

IN THE INCOME TAX APPELLATE TRIBUNAL : PANAJI BENCH: GOA

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.449/PAN/2018
Assessment Year: 2014-15**

Goa State Infrastructure Development Corporation Ltd. 7th Floor, EDC House, Dr. A. B. Road, Panaji, Goa 403001 (PAN: BLRGO3663C)	Vs.	Income Tax Officer, Ward-1(1), Panaji – Goa 403 001.
(Appellant)		(Respondent)

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**ITA No.453/PAN/2018
Assessment Year: 2014-15**

Deputy Commissioner of Income-tax, Circle-1(1), Panaji, Goa	Vs.	Goa State Infrastructure Development Corporation Ltd., Panaji
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jitendra Jain, AR
Department by : Shri Mayur Kamble, Sr. DR

Date of Hearing : 15.06.2022

Date of Pronouncement : 02.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Both these cross appeals preferred by the assessee and the revenue are directed against the order of Ld. CIT(A)-2, Panaji vide ITA No. 143/CIT(A)-2/PNJ/2017-18 and ITA No. 42/CIT(A)-1/PNJ/2017-18 dated 27.09.2018 for A.Y. 2014-15 passed against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-1(1), Panaji-Goa dated 19.12.2016.

2. Shri Jitendra Jain, AR appeared on behalf of the assessee and Shri Mayur Kamble, Sr. DR appeared on behalf of the revenue.

3. The only issue involved in these two cross appeals is in relation to disallowance of deduction of Rs.3,37,35,560/- claimed by the assessee u/s. 80IA of the Act. The assessee is in appeal in respect of disallowance of an amount of Rs.23,97,310/- and the department is in appeal in respect of relief granted by the Ld. CIT(A) for allowance of Rs.3,13,38,250/-, both comprising the total claim of Rs.3,37,35,560/-.

4. Brief facts as culled out from records are that assessee is a Public Limited Company promoted by Govt. of Goa for taking up infrastructural development work for various departments of the Govt. of Goa. Assessee is floated by the Government of Goa as a Special Purpose Vehicle (SPV) for speedy implementation of various infrastructural projects envisaged by the State Government like roads, bridges, flyovers, traffic management, bus stand, water supply augmentation etc. all over the state. The projects undertaken by the assessee are on cost plus basis.

4.1. The Government pays to the assessee based on expenditure incurred by it during the year towards development of various projects. Apart from the project development activities, assessee has also financed various government departments for the development of their projects. For the year under consideration, assessee claimed a deduction of Rs.3,37,35,560/- u/s. 80IA of the Act and reported a total income of Rs.4,02,18,620/- in its return filed for the year. Ld. AO completed the assessment u/s. 143(3) of the Act by assessing the total income at Rs.7,39,54,180/-, wherein a disallowance u/s. 80IA of the Act amounting to Rs.3,13,38,250/- and an addition of income from other sources amounting to Rs.23,97,310/- was made.

4.2. In the course of assessment, assessee had submitted audit report in Form 10CCB for its claim of deduction u/s. 80IA of the Act and

placed all the relevant details and documents on record to support its claim. It also submitted the activity wise profit and loss account and stated that assessee is in the 8th year of claim out of total 10 years with initial assessment year as AY 2007-08. The activity wise profit and loss account placed on record at page 23 of the paper book is reproduced as under:

Turnover	Finance	80IA Projects	Non 80 IA Projects	Total
Net construction and other expenses charged to Govt of Goa		99,82,01,503.00	1,98,43,52,356.00	2,98,25,53,859.00
Development Fees		5,02,41,120.00	6,65,36,459.00	11,67,77,579.00
Interest earned	1,23,54,693.00			1,23,54,693.00
Other Income	34,884.00	41,89,334.00	1,75,20,619.00	2,17,44,837.00
G Total	1,23,89,577.00	1,05,26,31,957.00	2,06,84,09,434.00	3,13,34,30,968.00
Construction and related expenses	-	93,25,62,510.00	1,86,46,13,376.00	2,79,71,75,886.00
Employee Benefits expenses	49,431.00	1,24,22,869.00	2,44,10,791.00	3,68,83,091.00
Finance cost	63,97,933.00	6,74,31,017.00	13,25,01,157.00	20,63,30,107.00
Depreciation	18,385.00	14,61,919.00	28,72,653.00	43,52,957.00
Other expenses	63,105.00	50,18,082.00	98,60,474.00	1,49,41,661.00
G Total	65,28,854.00	1,01,88,96,397.00	2,03,42,58,451.00	3,05,96,83,702.00
Profit Before Tax	58,60,723.00	3,37,35,560.00	3,41,50,983.00	7,37,47,266.00

4.3. Assessee submitted that the said deduction u/s. 80IA of the Act was allowed to it for all the preceding seven years. Aggrieved by the addition/disallowance, assessee went in appeal before the Ld. CIT(A). Before him, it was submitted that the only ground taken by the Ld. AO to deny the benefit of section 80IA is that it is working as nodal agency on behalf of the Government of Goa for which assessee controverted the stand taken by the Ld. AO. According to the assessee, it has been set up by the Government of Goa as a SPV to develop infrastructure facilities which are developed by the assessee by appointing various contractors. It was also pointed out that Ld. AO referred to the

provisions of Explanation to section 80IA(13) of the Act with retrospective effect from 01.04.2000 and held that the assets developed/created are not pertaining to the assessee and the assessee is entitled only to a fixed remuneration for its professional services and, therefore, disentitling it from deduction u/s. 80IA of the Act.

4.4. For this, Ld. AO placed reliance on the decision of Co-ordinate Bench of ITAT, Ahmedabad in the case of Gujarat Urban Development Co. Ltd. Vs. DCIT in ITA No. 1972/Ahd/2014. To counter the various assertions made by the Ld. AO in his assessment order and support the grounds taken by the assessee before the Ld. CIT(A), it was submitted by the assessee that it is a company which is wholly owned by the Government and as a SPV of Government of Goa and is a developer of various infrastructure facilities . Attention was invited to the provisions of section 80IA(4) of the Act according to which deduction is available to an enterprise carrying on the business of –

- (i) developing, or
- (ii) maintaining and operating, or
- (iii) developing, maintaining and operating any infrastructure facility.

4.5. Thus, it was contended that assessee carries on the activities of developing the infrastructure projects and the Ld. AO has wrongly presumed the assessee as a work contractor. To support its contention, it was submitted that legislature has provided that the income of the developer of a infrastructure projects would be eligible for deduction for which it presupposes that there could be income to the developer i.e. to a person which is carrying on the activities of handling/developing the infrastructure facility. Therefore, merely because the assessee was paid by the Government for development work, it could not be denied deduction u/s. 80IA(4) of the Act.

4.6. On the aspect of treatment of assessee as a work contractor by the Ld. AO, it was submitted that a person who enters into a contract with another person would be a contractor no doubt, and the assessee having entered into an agreement with the Government agencies for development of infrastructure projects was obviously a contractor, but that did not derogate the assessee from being a developer as well. The term “contractor” is not essentially contradictory to the term “developer”. It was further stated that section 80IA(4) of the Act itself provides that assessee should develop the infrastructure facility as per the agreement with Central Government, State Government or local authority and, therefore, entering into a lawful agreement and thereby becoming a contractor should in no way, be a bar to the one being a developer. It was also furnished that contractors/consultants were paid by the assessee from time to time out of its own funds which were raised by it by way of share capital contributed by the Government, loans from financial institutions and banks.

4.7. It was also pointed out that Ld. AO was totally wrong in considering the loans taken by the assessee from M/s. EDC Ltd. as an agency of the Government. The correct fact in this respect is that M/s. EDC Ltd. is a financial institution operating in Goa for financing industrial units and other business units. Further, M/s. EDC Ltd. has not advanced loans free of interest to the assessee and the interest rate charged by it was the same as it was charged to other industrialists and business units in Goa. Thus, it was strongly submitted that assessee met the development cost out of its own sources and that it did not work as a nodal agency of the Government of Goa as held by the Ld. AO

in the impugned order and thus claimed for the allowability of the deduction u/s. 80IA of the Act.

4.8. Ld. CIT(A) dealt with the issue elaborately both on merits and law and granted relief to the assessee by allowing the deduction of Rs.3,13,38,250/- out of the total claim of Rs.3,37,35,560/- u/s. 80IA(4) of the Act. For the remaining amount of Rs.23,97,310/- on an objective appraisal of facts in respect details of other income, Ld. CIT(A) sustained the addition for this amount by holding that sources of other income comprised in Rs.23,97,310/- are not from the eligible business though they may be distinctly related to the said business and thus, this addition was confirmed.

4.9. The relevant extracts of findings given by the Ld. CIT(A) in respect of relief granted to the assessee is reproduced as under:

“4.2. I have considered rival contentions of AO and the AR of the appellant. I have also deliberated on the judicial pronouncements referred by AO and the AR of the appellant. From the P & L account and the Balance Sheet of the appellant produced as on 31.03.2014, I find that the appellant is in the business of construction/development of infrastructure facilities and other projects which do not qualify for deduction u/s. 80IA(4) of the Act. The income from other projects has been offered to tax by the appellant in the return of income. It undertakes project of roads, bridges and other infrastructural facilities from State Government. The appellant being a developer of infrastructural facilities for the eligible projects within the meaning of section 80IA(4) of the Act, claimed deduction u/s. 80IA(4) of the Act. However, the AO disallowed the claim by stating that the appellant is not a developer but a nodal agency. The AO placed reliance on the ratio of decision of Hon'ble ITAT 'C' Bench, Ahmedabad in the case of Gujarat Urban Development Co. Ltd. Vs DCIT (ITA.No.1972/AHD/2014).

4.3. On perusal of the aforesaid decision, it is found that the facts of the case law cited by the AO are totally different from that of appellant's case and the AO has wrongly applied the said decision to impugned appellant. As the appellant had constructed new roads and bridges for Govt. of Goa thereby acted as developer and not as a Contractor. In support of the same, appellant has submitted copy of Tender Agreement before the AO as well as during appellate proceedings and I have also carefully gone through the terms and conditions of Tender Agreement. As per my considered view, a person, who enters into a contract with another person, would be a contractor no doubt however in the instant case the appellant having entered into an agreement with the Government agencies for development of the infrastructure projects, was obviously a contractor, but that did not derogate the appellant from being a developer as well. The term 'contractor' is not essentially contradictory to the term 'developer'. On the other hand, rather section 80-IA(4) itself provides that the assessee should develop the infrastructure facility

as per the agreement with the Central Government, State Government or a local authority. So, entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to the one being a developer. Therefore, merely because, in the TDS certificate, tax at source was deducted u/s. 194C being applicable to a contractor cannot be the reason for treating a genuine developer as a contractor. The same cannot detract the appellant from the position of being a developer; nor should it debar the appellant from claiming deduction under section 80-IA(4) of the Act. Therefore, the assessee, who is only engaged in developing the infrastructural facility, i.e., road, bridges etc is entitled to the benefits of the deduction under section 80-IA(4) of the Act. The provisions of sub-clause (c) of clause (i) of section 80-1A (4) were inapplicable to the instant case, Hence, the order of the AO in my opinion, is based on incorrect interpretation of law.

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4.6. A perusal of all the documents placed before me, I find that, all the contracts of the site which was handed over by the Government Bodies to the appellant for development of the infrastructure facility and on completion, same was handed back to the concerned Government department. In few cases after operation for certain period, the entire site with the infrastructure facility developed has been handed over to the owner i.e. govt. Thus, keeping in view the facts of instant case the AD wrongly relied on the order of the Ahmedabad Tribunal by treating the appellant as a nodal agency and not developer without appreciating that the appellant has entered into an agreement with the State Government or a local authority or any other statutory body for (i) developing or (ii) operating" and maintaining or (iii) developing, operating and maintaining a new infrastructure facility. For this purpose, I place reliance on the order of Hon'ble ITAT, Mumbai larger third Member Bench in the case of B. T. Patil & Sons Belgaum Construction (P) Ltd. v. Asstt. CIT [2010] 35 SOT 171. It is submitted that therein the assessee is engaged in development of infrastructure facility by way of constructing Road for PWD Department of the Government and it was held that the appellant is eligible for deduction u/s. 80IA(4) of the Act."

4.10. In addition to the findings given in above extracts, Ld. CIT(A) also dealt with the amendments brought in sec. 80IA of the Act by the Finance Act, 1999 w.e.f. 01.04.2000 by noting that from AY 2002-03 deduction u/s. 80IA(4) of the Act is available to the assessee if it carries on business of any one of the three types of activities listed above in para 4.4 of this order. After discussing the three types of activities and the nature of developmental work carried on by the assessee, Ld. CIT(A) observed that merely because the assessee was paid by the Government for the development work, it could not be denied the deduction u/s. 80IA(4) of the Act. Further, on the aspect of treating the assessee as a contractor, Ld. CIT(A) after perusal of the material placed on record, found that all the contracts of the site which were handed over by the government bodies to the assessee for development of infrastructure

facility and on completion of the same, were handed back to the concerned government department. He also observed that in few cases, after operation for certain period, the entire site with the infrastructure facility developed by it were handed over to the Government. Thus, by distinguishing the decision of Co-ordinate Bench of ITAT, Ahmedabad referred by the Ld. AO, Ld. CIT(A) placed reliance on the order of Coordinate Bench of ITAT Mumbai, third Member in the case of B. T. Patil & Sons Belgaum Construction Pvt. Ltd. (supra), wherein it was held that the assessee is engaged in development of infrastructure facility by way of constructing road for PWD Department of the Government and is eligible for deduction u/s. 80IA(4) of the Act.

4.11. Reliance was also placed on the decision of Hon'ble jurisdictional High Court of Bombay in the case of CIT Vs. ABG Heavy Industries (2010) 322 ITR 323. The relevant extract of the said decision is reproduced as under:

"Section 80-IA of the Income-tax Act, 1961, was introduced to provide an impetus to the growth of infrastructure in the nation. A sound infrastructure is a sine qua non for economic development. Absence of infrastructure poses significant barriers to growth and development. A model which relied exclusively on the provision of basic infrastructure by the State was found to be deficient: Section 80-IA was an instrument of legislative policy, conceived with a view to provide an impetus to private sector participation in infrastructural projects. Contemporaneously, with the provisions which were made by Parliament in section 80-IA of the Act explanatory circulars issued in an administrative capacity by the Central Board of Direct Tax held the field. These circulars gave expression to the scope and ambit of the concession was provided by section 80-IA. The evolution of section 80-IA would show a progressive liberalisation of the legislative scheme, in the interests of aiding the growth of infrastructure. The administrative circulars issued by the Central Board of Direct Taxes in implementation of section 80-IA similarly liberalised the scheme, consistent with the Act."

4.12. In respect of sustaining the addition of Rs.23,97,310/-, the relevant findings given by Ld. CIT(A) are reproduced as under:

"5.1. During the appellate proceedings, the details of other income were called for and examined. The said details are as under:

Application fees	9,120
Misc. receipts	508
RIGS Charges	<u>25,255</u>

	34,883
Sale of tender documents	15,45,321
Processing fees	5,11,127
Empanelment of consultants	1,75,032
PES Licence fees	94,088
EMD forfeit	<u>36,860</u>
	3,62,428
2362428 + 34883 =	23,97,310/-

5.2. On examination of the said details, it is found that the income earned which is rightly categorized as other income by the appellant is not directly emanating from development of eligible infrastructural projects. The AR of the appellant argued that the activities like sale of tender documents, processing fees, empanelment of consultants etc are relating to the infrastructural projects. However, as per the provisions of section 80IA of the Act, to qualify for deduction, the profits and gains have to be derived from eligible business alone which is development and maintenance of infrastructural facilities. None of the above sources of income are from the said eligible business though they may be distantly related to the said business. Moreover, the source of the income is not emanating from development of eligible infrastructural projects. Therefore, I agree with the AO that the said income needs to be taxed under the head income from other sources as per the provisions of section 56 of the Act. Needless to mention that the appellant does not get any deduction u/s. 80IA of the Act on the said income. Thus, addition made by the AO of Rs.23,97,310/- stands confirmed. Ground no.4 is dismissed.”

4.13. Before us, Ld. Counsel reiterated the submissions made before the authorities below which have been discussed in detail (supra). Ld. Sr. DR placed reliance on the order of the Ld. AO.

5. We have heard the rival contentions and perused the material available on record and gone through the decisions referred on the matter. From the perusal of meritorious and factual findings given by the Ld. CIT(A) for granting relief to the assessee by allowing the deduction u/s. 80IA(4) of the Act for an amount of Rs.3,13,38,250/-, since no contrary material, both on fact or law has been brought on record, we find no reason to interfere with the said findings given by the Ld. CIT(A) as discussed and reproduced above. We also note the fact that the claim of deduction u/s. 80IA(4) of the Act by the assessee is for the eighth consecutive year and for the past seven preceding years, the claim of the assessee has been consistently allowed. The past history of the assessments and appeals from AY 2007-08 onwards which was the

initial year of claim by the assessee, is tabulated below, which is also placed in the paper book at page 25:

Statement of IT Proceedings from start of 80IA year							Page No
Assessment Year	whether taken up for Assessment	Assessment order date	Section under which order is passed	Subsequent Proceedings	Remarks		
2007-08	Yes	10-03-2014	143/147	-		26-33	
2008-09	Yes	02-11-2010	143 (3)	263	Order dated 22/3/2013 under section 263 Passed in favour of Assessee	34-37	
2009-10	Yes	21-11-2011	143 (3)	246 (A)	Appeal order dated 20/11/2012 in favour of Assessee	38-70	
2010-11	Yes	26-03-2013	143 (3)	148	Issue regarding reopening of Assessment Pending in High Court	71-72	
2011-12	Yes	18-12-2013	143 (3)	148	Issue regarding reopening of Assessment Pending in High Court	73-74	
2012-13	Yes	30-01-2015	143 (3)	263	Order dated 7/3/2017 under section 263 Passed in favour of Assessee	75-77	
2013-14	Yes	22-03-2016	143 (3)	148	Issue regarding reopening of Assessment Pending in High Court	-	
2014-15	Yes				Explanation asked by AO asking reasons for claim of 80IA and reply filed by assessee on 11/7/2016, No further proceedings	78-79	
2015-16	-		143 (1)	-	Matter under Appeal before The Tribunal	-	
2016-17	-	21-07-2017	143 (1)	-	Not Taken up for Assessment	-	
					Not Taken up for Assessment	80-85	

5.1. Thus, from the tabulation above, we note that in the present case, deduction has been allowed for all the earlier assessment years and the Ld. AO has now sought to disallow the deduction for the eighth year which otherwise is allowable for consecutive period of ten assessment

years. In the instant case before us, as there is no change in the facts and the applicable law, if the deduction has been allowed in the initial assessment years, the same cannot be withdrawn in the subsequent years without making disallowance in the initial assessment years.

5.2. Reliance is placed on the decisions of Hon'ble jurisdictional High Court of Bombay in the cases of :

- (i) Western Outdoor Interactive (P) Ltd. (2012) 25 taxmann.com 340 (Bom);
- (ii) Simple Food Products (P) (2017) 84 taxman.com 239(Bom);
- (iii) Paul Brothers (1995) 216 ITR 548 (Bom)

5.3. While confirming the allowance of deduction granted by the Ld. CIT(A), we also place reliance on the decision of the Hon'ble jurisdictional High Court of Bombay in the case of ABG Heavy Industries Ltd. (supra). In respect of the addition of Rs.23,97,310/- confirmed by the Ld. CIT(A) and agitated by the assessee before us, we do not find any merit in the claim made by the assessee for allowing these items of other income in eligible for deduction u/s. 80IA of the Act. We do find no reason to interfere with the fact based findings given by the Ld. CIT(A) on this issue as discussed and reproduced above.

6. In the result, both the appeal of assessee and the revenue are dismissed.

Order pronounced under Rule 34(4) of the IT(AT) rules, 1963 on 02.09.2022.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 02.09.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-2, Panaji
 4. The CIT- Panaji.
 5. The DR, ITAT, Panaji Bench, Goa
- //True Copy//

By Order

Senior Private Secretary