

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 3548/DEL/2019 [A.Y. 2012-13]

The I.T.O
Ward - 62(4)
New Delhi

Vs.

Pratibha SMS JV
Jayesh Sangrajka & Co. DS Phalke Road
405, Hind Rajasthan Centre, Dadar East
Mumbai

PAN: AABAP 2640 M

(Applicant)

(Respondent)

Assessee By : Ms. Mansi Sotta, CA
Shri Shubham Shah, CA

Department By : Shri M.K. Pandey, Sr. DR

Date of Hearing : 25.01.2023
Date of Pronouncement : 25.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A)-20, New Delhi dated 15.02.2019 pertaining to Assessment
Year 2012-13.

2. The solitary grievance of the Revenue reads as under:

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 38,56,643/- for A.Y. 2011-12 and of Rs. 3,20,17,037/- for A.Y. 2012-13 on account of deduction u/s 80IA of the Income Tax Act, 1961 (respectively), by ignoring the fact that the assessee is merely a contractor executing a job work for which it is paid periodically by way of advances and regular running payments or for the work executed by it as per the terms and conditions mentioned in the tender documents/agreement. Deduction u/s 80IA(4) of the Act is to be provided to the developer of the infrastructural project only, who develop infrastructure projects by mobilizing its own resources & funds and undertaking the consequent investment risk. The assessee however, does not fulfill the said requirement of section 80IA, in as much as it executed a definite job work assigned to it for which it received in terms of the contract agreement from the owner and develop of the project i.e. HUDA. Therefore, the assessee was not eligible for deduction u/s 80IA of the Act.

The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”

3. At the very outset, the ld. counsel for the assessee stated that the impugned assessment order is pursuant to the order framed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'], which order has to be set aside by the Tribunal. Therefore, the subsequent orders become non-est.

4. The ld. DR fairly conceded to this.

5. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. The impugned assessment order dated 23.12.2016 is framed u/s 143(3) r.w.s 263 of the Act. We find that the order dated 29.03.2016 framed u/s 263 of the Act was challenged before the Tribunal, and the Tribunal, vide order dated 20.11.2017, in ITA No. 2735/DEL/2016 has quashed the order passed u/s 263 of the Act and restored the assessment order initially framed by the Assessing Officer. The relevant findings of the Tribunal read as under:

“5.11 Thus, this decision also supports the case of the assessee as in this order also the ITAT has specifically rejected the contention of the revenue that the assessee is not a developer to the Government of Maharashtra and APSEB. The facts of the case are similar to the facts of the present case and the only difference is that in the present case, the local authority is HUDA. Therefore, it is our considered opinion that the ITA Nos.2735, 2347Del/2016 Pratibha SMS Jv. vs Pr. CIT assessment order cannot be held erroneous on this count also because the Ld. Pr.CIT had a different view on this issue. Thus, the said assessment orders are not erroneous even if they might be prejudicial to the interest of the revenue and, therefore, they cannot be made a subject matter of revision u/s 263 of the Act. Under these facts and circumstances we are of the view that the assessment orders in question on the issue were neither erroneous

nor prejudicial to the interest of the revenue and, therefore, the Ld. Pr. CIT was not justified in setting aside the same. Accordingly, we deem it fit to quash the orders passed u/s 263 of the Act by the Ld. Pr. CIT and restore the assessment orders initially framed by the Assessing Officer.”

6. Since the very basis has been removed by this Tribunal, the super structure must fall. All the subsequent orders are treated as non-est.

7. In the result, the appeal of the Revenue in ITA No. 3548/DEL/2019 is dismissed.

The order is pronounced in the open court on 25.01.2023.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th January, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	