of deduction u/s 80IA(4) of the Act. That as per the interpretation of the Id. A.O., the assessee is a “contractor” and not a “developer” and therefore, hit by Explanation to sec. 80IA of the Act and was not entitled to deduction u/s 80IA(4) of the Act.

3. At the time of hearing before us, the Id. A.R pointed out that in A.Y. 2003-04 to 2006-07 also, the Id. A.O has treated the status of the assessee as a works contractor and had made the disallowance. However, the said disallowance and the deduction made by the Id. A.O and confirmed by the Id. CIT(A) was deleted by the Tribunal. The Tribunal had decided the appeals in favour of the assessee following the Hon’ble Jurisdictional High Court judgment in the case of CIT Vs. ABG Heavy Industries Ltd. & Ors. (2010) 37 DTR (Bom) 233. The Misc. Application of the Revenue was also dismissed. This decision has been accepted by the Revenue. Copies of decision of the Tribunal dismissing the Misc. Application and the judgment in the case of ABG Heavy Industries Ltd (supra) were filed before the Id. A.O for this year also.

4. That before the Id. CIT(A), the assessee had argued that this case is covered by the decision of the jurisdictional Tribunal in its own case in earlier assessment year and as there is no change in the facts, the Id. A.O should have allowed the claim following Tribunal's decision in the earlier years and more so when all these decisions have been placed before the Id. A.O at the time of assessment proceedings. The Id. CIT(A) after considering the submissions of the assessee and the assessment order held that the issue is covered in favour of the assessee by the decision of the Tribunal as well as the decision of the CIT(A) in assessee's own case. It is mentioned that in para 9 of the Id. CIT(A)'s order that for A.Y. 2005-06 to 2011-12, the said issue has been decided in favour of the assessee. The relevant portion of the order has been reproduced by the Id. CIT(A) in his order and need not be repeated herein again for the sake of brevity. However, we find that one pertinent observation has been made therein, in the case of the assessee for the said A.Ys 2005-06 to 2011-12, wherein it was demonstrated by the assessee that it had undertaken risk in terms of deployment of technical personnel, plant and machinery, technical knowhow, expertise and financial resources. That, due to the fact that the contracts for the project undertaken by the assessee involve design, development, and construction of shafts, tunnels, barrages, canals, gates, earthen dams, lift irrigations systems, etc., financial involvement including furnishing security deposit and defect correction in liability period, was also undertaken by the assessee and in such scenario the contracts entered into by the assessee cannot be called simple works contract so as to deny the deduction available u/s 80IA(4) of the Act. The assessee had claimed deduction u/s 80(IA)(4) of the Act in respect of project undertaken due to a valid contract entered into with the State Government. The assessee was thereafter required to bring in the finance, technical expertise and material and adhere to the quality requirements irrespective of cost. That, for completion of the

project, the assessee had utilised its own funds, expertise, employees and took responsibilities of developing intra-structure facilities. In such circumstances, the Tribunal also in assessee's own case (supra) has held that the developer of the infrastructure facilities cannot be denied the benefit of deduction available u/s 80IA(4) of the Act.

5. The Id. CIT(A) has taken cognizance of the aforesaid decisions in assessee's own case and at para 10 of his order observes that the allowability of deduction u/s 80IA(4) of the Act in the case of the assessee, has been repeatedly decided in favour of the assessee by various Tribunals. In assessee's own case, the Tribunal has allowed the deduction after considering all the objections raised in the assessment order by the Id. A.O. In the Tribunal's decision in assessee's own case for A.Y. 2007-08 in ITA No. 1748 & 1751/PN/2012, the relevant portion is as follows:

"3. We have heard the parties. We find that in the preceding years as noted hereinabove the issue has been decided in favour of the assessee by this Tribunal and there is no change in the facts. The assessee has filed the copy of them Tribunal's order which is placed on record. We, therefore, following the decision of this Tribunal on this issue in assessee's own case for A.Ys 2003-04, 2004-05, 2005-06 and 2006-07 we confirm the order of the Id. CIT(A) and dismiss the Ground No. 1."

6. The Id. CIT(A) following the Tribunal's order (supra) had allowed the claim of deduction u/s 80IA(4) of the Act for both the assessment years to the assessee.

7. The Id. A.R fairly conceded that the issue is covered in favour of the assessee as per various decisions of the Co-ordinate Bench of the Tribunal as well as the orders of the first appellate authority which ultimately remains an undisputed fact. The Id. D.R. could not bring out any new materials / evidences on record to suggest specifically that in the case of the assessee the deduction u/s 80IA(4) should not be allowed and that the assessee is not a "developer" but a "contractor". The Id. D.R could not also bring on record any binding

decision in favour of Revenue nor could demonstrate that facts were contrary to the facts already existing in respect of the case of the assessee.

8. We have carefully perused the case records, heard the rival contentions and analysed the facts and circumstances in this case. We find, on going through the various decisions in the case of the assessee as well as facts on record, that for these two assessment years, it is not correct interpretation of the provision of sec. 80IA(4) of the Act by the Id. A.O where he has held that the assessee is merely a contractor and not the developer since the funds are given by the Government. We have examined specifically the order in assessee's own case for A.Y. 2005-06 to 2011-12. Here, the assessee who is doing infrastructure development projects which he has procured from and had entered into through a valid contract with the State Government. The assessee was required to bring finance, technical expertise and materials and adhere to the quality requirements irrespective of cost. That further, for completion of the project the assessee also had to use its own funds, expertise and employees for developing the infrastructure facilities. The facts and circumstances are absolutely identical and similar in both the assessment years before us which were also there in assessee's own case for A.Y. 2005-06 to 2011-12 and even the Id. D.R conceded on the issue. The term "contractor" as used in reference to sec. 80IA(4) of the Act, is a person entering into a contract with a Government entity and doing the work as per the specific directions of the Government entity and the funds etc. are all given by the Government entity and the contractor is supposed to work as per the directions of the Government entity as imbibed in the terms of the contract and nothing more than that, meaning thereby there is no independent application of mind and therefore the contractor is also not supposed to poses expertise in the matters of the project. Everything is guided by the Government entity. Whereas in the case of a developer, he enters into a contract and disposes of the project work by using

his own acumen, expertise, employees and even has to adhere to quality standards as enshrined in the contract that he enters into. So for a developer it is a work in a much more broader sense of the term, its independent visualisation along with finance as utilised for completion of the project which is not the case in case of the contractor. That on examination of the facts and circumstances, and the various judicial pronouncements, we are of the considered view that this issue has been consistently held in favour of the assessee. That when the facts and circumstances are identical following the rules of consistency and on the same parity of reasoning, we hold that there is no need to interfere with the findings of the Id. CIT(A) which is upheld and the relief provided to the assessee is hereby sustained.

9. In the result, the appeal of the Revenue in **ITA No. 2518/PUN/2016 is dismissed.**

10. Both the parties have agreed that the facts and circumstances and the issues in ITA No. 2518/PUN/2016 are absolutely identical in the case of the assessee in ITA No. 2519/PUN/2016 for A.Y. 2013-14. Therefore, on hearing the parties our decision in ITA No. 2518/PUN/2016 for A.Y. 2012-13 shall apply *mutatis mutandis* to ITA No. 2519/PUN/2016 for A.Y. 2013-14.

11. In the result, the appeal of the Revenue in **ITA No. 2519/PUN/2016 is also dismissed.**

12. In the combined result, both the **appeals of the Revenue are dismissed as indicated hereinabove.**

Order pronounced in the open Court on this 21st day of March 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 21st March 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (Central) Pune
4. The CIT(A)-11, Pune
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	15-03-2022	Sr.PS
2	Draft placed before author	16-03-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	21-03-2022	Sr.PS/PS
7	Date of uploading of order	22-03-2022	Sr.PS/PS
8	File sent to Bench Clerk	23-03-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		