

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1587/Mum/2021
(Assessment Year : 2014-15)**

Dy. Commissioner of Income Tax, Central Circle- 7(2), Mumbai Room No.655, 6 th Floor Aayakar Bhavan M.K.Road, Mumbai- 400 020	Vs.	M/s.Rajahmundry Expressway Ltd., 2 nd Floor, Plot No.360 Block B, Sector-19, Dwarka New Delhi – 110 075
PAN/GIR No.AABCR9029A		
(Appellant)	..	(Respondent)

Assessee by	Shri Rakesh Joshi
Revenue by	Shri T.Shankar
Date of Hearing	17/08/2022
Date of Pronouncement	17/08/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1587/Mum/2021 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-49,Mumbai in appeal No.CIT(A), Mumbai-49/10588/2016-17 dated 22/06/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/12/2016 by the Id. Dy. Commissioner of Income Tax, Central Circle- 7(2), Mumbai (hereinafter referred to as Id. AO).

2. The revenue has raised the following grounds before us :-

1. *"On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the claim of deduction u/s 80IA to the assessee company without appreciating the fact that as per the 'EPC Contract', the assessee-company has transferred all the duties and responsibilities contained in the 'Concession Agreement to M/s. Gammon India Ltd. for the operation and maintenance of the infrastructural facility, and the assessee-company has only acted as a conduit between the NHAI and M/s. Gammon India Ltd.*

2. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the claim of deduction u/s. 80IA of the Act to the assessee-company, without appreciating the fact that Explanation added to Section 80IA by Finance Act, 2007 clearly states that in a case where a person makes the investment, and himself executes the development work, only then he will be eligible for tax benefit u/s. 80IA of the Act.*

3. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the entire claim of deduction u/s. 80IA of the Act to the assessee company, without appreciating the fact that large part of the scope of work pertained to strengthening of the existing road as is also clear from the Right of Way information charts and Schedule D 'Project Facilities' of Concession Agreement, whereas the deduction u/s 80IA is available only for development of the new infrastructure facility.*

4. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) was correct in allowing the appeal of the assessee by ignoring the fact that the assessee company was a mere paper company and not a developer.*

5. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the depreciation claimed on the right to collect annuity without appreciating the fact that CBDT, vide Circular No. 9 of 2014 has clarified that in respect of the BOT arrangements for development of roads/highways etc, the assessee undertaking the project of improvement, operation & maintenance etc., is not the owner of the property either wholly or partly, and does not hold any rights in the roads/highway development project, and therefore, cannot be treated as owner of the property for purposes of allowability of depreciation u/s. 32(1)(ii) of the Act.*

6. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the depreciation claimed on the right to receive annuity which is only in the nature of right to receive payment for the work done as also stated in paras 8.1, 8.2, 14.1 etc. of the Concession Agreement dated 30 Oct. 2001 between NHAI and assessee and is thus merely a type of trade*

receivable and not a depreciable asset for purposes of allowability of depreciation u/s. 32(1)(ii) of the Act. "

7. "On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the Disallowance of depreciation arising due to reduction in cost fixed asset u/s. 40A(2) without appreciating the fact that project cost awarded by the assessee company to M/s. Gammon India Limited as per the 'EPC Contract' was higher by 2.5% as compared to the project cost estimated by the Independent Engineer in their report, and therefore, the excess expenditure incurred by the assessee-company is squarely covered by the provisions of section 40A(2) of the Act."

8. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in deleting the disallowance of provisions for periodic maintenance charges without considering the facts that the liability for the periodic maintenance arises only in FY 2016-17 and not in the current year therefore cannot be allowed to the assessee as per the provisions of section 37(1) of the Income Tax Act.

9. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in deleting the disallowance of provisions for periodic maintenance charges from book profit without considering the fact that decision of the Mumbai Tribunal in the case of Anchor Electricals (P) Ltd. vs DCIT (2017) is not applicable to the case of the assessee.

10. On the facts and the circumstances of the case, Ld. CIT(A) erred in deleting the disallowance made on account of provision for periodic maintenance charges while computing the book profits u/s 115JB of the Income Tax act 1961, without considering the facts that the expenditure has neither crystallized nor incurred during the tear under consideration"

11. On the facts and circumstances of the case and in the law, whether the Ld CIT(A) erred in allowing the deduction under section 80IA of the ACT to the assessee without the facts that the same was not claimed by the assessee company in the return of income and thus not allowable as per section 80A of IT. Act.

12. The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company electronically filed its original return of income for the Asst Year 2014-15 on 28.11.2014

and revised return of income on 15.05.2015 declaring total loss of Rs 11,17,43,018/-. In the said return, since there was a Gross Total Loss, the assessee did not claim the deduction u/s 80IA of the Act. However, the assessee clearly mentioned the claim of deduction as Rs Nil in the computation of income itself. Hence the Ground No.11 raised by the revenue is devoid of merit and deserves to be dismissed. Infact the assessee has been continuously claiming deduction u/s 80IA of the Act from Asst Year 2006-07 onwards and there is no reason why the assessee should not claim the same in the year under consideration. Once the loss is converted into income by the Id. AO by making some disallowances or additions, then automatically, deduction u/s 80IA of the Act should have been granted to the assessee. Hence the Ground No.11 raised by the revenue is dismissed.

3.1. At the outset, both the parties before us mutually agreed that the Grounds 1 to 9 are covered by the order of this tribunal in assessee's own case for the Asst Years 2005-06 to 2011-12 dated 4.3.2020 on merits. The relevant facts and decision rendered thereon by the tribunal are reproduced hereunder for the sake of convenience :-

3. *In grounds no.1 to 5, the assessee has challenged the validity of the assessment framed under section 143(3) r/w section 153A of the Income Tax Act, 1961 (for short "the Act"). Whereas, in grounds no.6, 7, 8 and 9, the assessee has challenged the disallowance of deduction claimed under section 80IA(4) of the Act. Since the issues raised in all these grounds are overlapping and interconnected, we propose to deal with and dispose off these grounds together.*

4. *Before we proceed to decide the issues, it is necessary to provide a brief factual backdrop relating to them. The Government of India, for the purpose of widening National Highway no.5, entrusted the National Highway Authority of India to convert the existing road between Vijayawada and Vishakhapatnam section from Kms. 200 to kms. 250 to a 4-lane equal carriage with private sector participation on Build, Operate*

and Transfer (BOT) basis. Accordingly, NHAI floated a bid for construction of the 4-lane project on BOT basis under annuity scheme. As per the bid requirement, two entities i.e., Gammon India Ltd. (GIL) and Punj Lloyd Ltd., came forward to compete for the bid by forming a consortium and being successful, both Gammon India Ltd. and Punj Lloyd Ltd. incorporated the assessee company as a special purpose vehicle (SPV) to implement the project. Accordingly, NHAI entered into a concession agreement with the assessee on 30th October 2001, for implementing the 4-lane project. Thereafter, the assessee company entered into a Engineering Procurement Contract (EPC) and Operation and Maintenance (O & M) contract with Gammon India Ltd. for construction of the project. On completion of the BOT project on 20th September 2004, the assessee started its commercial operation. In the return of income filed for the assessment year 2006-07, for the first time the assessee claimed deduction under section 80IA. in respect of the aforesaid project. The claim for such deduction continued in the subsequent assessment years and for the impugned assessment year, the assessee filed its return of income on 29th September 2008, declaring total income of ₹ 6,72,99,474, after claiming deduction of ₹ 11,64,44,163, under section 80IA. The assessment in case of the assessee was completed under section 143(3), vide order dated 30th November 2010 disallowing assessee's claim of deduction under section 80IA of the Act on the reasoning that such deduction is allowable only on a new infrastructure project and not on repair widening of an existing road. The assessee contested the disallowance before the higher appellate authorities and was successful.

5. *Be that as it may, subsequently, a search and seizure operation under section 132 of the Act was conducted in case of Gammon India Ltd. and other group companies on 8th July 2010. The assessee was also covered under such search and seizure operation. In pursuance to the notice issued under section 153A of the Act, the assessee filed its return of income declaring total income at ₹ 6,72,99,474, after claiming deduction under section 80IA of the Act for an amount of ₹ 9,27,62,638. The Assessing Officer ultimately completed the assessment disallowing assessee's claim of deduction under section 80IA of the Act on identical reasoning on the basis of which similar claim made by the assessee was disallowed in the original assessment proceedings. Further, the Assessing Officer also made couple of other disallowances. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority.*

6. *Before learned Commissioner (Appeals), the assessee raised an additional ground challenging the validity of the assessment made under section 143(3) r/w section 153A of the Act. It was submitted by the assessee that in the absence of any incriminating material found against the assessee as a result of search and seizure operation, no addition/disallowance which*

is subject matter of the original assessment proceeding cannot be made in the search assessment. Of course, the assessee also contested the disallowance of deduction under section 80IA of the Act on merits. After considering the submissions of the assessee, learned Commissioner (Appeals) held that in the course of search operation carried out on Gammon India Ltd., incriminating material and other documents were found which revealed that the assessee has not developed the infrastructure facility (BOT Project) for which it has claimed deduction under section 80IA of the Act. Thus, he observed, due to availability of such incriminating material, the Assessing Officer was competent to initiate proceeding under section 153A of the Act. Further, he observed, the EPC contract clearly reveals that the assessee after being awarded the BOT Project has sub contracted it to Gammon India Ltd. on a back-to-back basis. He observed, the assessee has not carried out any activity to develop the project and the entire development work including design, implementation, etc., was performed by Gammon India Ltd. Thus, he held that the assessee merely is a paper company without having any business activity. Learned Commissioner (Appeals) observed, since Gammon India Ltd. has actually developed the BOT Project, if at all, the deduction under section 80IA of the Act would be available to Gammon India Ltd. and not to the assessee. On the basis of the aforesaid reasoning, learned Commissioner (Appeals) upheld the disallowance of deduction claimed under section 80IA of the Act, though, on a completely different reasoning.

7. *Shri Farookh V. Irani, learned Sr. Counsel for the assessee submitted, the NHAI had entered into a concession agreement with the assessee for developing, operating and maintaining the 4-lane carriage way from kms. 200 to kms. 250 on between Vijayawada and Vishakhapatnam section on National Highway no.5, otherwise known as [Rajahmundry Dharmabharam Tuni Toll Road](#), a 53 kms. Stretch of road on BOT basis. He submitted, on an application made by the assessee, the Central Government has approved the assessee under section 10(23G) of the Act as an eligible company engaged in development of infrastructure as provided under section 80IA(4) of the Act for the aforesaid BOT Project. He submitted, in consideration for developing, operating and maintaining the road NHAI has paid a fixed sum of annuity of ₹ 1,000 crore over the concession period of 17 and 1/2 years. He submitted, the NHAI after considering competitive bids received from various parties had ultimately accepted the bid offered by a consortium between Gammon India Ltd. and Punj Lloyd Ltd. He submitted, as per the terms of the work allotment letter of NHAI, there was a mandatory requirement that the successful bidder will have to incorporate a company as a special purpose vehicle (SPV) to implement the project. In this context, the leaned Sr. Counsel drew our attention to the letter of allotment dated 5th September 2001, issued by NHAI, a copy of which is at Page-120 of the paper book. He further submitted, NHAI had also put a condition that the SPV formed for the*

purpose of developing the project should not undertake any other business activity except the BOT project. He submitted, complying with the condition imposed by the NHAI in the letter of allotment the assessee company was incorporated to implement the BOT Project. He submitted, after entering into the concession agreement with NHAI, the assessee entered into EPC and O & M contracts with Gammon India Ltd. He submitted, the function, role and responsibility of each party under the concession agreement as well as EPC and O & M contracts is will defined. He submitted, while the assessee is to receive annuity of ₹ 1,000 crore from NHAI over the period of concession, the EPC contract is for the value of ₹ 400 crore which has to be incurred during the development phase of the project and O & M contract is for a value of ₹ 150 crore which will be amortized over the tenure of concession agreement. He submitted, the assessee has financed the entire BOT project by raising loans and finances from Banks / Financial Institutions. He submitted, in the audited financial statements, the assessee has credited annuity income received from NHAI and debited various expenses incurred by it with respect to the project, which included operation and maintenance cost, finance cost, insurance cost, travelling expenses, professional fee, etc. To substantiate his contention, leaned Counsel drew our attention to the financial statement submitted in paper book. He submitted, though, the project was completed in the financial year 2004–05, the assessee started claiming deduction under section 80IA of the Act from assessment year 2006–07 onwards. He submitted, no deduction was claimed in the assessment year 2005–06, since there was a loss. To emphasize upon the fact that the assessee is the developer of the infrastructure project and is also responsible for operation and maintenance, the leaned Counsel drew our attention to various clauses of the concession agreement. He submitted, as per the terms of the agreement, the assessee is required to develop, operate and maintain the project at its own cost, expenditure and risk. Make financing arrangement as would be necessary to finance the cost of the project as well as other obligations under the agreement in a timely manner. He submitted, the assessee at its own cost and expenses, purchase and maintain by due reinstatement or otherwise, such insurance as are necessary during the period of implementation of the project. The leaned Counsel submitted, in assessment year 2006–07 assessee's claim of deduction under section 80IA of the Act was allowed by the Assessing Officer while completing the assessment under section 143(3) of the Act. He submitted, in assessment years 2007–08 and 2008–09, the Assessing Officer disallowed assessee's claim of deduction under section 80IA of the Act on the reasoning that the assessee has not developed a new infrastructure facility, but has only widened the existing road. However, while deciding the issue in appeal, learned Commissioner (Appeals) allowed assessee's claim by holding that widening of an existing road would also be eligible for deduction under section 80IA of the Act, as it amounts to development, operation and maintenance of an infrastructure facility. He submitted, the aforesaid decision of the first

appellate authority was also upheld by the Tribunal while deciding the appeals filed by the Revenue. The learned Sr. Counsel submitted, while completing the assessment for the impugned assessment year under section 143(3) r/w section 153A of the Act, the Assessing Officer has repeated the disallowance under section 80IA of the Act on the very same reasoning on which it was disallowed in the original assessment order. He submitted, in the course of search and seizure operation no incriminating material whatsoever was found from the assessee. He submitted, even the Assessing Officer has not referred to any incriminating material in the assessment order to show that the assessee is merely a paper company. In fact, he submitted, no such allegation was ever made by the Assessing Officer. He submitted, even in the remand report submitted to learned Commissioner (Appeals), the Assessing Officer has neither referred to any incriminating material nor has alleged that the assessee is a mere paper company. He has simply stated that the disallowance of deduction claimed under section 80IA of the Act was made only on the basis of the reasoning on which such disallowance was made in the original assessment order. Thus, the learned Sr. Counsel submitted, since the impugned assessment year is a case unabated assessment, no addition / disallowance could have been made without any incriminating material concerning such issue. The learned Sr. Counsel submitted, in such circumstances the ratio laid down by the Hon'ble Jurisdictional High Court in CIT v/s Continental Warehouse Corporation (Nhava Sheva) Ltd., [2015] 374 ITR 645 (Bom.) would squarely apply. He submitted, the allegation of learned Commissioner (Appeals) that there are incriminating materials against the assessee is without any basis as no such material has been brought on record either by the Assessing Officer or by learned Commissioner (Appeals). He submitted, not only all the relevant material including the concession agreement as well as EPC and O & M contracts were executed long before and available on record before the Assessing Officer, but they have been examined by the Assessing Officer and the appellate authorities while deciding assessee's appeals on the very same issue in the assessment years 2007-08 and 2008-09 arising out of the original assessment proceedings. Thus, he submitted, the issue relating to assessee's claim of deduction under section 80IA of the Act having been already examined by the Assessing Officer as well as the appellate authorities earlier, it cannot be re-visited in a proceeding under section 153A of the Act which can only be done on the basis of incriminating material found during the search. Without prejudice, the learned Sr. Counsel submitted, the allegation of learned Commissioner (Appeals) that the assessee is a paper company also does not emanate from any incriminating material found during the search and seizure operation. He submitted, once assessee's claim of deduction under section 80IA of the Act has been accepted by the Tribunal in assessment years 2007-08 and 2008-09, it cannot be reviewed and learned Commissioner (Appeals) cannot disallow assessee's claim of deduction under section 80IA of the Act on the teeth of the orders passed by the Tribunal.

8. Thus, he submitted, exercise of power under section 153A of the Act to make disallowance under section 80IA of the Act is wholly without jurisdiction, hence, untenable. As regards the merits of the issue, the learned Counsel submitted, the allegation of the learned Commissioner (Appeals) that the assessee is merely a paper entity is completely contrary and inconsistent with his own finding elsewhere in the order. He submitted, though, the assessee has offered the annuity income received from NHAI in terms of concession agreement, learned Commissioner (Appeals) has not directed for excluding the annuity income while computing income of the assessee. He submitted, learned Commissioner (Appeals) has also not disturbed various expenditures incurred and claimed by the assessee in respect of BOT project. Additionally, learned Commissioner (Appeals) has also allowed depreciation on the capital expenditure incurred on the project. Learned Counsel submitted, while treating the assessee as a paper entity, learned Commissioner (Appeals) has overlooked the fact that creation of the assessee as a SPV was a mandatory requirement of NHAI. The learned Counsel submitted, as per the terms of the concession agreement, the entire responsibility, risk and reward of building, operating and maintaining the infrastructure facility is with the assessee. To substantiate the aforesaid claim, learned Counsel drew our attention to various clauses of the concession agreement. The learned Counsel submitted, entire finance for the project has been provided by the assessee by incurring loans with interest cost. He submitted, merely because the assessee has entered into the EPC and O & M contracts with GIL and the construction work was carried out by the GIL, it cannot be said that the assessee is a mere paper entity. He submitted, the very fact that the assessee has earned annuity income and it has been assessed at the hands of the assessee nullifies learned Commissioner (Appeals)'s finding regarding assessee's status as a genuine company. The learned Counsel submitted, even, acceptance of assessee's claim of expenditure shows that the assessee is a genuine company having business activities. The learned Counsel submitted, very fact that the Tribunal while deciding Revenue's appeal in assessment years 2007-08 and 2008-09 arising out of the original assessment proceedings has allowed assessee's claim of deduction under section 80IA of the Act vindicates assessee's stand that it is a genuine company and has developed the infrastructure facility. Further, he submitted, the allegation of learned Commissioner (Appeals) that GIL has also claimed deduction under section 80IA of the Act for the same infrastructure facility is totally erroneous as the GIL has not claimed any deduction under section 80IA of the Act for the BOT road. Drawing our attention to the provisions of section 80IA(4) of the Act, learned Counsel submitted, GIL has acted merely as a contractor, hence, is not eligible to claim deduction under section 80IA of the Act. Further, he submitted, the GIL has not employed any finance for development of project as the entire project was financed by the assessee. He submitted, even after the search

operation was conducted, in assessee's own case for the assessment year 2012-13 learned Commissioner (Appeals) has allowed deduction claimed under section 80IA of the Act. Further, he submitted, the fact that the assessee company was purchased by a Singapore based company in financial year 2015-16, demolishes the finding of learned Commissioner (Appeals) that the assessee is a merely paper company. He submitted, though, the issue was otherwise concluded by the decision of the Tribunal in assessment years 2007-08 and 2008-09, only to get over the orders passed by the Tribunal, learned Commissioner (Appeals) has disallowed assessee's claim of deduction under section 80IA of the Act on a completely different reasoning without any material basis. Thus, he submitted, assessee's claim of deduction under section 80IA should be allowed. In support of his contention, learned Sr. Counsel relied upon the following decisions: –

- i) Radhaswamy Satsangh v/s CIT, [2992] 193 ITR 221 (SC); and*
- ii) CIT v/s Paul Bros., [2995] 216 ITR 548 (Bom.).*

9. *The learned Departmental Representative submitted, in course of search and seizure operation conducted in case of the assessee as well as GIL incriminating material relating to assessee's claim of deduction under section 80IA of the Act was found. He submitted, the incriminating material found during the search and seizure operation revealed that the assessee is a paper entity and has not carried out any development of work at all. Therefore, on the basis of such incriminating material found as a result of search, initiation of proceeding under section 153A of the Act is valid. The learned Departmental Representative submitted, though, in the original assessment order the issue of assessee's claim of deduction under section 80IA(4) of the Act was examined and disallowed by the Assessing Officer, however, at that point of time there was no material before the Assessing Officer to reveal that the assessee is a mere paper company and has not developed, operated or maintained the infrastructure facility to become eligible for deduction under section 80IA of the Act. He submitted, learned Commissioner (Appeals) while examining the issue has given a categorical finding that since the disallowance of deduction under section 80IA of the Act is on the basis of incriminating material, the validity of assessment order passed under section 153A of the Act with reference to the said issue cannot be questioned. Thus, he submitted, the ratio laid down by the Hon'ble Jurisdictional Court in Continental Warehouse Corporation (Nhava Sheva) Ltd. (supra) will not be applicable. Without prejudice, the learned Departmental Representative submitted, as per section 80IA(4) of the Act, only if a person is carrying on business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility is eligible to claim deduction. He submitted, in the facts of the present case, the materials on record show that in response to the bid floated by the Central Government / NHAI, Gammon India Ltd. and*

Punj Lloyd Ltd., formed a consortium to offer the bid and the assessee was not the bidder. Only after the consortium became successful in the bid, the assessee company was created as a SPV and it entered into a concession agreement with the NHAI. After the execution of the concession agreement, the assessee immediately entered into two separate contracts with the GIL i.e., EPC and O & M contracts under which the entire work relating to development, operation and maintenance of the BOT Project was handed over to GIL on purely back-to-back basis. He submitted, all the responsibilities and liabilities under concession agreement as conferred on the assessee company were shifted to GIL under the EPC and O & M contracts. Further, he submitted, the pricing of the EPC contract with the GIL is not transparent as the assessee has deflated the price to increase its profitability. He submitted, except making financial investment, the assessee is not contractually exposed to any risk or liability. The learned Departmental Representative submitted, unless the person claiming deduction under section 80IA of the Act himself carries out any one of the activities as provided under section 80IA(4)(i) of the Act, it will not qualify for deduction. He submitted, in the facts of the present case, admittedly, the assessee has not carried out even a single activity relating to either development or operation or maintenance of the infrastructure facility. The entire work was carried out by GIL. The assessee merely received the annuity income from NHAI on the basis of the concession agreement. Therefore, he submitted, the assessee is not eligible to claim deduction under section 80IA of the Act. He submitted, though assessee's claim of deduction under section 80IA of the Act was allowed in the proceedings arising out of original assessment orders, however, that was on a completely different reasoning as in those proceedings assessee's claim was disallowed on the ground that four laning of the road cannot be considered as a new infrastructure facilities. He submitted, on the basis of material found during the search and seizure operation it came to the notice of the Department that the assessee is neither a developer of the infrastructure facility nor is involved in operation and maintenance of the project. Therefore, assessee's claim of deduction was rightly disallowed.

10. We have patiently and carefully considered rival submissions in the light of the decisions relied upon and perused the material on record. Basically, two issues arise for our consideration. Firstly, whether as a result of search incriminating material came to the possession of the Assessing Officer enabling him to make the disallowance under section 80IA, in a proceeding under section 153A of the Act and secondly, the merits of the issue as to whether the assessee is eligible to claim deduction under section 80IA, on the BOT Project. Before we delve into the issues, at the cost of repetition, we think it appropriate to briefly narrate the relevant facts. Undisputedly, in the return of income filed for the impugned assessment year, the assessee had claimed deduction under section 80IA, in

respect of the profit/income earned from the development of the toll (BOT) road forming part of National Highway no.5. The aforesaid claim of the assessee was examined in the course of original assessment proceeding under section 143(3) of the Act. After examining the issue with reference to the relevant materials, the Assessing Officer formed an opinion that the assessee is ineligible to claim deduction under section 80IA of the Act since the four laning of the existing road cannot be considered as a new infrastructure facility. Accordingly, he disallowed assessee's claim of deduction. Of course, it is a different matter that the aforesaid decision of the Assessing Officer was reversed by learned Commissioner (Appeals) while accepting assessee's claim and the Tribunal also upheld the aforesaid decision of learned Commissioner (Appeals).

11. *The issue which needs examination is, what is the incriminating material found as a result of search conducted in case of the assessee, that could have enabled the Assessing Officer to again re-visit the issue of deduction claimed under section 80IA of the Act in the search assessment. On a perusal of the assessment order passed under section 143(3) r/w section 153A of the Act, it is very much evident that the Assessing Officer has not referred to any incriminating material insofar as it relates to development of the BOT Project or assessee's claim of deduction under section 80ITA of the Act. In fact, while dealing with the specific issue relating to assessee's claim of deduction under section 80IA of the Act, the Assessing Officer has very clearly relied upon the reasoning on the basis of which similar disallowance was made in the original assessment orders passed under section 143(3) of the Act for the assessment years 2007-08 and 2008-09. In fact, adopting the very same reasoning in the earlier assessment orders, the Assessing Officer disallowed assessee's claim on the conclusion that the BOT road developed by the assessee not being a new infrastructure facility, the assessee is not eligible to claim deduction under section 80IA of the Act. There is neither reference to a single incriminating material found as a result of search with regard to assessee's claim of deduction under section 80IA of the Act nor there is even a whisper by the Assessing Officer that the assessee is a paper entity. Though, the Assessing Officer was aware of both the concession agreement as well as EPC and O & M contracts, still he never treated the assessee as a paper entity. Nowhere in the assessment order has the Assessing Officer alleged that the assessee has not carried out the development of the BOT Project. In fact, assessee's claim of deduction under section 80IA of the Act was never disallowed by the Assessing Officer on the allegation of not developing, operating and maintaining the infrastructure facility.*

12 *Keeping in view the aforesaid facts, if we examine the order of learned Commissioner (Appeals), it is to be noted that while dealing with assessee's ground challenging the validity of the proceeding under section, learned Commissioner (Appeals) has observed that during the search*

operation conducted in case of the assessee no incriminating material was found. To put it simply, he has not referred to a single incriminating material found from the assessee. Only observation he has made is, in course of search operation conducted in case of GIL, incriminating documents relating to GIL were found from their premises. Further, he has stated that on the basis of such incriminating documents found during the search which relates to unaccounted scrap sales which has generated unaccounted cash, bogus purchase and bogus sub contracts and misc. income, GIL has declared income of ₹ 50 crore. Of course, to justify the validity of the proceedings under section 153A, learned Commissioner (Appeals) has observed that incriminating material seized from GIL is intimately and inseparably connected to the assessee without specifying the nature of such incriminating material and how they are connected to the assessee or its claim of deduction under section 80IA of the Act.

13. *Further, to negate assessee's objections regarding the validity of the proceeding under section 153A of the Act, learned Commissioner (Appeals) has referred to a report of the Freschmann Prabhu India Pvt. Ltd., relating to actual cost of the project as a new material available to the Assessing Officer. However, the assessee's contention that the said report is not an incriminating material found as a result of search, but was submitted by the assessee itself remains uncontroverted. Thus, from the aforesaid facts, it becomes clear that no incriminating material relating to the assessee was found as a result of search. Further, learned Commissioner (Appeals) while justifying the initiation of proceeding under section 153A of the Act, has observed that the incriminating finding by him that the assessee is a paper company is directly related to assessee's claim of section 80IA of the Act and these are new facts on record which are never examined earlier, hence, empowers the Assessing Officer to examine the claim of deduction under section 80IA of the Act. Thus, the observations made by learned Commissioner (Appeals), as discussed above, clearly establishes the fact that in the course of search and seizure operation conducted in assessee's case no incriminating material was found to demonstrate that the assessee is a paper company and has made a wrong claim of deduction under section 80IA of the Act. The "incriminating finding", if any, has to be on the basis of incriminating material found as a result of search. It is learned Commissioner (Appeals), who only has termed the assessee as a paper company on the basis of his own reasoning to deny assessee's claim of deduction under section 80IA of the Act. As discussed earlier, nowhere in the impugned assessment order, the Assessing Officer has either referred to any incriminating material or has recorded any finding that the assessee is a paper company and has not developed, operated or maintained the infrastructure facility. This fact is further corroborated from the observations of the Assessing Officer in the remand report submitted to learned Commissioner (Appeals). On a reading of Para-3.11 of the order of learned Commissioner (Appeals), it is evident,*

the Assessing Officer has very clearly and categorically stated in the remand report that the order passed under section 143(3) r/w section 153A of the Act on the issue of assessee's claim of deduction under section 80IA of the Act was only a reiteration of Assessing Officer's reasoning while making similar disallowance in the original assessment order passed u/s 143(3).

14. Thus, the aforesaid facts make it absolutely clear that no material, much less, any incriminating material was found during the search and seizure operation with reference to assessee's claim of deduction under section 80IA(4) of the Act which could have enabled the Assessing Officer to re-visit the issue again in an unabated assessment proceeding when the issue has already been examined and stands concluded in the original assessment proceeding. Therefore, in our considered opinion, once assessee's claim of deduction under section 80IA of the Act has been examined in the original assessment proceeding, the same could not have been examined again in the proceeding under section 153A of the Act in the absence of any incriminating material found as a result of search. The ratio laid down by the Hon'ble Jurisdictional Court in Continental Warehouse Corporation (Nhava Sheva) Ltd. (supra), therefore, would squarely apply. Therefore, the disallowance of deduction claimed under section 80IA of the Act having already been knocked off by learned Commissioner (Appeals) and the Tribunal, it cannot be revived again in the search assessment proceeding.

15. As it appears, knowing fully well that the reasoning on the basis of which the Assessing Officer has disallowed assessee's claim of deduction under section 80IA of the Act would not be sustainable in view of Tribunal's decision on such issue in assessee's own case, learned Commissioner (Appeals) has attempted to introduce the theory of 'paper entity' to disallow assessee's claim of deduction under section 80IA of the Act by referring to incriminating material which, in reality, never existed. Therefore, we are unable to uphold the decision of learned Commissioner (Appeals) on the issue of validity of assessment made under section 153A of the Act. Accordingly, we hold that the additions made in the assessment order which are not on the basis of any incriminating material found as a result of search are not sustainable.

16. Having held so, we could have restrained ourselves from deciding the issue on merits. However, since the issue arises in other assessment years as well where the assessments have abated, we consider it appropriate to deal with the merits of the issue at this juncture. Undisputedly, the Assessing Officer adopting the very same reasoning on the basis of which assessee's claim of deduction under section 80IA of the Act was disallowed in the original assessment proceedings for the assessment years 2007-08 and 2008-09 has disallowed assessee's claim of

deduction in the impugned assessment year as well. As discussed earlier, the reason for such disallowance in all these years is, the BOT road not being a new infrastructure facility is ineligible for deduction under section 80IA of the Act. However, knowing the fallacy of the aforesaid reasoning of the Assessing Officer, which has been reversed by the appellate authorities in proceedings arising out of original assessment order, learned Commissioner (Appeals) has made an attempt to sustain the disallowance by completely deviating from the reasoning of the Assessing Officer and in the process has provided his own reasoning. Referring to the concession agreement as well as the EPC and O & M contracts learned Commissioner (Appeals) has tried to make out a case that the assessee is a mere paper company and after getting the work from NHAI has awarded the work to GIL on back-to-back basis without carrying out any work itself. However, facts on record reveal that it is the assessee with whom NHAI has entered into the concession agreement for developing, operating and maintaining the toll Road. A perusal of the concession agreement reveals that the entire responsibility, risk and reward arising out of the BOT Project were with the assessee. Though, assessee was entrusted the job of developing, operating and maintaining the project by the NHAI, however, the concession agreement also provides that the assessee can get the development work done through a contractor by entering into EPC contract. Further, the concession agreement also provided that the assessee can enter into a separate contract for operation and maintenance of the BOT Project. Thus, it is evident, the EPC and O & M contracts entered into by the assessee with GIL are as per the terms of the concession agreement and also with the approval of NHAI. It is also a fact on record that the assessee has financed the entire project by availing loan from financial institutions. Further, as per the concession agreement assessee at its own cost is required to insure the project during the period of implementation. The work of GIL is limited to carrying out the development as well as operation and maintenance of the infrastructure project as per the price fixed under the contracts. Thus, the status of GIL is that of a contractor. Whereas, the assessee as per the terms of the concession agreement is the developer of the infrastructure facility. It is relevant to observe, the concession agreement was executed on 30th October 2001. Whereas, the EPC contract was entered into on 13th February 2002. Thus, both these contracts were much prior to assessment year 2006-07, wherein, for the first time assessee claimed deduction under section 80IA of the Act. It is also a fact on record that in the course of assessment proceeding in assessment year 2006-07, the Assessing Officer after examining assessee's claim allowed the deduction under section 80IA of the Act. Though, in assessment years 2007-08 and 2008-09 while completing the assessments under section 143(3) of the Act, the Assessing Officer disallowed the deduction under section 80IA of the Act on the ground that it is not a new infrastructure facility, however, both the appellate authorities i.e., learned Commissioner (Appeals) and the Tribunal have allowed assessee's claim. The facts and

materials on the basis of which assessee's claim of deduction under section 80IA of the Act was allowed by the appellate authorities have not changed as the concession agreement and the EPC and O & M contracts have remained same. In fact, in the impugned assessment order, the Assessing Officer has examined the EPC contract, however, he has not raised any doubt regarding assessee's status as a developer. Learned Commissioner (Appeals) on the basis of the very same documents has held the assessee as a paper company and not a developer. This is merely for the fact that the assessee has entered into the EPC contract with GIL. In our view, a reading of section 80IA of the Act makes it clear that as per the qualifying conditions, the company eligible for claiming deduction firstly, must have been created by a consortium, secondly, it must have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility and thirdly, it has started or starts operating and maintaining the infrastructure facility on/or after first day of April 1995. There cannot be any doubt that the assessee has fulfilled the first and third conditions. If, at all, there is some doubt regarding the second condition as to whether the assessee can be regarded as a developer or engaged in operating and maintaining the infrastructure facility. A reading of section 80IA as a whole as well as the concession agreement would make it clear that it is the assessee who has been entrusted the work of developing, maintaining, operating the infrastructure facility. The project has been financed entirely by the assessee. GIL has executed the work merely as a contractor.

17. Though, learned Commissioner (Appeals) has stated that for the same infrastructure facility both the assessee and the GIL are claiming deduction, however, the aforesaid finding is factually incorrect. In fact, from the material placed on record, it is evident, GIL has withdrew its claim of deduction under section 80IA of the Act after the amendment brought to provision prohibited allowance of deduction to a contractor. Thus, as per the facts on record, it is the assessee who is only claiming deduction under section 80IA of the Act. Further, the allegation of learned Commissioner (Appeals) that the assessee is a mere paper company is unacceptable considering the fact that an agency of the Central Government has entered into a contract with the assessee. Even, the annuity income received by the assessee from NHAI has been assessed at the hands of the assessee. Expenditure claimed including finance cost, depreciation, etc. have also been allowed. Thus, it is very much clear that the assessee is a genuine company doing business and cannot be regarded as a paper entity. The most crucial factor which needs to be kept in mind is, assessee's claim of deduction under section 80IA of the Act in respect of the same infrastructure facility was allowed by learned Commissioner (Appeals) in the assessment years 2007-08 and 2008-09 and the Tribunal also approved it. It is worth mentioning, while deciding identical issue in

assessment year 2012–13, which is after the date of search and seizure operation, learned Commissioner (Appeals) following the decision of the Tribunal has allowed assessee's claim of deduction under section 80IA of the Act. Thus, it is very much clear that the appellate authorities on verifying identical facts and materials have never considered the assessee as a paper company or it is not a developer of the infrastructure facility, hence, allowed assessee's claim of deduction. In our view, when the issue relating to assessee's claim of deduction stands concluded by the Tribunal, learned Commissioner (Appeals) cannot take a different view to disallow assessee's claim of deduction by treating it as a paper company, that too, without any material basis. For coming to such conclusion, we are supported by the decision of the Hon'ble Jurisdictional High Court in Paul Bros. (supra).

18. The observation of the learned Commissioner (Appeals) that the assessee is a mere paper company and by entering into EPC contract, it has inflated its profit by deflating the value of the contract cannot also be accepted as it is merely on the basis of a presumption. As discussed earlier, vide notification no.266, dated 19th September 2002, the Central Government has granted approval under section 10(23G) of the Act recognizing the assessee as an undertaking wholly engaged in developing, operating and maintaining infrastructure facility. Meaning thereby, the Central Government recognizes the assessee as an eligible undertaking under section 80IA(4) of the Act for developing, operating and maintaining the BOT Toll Road. Therefore, only because the work has been executed through a contractor, the assessee cannot be treated as a paper company.

19. As regards the observation of learned Commissioner (Appeals) that, if at all, GIL would be eligible for deduction under section 80IA, in our view, such finding is totally misplaced. A reading of section 80IA(4)(i) of the Act would make it clear that GIL does not fulfill any of the conditions mentioned therein. Moreover, by insertion of explanation below section 80IA(13) of the Act, it has been made clear that a contractor is not eligible to claim deduction under section 80IA of the Act. The financial statements of both the assessee as well as GIL, concession agreement, EPC and O & M contracts clearly demonstrate that GIL is executing the work in the status of a contractor. For this reason alone, GIL withdrew its claim of deduction under section 80IA of the Act which is evident from the order passed by the Tribunal in ITA no.5149& 7430/Mum./2007, dated 27th April 2011. The provision of section 80IA(4) of the Act certainly does not give an impression that the assessee has to do the developing, operating and maintaining the infrastructure facility all by itself without engaging any contractor. This, in our view, cannot be the meaning of section 80IA(4) of the Act. This is why, while dealing with the issue earlier, though, the fact of EPC and O & M contracts were very much in the knowledge of the Assessing Officer as well as the appellate authorities, they never questioned

assessee's status as the developer of the infrastructure facility and the disallowance of deduction under section 80IA of the Act was made only on the reasoning that the infrastructure facility is not a new one. Therefore, when the status of the assessee has been accepted as a developer, even by the Assessing Officer in the impugned assessment order, learned Commissioner (Appeals) cannot change the status purely on the basis of conjecture and surmises without any contrary material available on record. In fact, learned Commissioner (Appeals) has not referred to even a single piece of material which can even remotely suggest that the assessee is a mere paper company and does not qualify the conditions of section 80IA(4) of the Act. There is no doubt that the BOT Toll Road built by the assessee is a infrastructure facility as defined under section 80IA(4) of the Act. Therefore, an entity which developed such a facility is eligible to claim deduction, provided, he fulfills the conditions of section 80IA(4)(i) of the Act. In the fact of the present case, if neither the assessee nor GIL are held as ineligible then no one else could get the benefit of section 80IA of the Act and the very object for which the provision has been brought would fail. Unless the entity coming forward to make the investment in developing infrastructure facility is granted the statutory deduction no one will come forward to make huge investment for development of infrastructure facility which ultimately leads to development of country's economic condition. Therefore, keeping in view all the relevant facts including the decision of the Tribunal in assessee's own case as referred to elsewhere in the order, we hold that the assessee is eligible to claim deduction under section 80IA of the Act. Therefore, the Assessing Officer is directed to verify the correctness of assessee's computation of deduction under section 80IA and allow the same. Further, to ensure that deduction for the same infrastructure facility is not allowed to both the assessee and Gil, the Assessing Officer is directed to verify the relevant facts and thereafter compute deduction under section 80IA of the Act. These grounds are allowed.

20. In ground no.10, the assessee has challenged the disallowance of depreciation claimed on the right to collect annuity by treating it as intangible asset.

21. Brief facts are, in the course of assessment proceedings, the Assessing Officer noticed that the assessee has awarded the EPC contract to the GIL, a related party, at a rate which is higher by 2.5%. He observed, the consortium bankers who have extended loans to the assessee had appointed an individual engineering firm Frischmann Prabhu India Pvt. Ltd., who had independently evaluated, examined and estimated the project cost at ₹ 231.53 crore. Thus, he held that the provisions of section 40A(2) of the Act are attracted. Further, on verifying the books of account he found that the assessee has capitalized a sum of ₹ 226 crore towards EPC charges. Comparing the EPC contract cost awarded by the assessee to GIL with

contract cost awarded by an associate as well as the independent engineer's report, the Assessing Officer disallowed capitalization of excess cost amounting to ₹ 5.47 crore. Consequently, he disallowed corresponding depreciation on such cost worked out at ₹ 39,87,630. The assessee contested the aforesaid disallowance before the first appellate authority.

22. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) held that the Assessing Officer has no power to substitute the actual cost of the project recorded in the books of account with an estimated cost without rejecting the books of account. Accordingly, he deleted the disallowance of depreciation made by the Assessing Officer. However, relying upon CBDT Circular no.9/2014, dated 23rd April 2014, he held that the project cost has to be amortized over the concession period and the depreciation claimed by the assessee has to be disallowed. Accordingly, he disallowed the depreciation claimed by the assessee at ₹ 2,82,47,295.

23. Before us, the learned Counsel for the assessee submitted, by acquiring the right to collect annuity, the assessee has acquired a valuable commercial right which is an intangible asset within the meaning of section 32(1)(ii). Thus, he submitted, assessee's claim of depreciation has to be allowed. In support of such contention, the learned Counsel for the assessee relied upon the following decisions:—

i) ACIT v/s Progressive Construction Ltd., ITA no.1845/Hyd./ 2014, and C.O. no.36/Hyd./2015, dated 14.02.2017 (SB); and

ii) ACIT v/s West Gujarat Expressway Ltd., [2015] 154 ITD 103 (Mum.).

24. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

25. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. The issue raised before us is now fairly well settled in view of the Special Bench decision of the Tribunal, Hyderabad Bench, referred to above. Undisputedly, the assessee was awarded the work of constructing a part of the National Highway no.5, under BOT basis. Therefore, entire investment/finance for developing the infrastructure facility was borne by the assessee. By making such investment what the assessee received in return was a right to collect annuity over the period of concession. Thus, the investment made by the assessee for acquiring such right certainly is an intangible asset coming within the purview of section 32(1)(ii) of the Act. Therefore, the assessee would be eligible to claim depreciation. The decision of the learned Commissioner (Appeals) on the issue is hereby reversed.

33. *The only issue raised by the Revenue is with regard to the deletion of disallowance made under section 40A(2) of the Act.*

34. *As discussed earlier, while dealing with ground no.10, raised by the assessee in its appeal being ITA no.6518/Mum./2017, the Assessing Officer being of the view that the assessee has paid contract cost to the GIL at a higher rate, invoked the provisions of section 40A(2) of the Act and disallowed a part of depreciation expenditure corresponding to the excess cost capitalized by the assessee.*

35. *Learned Commissioner (Appeals) while dealing with the issue has deleted the disallowance on the reasoning that the cost of contract as entered in the books of account cannot be substituted with an estimated cost without rejecting the books of account.*

36. *Having considered the rival submissions and perused the relevant facts and material on record, we do not find any infirmity in the aforesaid decision of learned Commissioner (Appeals). Before invoking the provisions of section 40A(2)(b) of the Act, the Assessing Officer has to establish through cogent material that the price paid by the assessee is not at arm's length. In the facts of the present case, as rightly observed by the learned Commissioner (Appeals), the Assessing Officer has substituted the price of contract with an estimated cost. Therefore, we do not find any reason to interfere with the decision of the learned Commissioner (Appeals). Even, otherwise also, the tax effect on the amount disputed by the Revenue in the present appeal is below the monetary limit of ₹ 50 lakh applicable to appeals before the Tribunal, as per CBDT Circular no.17 of 2019, dated 8th August 2019. Further, he submitted, none of the exceptions provided in CBDT Circular no.3 of 2018, dated 11th July 2018 r/w circular F. no.279/Misc./142/2007-ITJ-(Pt) dated 20th August 2018, would apply to Revenue's appeal. For that reason also, Revenue's appeal is not maintainable.*

3.2. Respectfully following the aforesaid decision, we hold that Ground Nos. 1 to 4 raised by the revenue are covered in favour of the assessee by order of the tribunal in assessee's own case referred to supra and hence the said grounds are dismissed.

4. The Ground Nos. 5& 6 raised by the revenue are covered in favour of the assessee by the following orders of the tribunal :-

- a) Tribunal order in assessee's own case dated 4.3.2020 referred to supra;
- b) Order of Mumbai Tribunal in the case of DCIT vs Kosi Bridge Infrastructure Co Ltd in ITA Nos. 582,576 & 581/Mum/2020 for Asst Years 2012-13, 2014-15 & 2015-16 respectively dated 8.10.2021 vide para 6 of the decision ;
- c) Order of Mumbai Tribunal in the case of DCIT vs Gorakhpur Infrastructure Co. Ltd (sister concern of assessee) in ITA Nos. 574, 846 & 847/Mum/2020 for Asst Years 2013-14, 2014-15 & 2015-16 respectively dated 30.11.2021, vide paras 2.1. and 2.2. of the decision ;
- d) Order of Mumbai Tribunal in the case of DCIT vs Andhra Expressway Pvt Ltd in ITA Nos. 6462, 6463 & 6464/Mum/2017 for Asst Years 2008-09, 2009-10 & 2010-11 respectively dated 16.10.2020 together with its related Cross Objections and Andhra Expressway Pvt Ltd vs ACIT in ITA Nos. 6508-6513/Mum/2017 for Asst Years 2005-06 to 2010-11 respectively dated 16.10.2020, vide paras 18 to 22 of the decision.

4.1. Respectfully following the judicial precedents relied upon hereinabove, we hold that Ground Nos. 5 & 6 raised by the revenue are dismissed as they are covered in favour of the assessee .

5. The Ground No. 7 raised by the revenue is covered in favour of the assessee by the order of this tribunal in assessee's own case for Asst Years 2005-06 to 2011-12 dated 4.3.2020 referred to supra vide paras 33 to 36 of the decision.

5.1. Respectfully following the aforesaid decision, we hold that Ground No. 7 raised by the revenue is dismissed.

6. The Ground Nos. 8 & 9 raised by the revenue are covered in favour of the assessee by the order of this tribunal in the case of DCIT vs Kosi Bridge Infrastructure Co Ltd in ITA Nos. 582,576 & 581/Mum/2020 for Asst Years 2012-13, 2014-15 & 2015-16 respectively dated 8.10.2021 vide para 7 of the decision which is reproduced below:-

“7. So far as the deduction of provision of periodic maintenance is concerned, it is undisputed fact that the assessee was under contractual obligation to carry out periodic maintenance and had definite financial obligation which may or may not happen. Nevertheless, the same was ascertained liability and as long as the same is estimated on a scientific basis, the same would be an allowable deduction notwithstanding the fact whether the same actually crystallizes during the year or not. During appellate proceedings, the assessee placed on record the copy of the technical report on the basis of which the provision for the periodic maintenance charges was determined. It was gathered that the amount of provision was determined on the basis of a reasonable scientific method and on the basis of an historical experience. The provision has been made on the basis of the Schedule of Rates of Road Construction Department, Government of Bihar. Thus, it could safely be concluded that the provision was determined on the basis of scientific method and was reasonable. As per the cited decision of Hon'ble Apex Court, the provision for a contingent liability can be allowed as an expense only if it is ascertained according to a reasonable scientific method which uses historical experience and statistical analysis of previous years' data. Since, in the present case, there was definite obligation which would require outflow of resources and a reliable estimate of the obligation was also possible, the liability could not be termed as contingent liability. Hence, the deduction of the same has rightly been allowed to the assessee under normal provisions. Consequently, these would not be added back to compute Book-Profits u/s 115JB. The grounds raised by the revenue stand dismissed.”

6.1. Similar view was also taken by this tribunal in the case of DCIT vs Gorakhpur Infrastructure Co. Ltd (sister concern of assessee) in ITA Nos.

574, 846 & 847/Mum/2020 for Asst Years 2013-14, 2014-15 & 2015-16 respectively dated 30.11.2021, vide paras 3.4. and 3.5. of the decision.

6.2. Respectfully following the judicial precedents relied upon hereinabove, we hold that Ground Nos. 8 & 9 raised by the revenue are dismissed as they are covered in favour of the assessee .

7. The Ground No. 10 raised by the revenue is challenging the deletion of disallowance u/s 14A of the Act while computing book profits u/s 115JB of the Act.

7.1. We have heard the rival submissions and perused the materials available on record. We find from the perusal of the assessment order , no disallowance u/s 14A of the Act by the Id. AO while computing the book profits u/s 115JB of the Act. Hence there was no occasion for the Id. CIT(A) to have adjudicated this issue at all in his appellate order. Accordingly, the Ground No. 10 raised by the revenue is dismissed as infructuous as it is emanating from the orders of the lower authorities.

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

Order pronounced on 17 /08/2022 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 17/08/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai