

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ ‘ Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos. 697 to 701/Hyd/2020		
Assessment Years: 2014-15 to 2018-19		
M/s. GVPR Engineers Ltd Hyderabad PAN:AAACG7614F	Vs.	Dy. C. I. T Central Circle 1(3) Hyderabad
(Appellant)		(Respondent)
ITA Nos. 750 to 754/Hyd/2020		
Assessment Years: 2014-15 to 2018-19		
Dy. C. I. T Central Circle 1(3) Hyderabad	Vs.	M/s. GVPR Engineers Ltd Hyderabad PAN:AAACG7614F
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri K.E. Sunil Babu, CIT(DR)	
Date of hearing:	05/01/2023	
Date of pronouncement:	28/02/2023	

ORDER

Per Bench:

The above batch of 5 appeals filed by the assessee and 5 appeals filed by the Revenue are cross appeals and are directed against the separate orders dated 7.8.2020 of the learned CIT (A)-11, Hyderabad for the A.Ys 2014-15 to 2018-19 respectively. For the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. There is a delay of 26 days in filing of these appeals by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to the prevailing covid pandemic. After considering the contents of the condonation application filed along with the affidavit and after hearing the learned DR, the delay in filing of the appeals by the assessee are condoned and these appeals are admitted for adjudication.

3. First we take up ITA No.697/Hyd/2020 filed by the assessee and ITA No.750/Hyd/2020 filed by the Revenue for the A.Y 2014-15 as the lead case.

4. Facts of the case, in brief, are that the assessee is a company engaged in execution of Electrical, Civil and Infrastructure projects. It filed its return of income on 30.11.2014 declaring total income of Rs.7,85,99,860/-after claiming deduction u/s 80IA(4)(iv)(b) of the I.T. Act, 1961 in respect of electrical projects of Rs.14,59,30,268 and u/s 80IA(4)(i)(c) in respect of irrigation projects of Rs.7,51,96,418/-. The case was selected for scrutiny and the order u/s 143(3) was passed on 9.12.2016 determining the total income of the assessee at Rs.30,96,22,952/-wherein the deduction u/s 80IA(4)(iv)(b) and 80IA(4)(i)(c) was denied and further disallowance of expenditure of Rs.40,00,000/- and bank guarantee charges of Rs.59,03,406/- were made. The CIT (A) vide order dated 29.06.2017 deleted the disallowance of Rs.7,51,96,418/- in respect of deduction u/s 80IA(4)(iv)(c) and the disallowance of Rs.40,00,000/-. He, however, confirmed the disallowance u/s 80IA(4)(iv)(b) of Rs.14,59,30,268/- and Rs.59,03,406/-.

4.1 A search and seizure operation u/s 132 of the I.T. Act was conducted on 2.11.2017 along with group cases of M/s. GVPR Engineers Ltd. In response to notice u/s 153A on 6.3.2018, the assessee filed its return of income on 3.3.2018 declaring total income of Rs.8,22,37,650/- after claiming deduction u/s 80IA in respect of irrigation project at Rs.13,97,10,217/- and electrical project at Rs.27,11,29,263/-. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) of the Act to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

5. During the course of search & seizure proceedings, the statement of the Chairman & M.D. of the assessee company were recorded wherein they have admitted additional income of Rs.25,97,54,397/- in the hands of the assessee company under the non-80IA projects. However, the assessee has not admitted such additional income in response to the return filed u/s 153A of the Act. The Assessing Officer, therefore, asked the assessee to submit its explanation for non-admission of such additional income in the return filed in response to notice in response to notice u/s 153A. The assessee submitted that they cannot substantiate the expenses booked under non-80IA projects of Rs.27,97,54,397/- (which included in the total additional income admitted of Rs.117.00 crores for the A.Ys 2014-15 to 2017-18) for the year under consideration with documentary evidences and the same was admitted as additional income in the hands of the assessee company in the revised return filed manually on 1.11.2018. The assessee filed the return of income u/s 153A manually on 20.12.2018 stating that they are unable to upload the return in the e-filing portal due to technical problems despite filing the return of income in response to notice u/s 153A within

the due date and the grievance were raised with systems but still the same could not be uploaded.

6. The M.D of the assessee company again confirmed that they are abiding by the admission made during the search and requested to consider the revised return of income as the assessee has filed the return u/s 153A within the stipulated time. The Assessing Officer, therefore, accepted the same. However, on perusal of the same, he noted that the assessee has shown total income of Rs.15,26,41,460/- including the total additional income of Rs.25,97,54,397/- under schedule BP of return of the income and claimed additional deduction u/s 80IA. The Assessing Officer compared the return filed u/s 139, the return filed in response to notice u/s 153A and the revised return of income u/s 153A, the details of which are as under:

Particulars	139(1) ROI	153 ROI	Revised 153A ROI
Eligible U/s 80IA - A	1,75,33,18,227	1,75,33,18,227	1,75,33,18,227
Non Eligible U/s 80IA - B	1,16,86,89,629	1,16,86,89,629	1,16,86,89,629
Total Irrigation Turnover I=(A+B)	2,92,20,07,856	2,92,20,07,856	2,92,20,07,856

Eligible U/s 80IA - X	3,40,25,84,925	3,40,25,84,925	3,40,25,84,925
Non Eligible U/s 80IA - Y	74,83,64,184	74,83,64,184	74,83,64,184
Total Electrical Turnover II=(X+Y)	4,15,09,49,109	4,15,09,49,109	4,15,09,49,109
Total Turnover III=I+II	7,07,29,56,965	7,07,29,56,965	7,07,29,56,965
Profit	30,33,45,405	30,33,45,405	30,33,45,405
Add:			
Additions admitted on account of 143(3) assessment Admission made in Search	-	40,00,000	40,00,000
Interest on Statutory Payments	20,68,509	20,68,509	20,68,509
Donations	6,43,281	6,43,281	6,43,281
Depreciation (Considered separately)	4,39,64,068	4,39,64,068	4,39,64,068
Wealth Tax	3,13,980	3,13,980	3,13,980
Gratuity	7,60,207	7,60,207	7,60,207
Total Income	35,10,95,450	35,50,95,450	61,48,49,847
Less:			
Depreciation allowable U/S 32 of IT Act	4,96,78,358	4,96,78,358	4,96,78,358
Payment of Bonus	2,65,859	2,65,859	2,65,859
Payment to gratuity fund	13,08,937	13,08,937	13,08,937
Gross Total Income	29,98,42,296	30,38,42,296	56,35,96,693
Less: Deductions under Chapter VI A			
Donation U/S 80G	1,15,751	1,15,751	1,15,751
Deductions U/s 80 IA - Irrigation	7,51,96,418	7,53,19,592	13,97,10,217
Deductions U/s 80 IA - Electrical	14,59,30,268	14,61,69,307	27,11,29,263
Total Deductions	22,12,42,436	22,16,04,650	41,09,55,232
Taxable Income	7,85,99,860	8,22,37,646	15,26,41,461

7. He noted that the deduction claimed u/s 80IA for both the Electrical and Irrigation projects have been disallowed in the assessment order passed u/s 143(3) on 9.12.2016. On appeal, the learned CIT (A) sustained the addition made u/s 80IA(iv)(b). He noted that the assessee claimed deduction of Rs.14,59,30,268/- u/s 80IA(iv)(b) with respect to electrical project in the original return of income and thereafter had claimed additional deduction in the revised return of income filed in response to notice u/s 153A for Rs.27,97,54,397/-. He noted that the deduction as per the Form 10CCB certified by the Auditor and filed by the assessee at the time of filing the original return of income, the eligible deduction u/s 80IA(4)(iv)(b) is Rs.14,59,30,268/-. Further the additional income admitted during the course of search & seizure action is on a/c of non-genuine expenses booked pertaining to the non-80IA projects. Hence the assessee cannot claim more deduction than what was claimed in the original return of income filed u/s 139(1). Since the assessee is not a power transmission or distribution undertaking, therefore, the Assessing Officer, following the decision of the CIT (A) for the A.Y 2014-15, disallowed the claim of deduction u/s 80IA(4)(iv)(b). Since he disallowed the claim of deduction under this section for Rs.14,59,30,268 in the order u/s 143(3) dated 9.12.2016, therefore, he disallowed the additional deduction claimed u/s 80IA(4)(iv)(b) of Rs.12,51,98,995/-.

8. The Assessing Officer similarly noted that the assessee has claimed deduction u/s 80IA(4)(i)(c) w.r.t to irrigation projects for Rs.7,51,96,418/- which was disallowed in the original assessment order passed u/s 143(3) on 9.12.2016. He observed that the assessee in the revised return of income filed u/s. 153A has claimed deduction of Rs. 13,97,10,217/- U/s. 80IA(4)(i)(c)

compared to the claim of Rs.7,51,96,418/- in the return of income filed u/s 139. He, therefore, disallowed the additional claim of deduction u/s.80IA(4)(i)(c) of Rs.6,45,13,799/- on the ground that the Assessee has disclosed the additional income on account of non-genuine expenses booked towards non-80IA projects, hence the Assessee cannot claim additional deduction U/s. 80IA(4)(i)(c). He further noted that though the Tribunal has held that the agreement is not in the nature of work contract and thereby provisions of Explanation to section 80IA(13) are not attracted, however, the department has filed appeal before Hon'ble High court against the decision of the Tribunal. As the interpretation of provision of sec. 80IA(4) of the IT Act should not enable works contractors to avail the benefits u/s 80IA(4)(i)(c), hence, to maintain consistency with the stand of the revenue and to keep the issue alive, he disallowed the claim of deduction U/s.80IA(4)(i)(c) and added to the total income.

9. Further he disallowed the claim of deduction u/s 80IA(4)(i)(c) on the ground that the assessee is not a developer and is not operating and maintaining the infrastructure facility. Since claim of deduction U/s.80IA(4)(i)(c) amounting to Rs. 7,51,96,418/- is already disallowed but the same was deleted by the learned CIT (A) and the appeal of the Revenue on this issue is pending before the ITAT, hence he disallowed the additional deduction claimed u/s 80IA(4)(i)(c) in the revised return of income of Rs.6,45,13,799/- (Rs.13,97,10,217-Rs.7,51,96,418) and added the same to the total income of the assessee.

10. Finally, the Assessing Officer completed the assessment determining the total income of the assessee at Rs.41,89,91,511/- by observing as under:

6.0 With the above observation, the assessment is completed as under:

6.1.0 Following points are being written down for the sake of clarity of computation of total income.

6.1.1 In the revised return of income filed in response to notice u/s 153A the Assessee admitted total income of Rs 15,26,41,461/ which includes additional income admitted of Rs 25,97,54,397/- on account of search and seizure operation and addition made on account of disallowance of labour charges of Rs 40,00,000/- in the Assessment order dated 09.12.2016 but has claimed additional deduction u/s 80IA(4)(iv)(6) and 80IA(4)(i)(c), thereby admitting the total income of Rs 15,26,41,461/-

6.1.2 However the Assessee did not admit the addition of Rs 59,03,406 in respect of Bank Guarantee Charges made in the Assessment order dated 09.12.2016. Hence the same is being added back to the Revised Returned income U/s. 153A as the Ld CIT(A) vide order dated 29.06.2017 sustained the addition.

6.1.3 In the Revised Returned of income U/s. 153A, though the Assessee admitted additional income of Rs 25,97,54,397/- on account of search and seizure operation but has claimed additional deduction u/s 80IA(4)(iv) (b) and 80IA(4)(i) (c). The same are being added back to the revised return of income, giving due consideration to the relief given by the Ld CIT(A) vide order dated 29.06.2017 on the additions on account of disallowance of 80IA deduction made U/s. 143(3) order dated 09.12.2016.

Revised Returned income U/s. 153A	Rs. 15,26,41,461
Add: Addition U/s. 143(3) order dated 09.12.2016 in respect of Bank Guarantee Charges & Ld CIT(A) vide order dt 29.06.2017	59,03,406
Less: Relief given by the Ld CIT(A) vide order dated 29.06.2017 in respect of 80IA(4)(i)(c) on the addition made U/s. 143(3) order dated 09.12.2016 in respect of 80IA(4)(i)(c)	7,51,96,418
Add: Addition upheld by the Ld CIT(A) vide order dated 29.06.2017 in respect of 80IA(4)(iv)(b) on the addition made u/s 143(3) order dated 9.12.2016 in respect of 80IA(4)(iv)(b)	14,59,30,268
Add: Additions as per para 4.2 in respect of disallowance of additional deduction claimed u/s 80IA(4)(iv)(b) in revised returned income u/s 153A	12,51,98,995
Add: Additions as per para 5.1 in respect of disallowance of additional deduction claimed u/s 80IA(4)(i)(c) in revised returned income u/s 153A	6,45,13,799
Assessed Income	41,89,91,511

11. Before the learned CIT (A), the assessee made elaborate arguments and filed the orders of the Tribunal in assessee's own case for the past years. Based on the arguments advanced by the assessee, the learned CIT (A) allowed the claim of

deduction u/s 80IA in respect of the income from irrigation projects by observing as under:

4.4 I have considered the assessment order, submissions of the appellant and perused the decisions as brought out above. It is seen that the AO has not allowed the deduction claimed u/s.80IA in respect of Irrigation projects as the department has not accepted the order of Hon'ble ITAT and is in appeal before Hon'ble High Court and the addition is made to keep the issue alive.

4.4.1 I have no choice but to follow the decision of Hon'ble ITAT as far as deduction u/s.80IA related to Irrigation projects. As far as the deduction u/s.801A w.r.t the income from Irrigation projects are concerned the direction of Hon'ble ITAT for A.Y-2004-05 to 2009-10 is as under:

"The profit from contracts which involves Design, Development, Operating & Maintenance, Financial involvement and defect correction and liability period is to be computed by the Assessing officer on pro-rata basis of turnover. The AO is directed to examine the records accordingly and grant deduction on eligible turnover as above."

The Hon'ble ITAT has followed and allowed deduction u/s.80A in respect of Irrigation projects as above for A. Yrs 2010-11, 2011-12 & 2012-13 also.

4.4.2 Respectfully following the above orders (supra), the AO is directed to allow deduction u/s.801A in respect of the income from Irrigation projects computing the same as per the directions above and keeping in view the facts and circumstances of the case. The ground Nos. 2 & 3 are disposed off with above direction."

12. So far as the deduction claimed u/s 80IA with respect to the electrical project is concerned, the learned CIT (A) rejected the same on the ground that the Tribunal in assessee's own case for the A.Y 2010-11 has upheld the order of the CIT (A) in rejecting the claim of deduction u/s 80IA(4)(iv)(b). Further, the Tribunal in assessee's own case for the A.Y 2011-12 has decided the issue in favour of the assessee for which M.A is filed by the Revenue. Therefore, he decided the issue against the assessee in respect of deduction u/s 80IA of the profits from the electrical projects. The relevant observations of the learned CIT (A) on this issue at Para 4.4.3 to Para 4.4.3.2 read as under:

"4.4.3 As far as the deduction u/s.801A w.r.t the Electrical projects is Concerned, for the A.Y-2003-04 to 2009-10, there is no discussion specifically about such projects in the orders of AO/CIT(A) or that of the Hon'ble ITAT. However, for the A.Y 2010-11, the Hon'ble ITAT has decided the issue as under:

"8. We have considered the rival submissions and perused the orders of revenue authorities as well as the material facts on record. The provisions of sec. 801A(4)(iv)(b) read as under:

"a).....

b) Starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 199 and ending on the 31st day of March, 2013.

Provided the deduction under this section to an (undertaking) under sub clause(b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution."

8.1 As per the above section, an assessee is eligible to claim deduction u/s.801A(4)(iv)(b) by laying the network of new transmission or distribution lines only in relation to the profits derived from laying of such new network of new lines for transmission or distribution. It gives an impression that it is available only to those assesses, who are in the business of transmission or distribution of power. In the present case, the assessee is not in the business of transmission or distribution of power. However, learned AR has submitted that in the case of Kinfra Exports(supra), on the similar issue, the ITAT, Cochin Bench has allowed deduction u/s. 801A (4)(iv)(b). On careful reading of the said judgement, we find that the assessee in the said case was already in the business of transmitting and distributing electricity and it had claimed deduction u/s.801A(4)(iv)(b) by laying new network of transmission lines. In the case under consideration, it is different as the assessee is not in the line of generation and distribution of power. However, have claimed deduction u/s.801A(4)(iv)(c). As per this section, a unit which undertakes substantial renovation on modernizing of existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending 31.03.2013, is eligible to claim the said deduction. However, the meaning of substantial renovation and modernization is explained as increase in the plant and machinery in the network of transmission and distribution lines by at least 50% book value of such plant and machinery as on the 1st day of April, 2004. Since the assessee has not submitted any details, like value of the plant and machinery in the books of contractee company as the assessee is not in the business of transmission or distribution of power, it itself cannot claim. As regards reliance of the Id counsel for the assessee on the orders of this ITAT in the assessee's own case for the earlier AYs, we find that though the projects therein included electricity projects as well. TAT has not brought out the distinction between section 801A(iv)(6) and therefore, it cannot be said that this issue is covered by those orders. From the above observations and the detailed observations made by the

CIT(A), we are inclined to accept the findings of the CIT(A) to come to a conclusion that the assessee is not eligible to claim deduction u/s.80IA(4)(iv)(b). Accordingly, we uphold the order of the CIT(A) on this issue and dismiss the grounds of appeal of assessee."

4.4.3.1 Further, for A.Y-2011-12, the Hon'ble ITAT has decided, the issue as under:

"Regarding Ground nos. 1 to 4 for the A.Y-2011-12, covering the issues raised I in the grounds of both the appeals for both the years. Ld Counsel for the assessee made the following written submissions, and the same are extracted as under:

"issues involved in these appeals are:

Deduction under sec. 80IA(4)(i)(c) in respect of civil works projects and including irrigation 80IA(4)(iv)(b) in respect of Electrical Projects.

3. Assessee appeal are in relation to disallowance of deduction under sec.80IA in The respect of Electrical projects u/s.80IA(4)(iv)(b). CIT(A) based on the appeal order of the CIT(A) and ITAT for the 11 in 1TA No. a.y-2010- 765/Hyd/2014, 740/Hyd/2014 and CO dt.29.02.2016 No.47/Hyd/2014, differing from the earlier ITAT order in Assessee's own a.y-2004-05 to 2009-10 ITA case for The Hon'ble ITAT in No.347/Hyd/2008 and 13 others dt.29.02.2012. its order in ITA No.347/Hyd/2005, at projects are extracted pages 16 to 21 the under: and the direction of the ITAT is at 44 8th line reads as under:

"Therefore in our considered view, the deduction under sec.80IA assessee should not be denied the of the Act, if the contracts involves development, operating and maintenance, design, financial involvement and defect correction and liability period then such contracts cannot be called a simple works contracts to deny the deduction u/s.80IA of the Act, in our contracts which contain above opinion the features to be u/s.80IA has to be segregated on this deduction granted and the other agreements which are pure contracts works contracts hit by the explanation section 80IA(3), those works are not entitled for deduction u/s 80IA of the act. The profit from the contracts which involves design, development, operating and maintenance, financial involvement and defect correction and liability period is to be computed by assessing officer on pro-rata basis of turnover. The assessing officer is directed to examine the records accordingly and grant deduction on eligible turnover as directed above.....

In view of the above directions of the ITAT both irrigation projects as well as electrical projects are eligible for deduction under sec.80IA[4](i)(c) and 80IA(4)(v) of the I. T Act, 1961.

For the a.y-2010-11 the CITA) the CIT(A) as well as the TAT have denied deduction under sec.80IA(4){iv}||[b) the relevant paras are:

CITA) order pages 9, para 6.5 reads as under :

Thus, as far as these two electrical works are concerned, the appellant is not eligible for deduction u/s.80IA(4)(b), since the appellant is not a power transmission or distribution undertaking. The deduction claimed to the tune of Rs.3,63,21,718/- is therefore erroneous and is not admissible. Accordingly, the disallowance made to this extent is therefore upheld.

And ITAT order at page-9 and 10 para 8.1 towards end gave a finding.

"We find that though the projects therein included electricity projects as well ITAT has not brought out the distinction between sec80IA(4)(iv)}b) and therefore it cannot be said that this issue is covered by those orders. the above observations and the detailed observations made by the CIT(A) to come to conclusion that the assessee is not eligible to claim deduction u/s.80IA4(iv)(b). Accordingly, we uphold the order of the CIT(A) on this issue and dismiss the ground of appeal of assessee.

We submit that the undertaking referred to in sec.80IA(4)(iv) and undertaking referred to in the proviso to sec.80IA(4)(iv)(b) are different and cannot be the same. The undertaking referred to in sec.80IA(4)(iv) can be confined to the power transmission or distribution undertaking whereas the undertaking referred to the proviso to this section is different. The proviso From reads as under:

"Provided the deduction under this section to an undertaking under subclause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution.

In case the undertaking involved in transmission and distribution undertakes laying of the such network of new liens will be capital and nature and cannot earn prof for such laying of new lines, therefore, there has to be another undertaking. Hence your appellant is eligible for deduction on profits from electrical projects. It is prayed that deduction under sec. 80IA(4)(iv)(b) may be allowed.

4. The department appeal are in respect of deduction allowed by CITA) under sec.80IA(4))(c):

The CIT(A) has followed the I1AT order for A. Y-2004-05 to 2009-10 in TA No.347/H/2008 and others, order of CIT[A) as well ITAT order for a.y 2010 11, the relevant paras are The Hon'ble ITAT in its order in ITA No.347/H/ 208, at pages 16 to 21 the projects are extracted and the direction of the ITAT is at 44 8th line. under:

"Therefore in our considered view, the assessee should not be denied the deduction under sec.80IA of the Act, if the contracts involves design, development, operating and maintenance, financial involvement and defect correction and liability period then such contracts cannot be called a simple works contracts to deny the deduction u/s.80IA of the Act, in our opinion the contracts which contain above features to be segregated on this deduction u/s.80LA has to be granted and the other

agreements which are pure works contracts hit by the explanation sec.80IA(13), those works are not entitle for deduction u/s.801A of the act. The profit from the contracts which involves design, development, operating and maintenance, financial involvement and defect correction and liability period is to be computed by assessing officer on pro-rata basis of turnover. The assessing officer is directed to examine the records accordingly and grant deduction on eligible turnover as directed above....

For the a.y-2010-11 the CIT(A) as well as the ITAT have allowed deduction under sec.801A(4)(i)(c) the relevant paras are:

CIT(A) order pages 6, para 6.2 reads as under:

"The issue in the earlier order before the Hon'ble Tribunal was whether the appellant is a work contractor or not. The tribunal had given a finding that the appellant is not a mere work contractor and is therefore entitled deduction for u/s.80IA. Thus, once an appellant is under eligible for the deduction sec. 80IA, then, this claim is to be allowed in terms of Hon'ble the order of the ITAT in appellant's own case for earlier years. This finding can therefore be applied to the first three projects namely the claim u/s.80IA(4)11)(ç of deduction). Accordingly, the claim of the deduction u/s.80IA (4)/i}(c) to the tune of Rs.5,15, 54,567/-is therefore, allowed.

And ITAT order at page-11 para 10.1 reads as under:

"The revenue has filed an appeal u/s.260A of the" Act challenging the above order of ITAT before the Hon'ble High Court. In the aid order, it was heled that these contracts are not in the nature of works contracts und thereby explanation to the provisions of sec. 801A(3) are not attracted. Hence, just to maintain consistency with the stand of the revenue und to keep the issue alive, AO has disallowed the deduction u/s. 80IA(4)(i)(c). Apart from that there is no merit in such disallowance. However, the learned CIT(A) has allowed assessee's claim u/s.80IA(4)(i)(c) relying on the order of the Coordinate Bench of this tribunal (supra), hence, we are inclined to uphold the order of CIT(A), in this regard as the order of the CIT(A) is in line with the order of TTAT.

In view of the above, the department appeals may be dismissed."

6.1 Further, relying on the decision of Hon'ble ITAT vide its order dt.29.02.2012 in ITA No.347/Hyd/2008 and others, Ld counsel for the assessee submitted that all these issues have to be remanded to the file of CITA) for passing an order in compliance with the said order of the Tribunal. Referring to above note, Ld Counsel for the assessee submitted that the assessee is entitled to deduction u/s. 80LA(4) of the Act in respect of both the types of the projects. The said order of the Tribunal helps the assessee if an effect is given and the said decision is honoured by the AO. Further, referring to the allowability of deduction u/s.80IA(4)(i)(c) of the act, Ld Counsel for the assessee submitted that the

ITAT already taken a view in this regard and consequently, the appeals, of the revenue are dismissed.

7. After hearing both sides and also considering the decision of the Coordinate bench of the Tribunal in assessee's own case cited the supra, we are of opinion that the direction's should be given to the CIT(A) to go by the said order of the Tribunal. AO shall grant an opportunity of being heard. Accordingly, ground nos.1 to 4 are allowed for statistical purposes.

The department has filed Miscellaneous Application before the Hon'ble ITAT as the decision given in order by Hon'ble ITAT itself for A.Y-2010-11, where specific issue was before the Hon'ble ITAT, was not followed, to rectify the mistake.

4.4.3.2 Keeping in view the above, respectfully following the ITAT, order for A.Y-2010-11 on the issue, the ground nos.485 are decided against the assessee. It is held that the appellant is not eligible for deduction u/s 80IA in respect of profits from electrical contracts”.

13. So far as the finding of the Assessing Officer that the deduction claimed is to be restricted to calculation claimed in Form 10CCB which was filed in the original return of income is considered, the learned CIT (A) held that the assessee is to be allowed deductions as per the provisions of the Act and the claim of additional deduction cannot be taken as final. The relevant observation of the learned CIT (A) at para 5 of his order reads as under:

“5. The ground no.6 is against the finding of AO that the deduction claimed is to be restricted to calculation filed in Form-10CCB which was filed with the original return of income. One of the grounds for rejecting the revised claims for deduction u/s.80IA as per the Revised Return filed is that there is no fresh form-10CCB filed computing/certifying the eligible claim. The appellant's contention is that there is no provision to file fresh Form-10CCB and the deduction u/s.80IA is to be computed and allowed as per the provisions of the Act. On consideration of the issue, it is held that the appellant is to be allowed the deduction as per the provisions of the Act. The same undergoes change as per the interpretation of the provisions at various fora and levels of appeals. By implication, the claim originally made cannot be taken as final. In view of the above, it cannot be said/held that the claim for deduction made can only be as per the Form-10CCB originally filed. Accordingly, the contention of the appellant is acceptable and the ground is allowed.”

14. So far as the claim of the assessee that the disallowance/addition made by the Assessing Officer are to be considered as part of gross total income for computation of deduction u/s 80IA is concerned, the learned CIT (A) allowed such claim by observing as under:

“6.1 I have considered the assessment order, submissions of the appellant and the decision relied on by the appellant. There is no finding of the Assessing Officer that the appellant had any other source of income. The disallowances/additional made would go to increase the ‘Gross Total Income’ of the appellant. Respectfully, following the decision relied on by the appellant, it is directed that the computation of deduction be done taking the disallowances/additions as part of “Gross Total Income” of the appellant. The ground is treated as allowed”.

15. Aggrieved with such part relief granted by the CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1. The CIT (A) erred in law and facts of the R case in not allowing deduction under section 80IA (4)(iv)(b) of the Income Tax Act, 1961.

2. Your Appellant submits that setting up of new transmission or distribution lines is also development of infrastructure and is eligible for deduction under section 80IA of the Income Tax Act, 1961.

3. Your Appellant submits that setting up of new transmission or distribution lines on turnkey basis is not mere works contract, therefore the Explanation to sub-section 13 of section 80IA are not applicable and is eligible for deduction under section 80IA(4)(iv)(b) of the Income Tax Act, 1961.

4. The CIT(A) and the Assessing Officer ignored the provision to section 80IA(4)(iv)(b), by virtue of which the profit derived laying of such network of new lines for transmission or distribution and not profit 4. from derived from transmission or distribution lines, therefore your Appellant is eligible for deduction under section 80IA(4)(iv)(b) explanation in respect of profit derived from laying of such network of new lines for transmission or distribution.

5. The CIT(A) ought to have followed the ITAT order for AY 2011-12 & 2012-13 dated 5-12- 19, allowed the deduction under section 80IA(4)(iv)(b) in respect of electrical project.

6. *The CIT(A) ought not have brushed aside the decision of ITAT for AY 2011-12 & 2012-13 dt. 5-12-19, on the ground that a Miscellaneous Application has been filed by the Department, may have allowed the deduction under section 80IA(4) in respect of electrical projects also.*

7. *The CIT(A) as well as the Assessing Officer ought to have followed the decision of the ITAT in the case of ASR Engineering & Projects Limited and ought to have disallowed only a percentage of the subcontract works disallowed of Rs. 25,97,54,397/, alleged to have not undertaken any works, ignoring the fact that works have been certified by the Government departments to have been completed.*

8. *Your Appellant submits that the CIT(A) ought to have considered the fact that all works have been executed and bills certified by the Government Departments for payment, most of the payments received, the entire amount of sub-contracts cannot be disallowed and only a percentage of the same would have been disallowed following the ITAT decision in the case of ASR Engineering & Projects Limited.*

9. *Your Appellant submits that a direction may be given to the Assessing Officer to consider all the disallowance as part of the gross total income while computing the deduction under section 80IA(4) of the Income Tax Act, 1961”.*

16. The Revenue in ITA No.750/Hyd/2020 for the A.Y 2014-15 has raised the following grounds:

“1. The Id.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2. The Ld. CIT(A) erred in allowing the deduction u/s 80IA(4)(i)(c) of the Act without appreciating the fact that the assessee is not a 'developer as it is not operating and maintaining the infrastructure facility but only maintaining the infrastructure facility during the warranty period.

3 The Ld. CIT(A) erred in allowing the deduction u/s 80IA(4)(i)(c) of the Act without considering the fact that the issue of whether the assessee is entitled to deduction u/s 80IA(4) is pending for adjudication before the Hon'ble High Court as the Department has filed appeals for the A.Y.s2004- 05 and 2005-06 in the assessee's own case.

4. The Ld. CIT(A) erred in holding that the claim of deduction u/s 80IA is allowable even if it is not in accordance with the Form 10CCB originally filed.

5 The Ld. CIT(A) erred in holding that the disallowances/additions are to be considered as part of the Gross total income for computation of deduction u/s 80IA ignoring the fact that the additions in the assessee's case pertain to additional income admitted during search towards non-genuine to expenditure pertaining to non-80IA projects.

6. *The appellant craves leave to amend or alter any ground or add any other ground(s) which may be necessary”.*

16.1 The assessee has also raised the following additional grounds:

“10. The Hon. ITAT is requested to kindly admit the grounds which are taken for the first time before them, as per the ratio laid down by the Hon. Supreme court of India in the case of National Thermal Power Corporation Limited vs. CIT [1998] 229 ITR 383 (SC).

11. The CIT(A) erred in not allowing the bank guarantee commission amounting to Rs.59,03,406/- which was incurred in the due course of advancement of the objects of the business activities.

12. The CIT(A) erred in not allowing the other expenses amounting to Rs. 40,00,000/- which were incurred exclusively in the regular course of operations of business.

13. The CIT(A) ought to have appreciated that the any expenditure not falling under the specific head but incurred for the purpose of business need to be allowed as per the provisions of section 37 of the Act.

14. The Ld. CIT(A) erred in not appreciating the fact that any further discrepancies in income/expenses were also considered and offered an amount of Rs. 25,97,54,397/-by the company and the same is qualified for deduction u/s 80-IA.

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

16. The Ld. CIT(A) ought to have appreciated the fact that any addition made to the income of the assessee would enhance the claim of deduction u/s 80IA of the Act.

17. The Ld. CIT(A) ought to have enhanced the claim of deduction u/s 80IA of the act which stands at Rs.54,07,87,066/-as per board circular No.37/2016.

18. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of appeal”.

16.2 However, the learned Counsel for the assessee did not press the additional grounds stating that these are already taken in the original grounds. Accordingly, the additional grounds raised by the assessee are dismissed as not pressed.

16.3 Grounds of appeal No.1 to 9 by the assessee relate to the denial of the deduction claimed in respect of electrical projects u/s 80IA(4)(iv)(b) of the I.T. Act.

16.4 The learned Counsel for the assessee at the outset submitted that the Coordinate Bench of the Tribunal in assessee's own case for the A.Ys 2012-13 & 2013-14, which belongs to the same block, has allowed the claim of deduction u/s 80IA(4)(iv)(b) in respect of electrical projects. Referring to para 27 of the order of the Tribunal, the learned Counsel for the assessee submitted that the Tribunal, following the CBDT Circular and various judicial pronouncements, has allowed the claim of deduction including the enhanced claim in respect of the electrical projects. Therefore, the grounds raised by the assessee should be allowed by following the decision of the Tribunal in assessee's own case.

16.5 The learned Counsel for the assessee thereafter drew the attention of the Bench to the year-wise turnover of the eligible electrical projects for the A.Ys 2012-13 to 2018-19, the details of which are as under:

S.No	Nature of work	Client name	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
1	Laying of new transmission line & sub station	AP Transco	1,02,54,64,357	2,13,09,31,749	2,13,09,31,749	1,80,07,16,837	97,19,64,798	45,27,27,684	1,13,08,586
2	Laying of new transmission line & sub station	KPTCL	4,88,66,454	22,95,49,206	92,45,15,373	7,84,22,568	22,59,93,144	2,86,26,063	9,66,01,718
3	Laying of new	MSEDCL	91,89,87,886	20,01,62,908	-	-	-	-	-

	transmission line & sub station								
4	Laying of new transmission line & sub station	MP Poorv Kshetra Vidyut Vitharan Co. Ltd	17,27,13,849	14,18,13,172	4,77,32,201	3,18,21,977	99,85,810	3,88,89,771	-
5	Laying of new transmission line & sub station	TNGEDCO	-	-	62,96,20,514	41,60,68,011	71,55,28,116	39,37,21,429	4,61,13,242
	Total		21,16,60,32,546	2,70,24,57,035	3,40,25,84,925	1,49,82,77,354	1,40,42,35,024	46,86,52,111	15,40,23,546

17. He submitted that the learned CIT (A) while passing the order for the year under consideration has relied on the order of the Tribunal passed for the A.Y 2010-11 instead of considering the judgment of the Tribunal for the A.Y 2011-12 & 2012-13 merely on the ground that for the A.Y 2011-12 & 2012-13 the Revenue has filed a Miscellaneous Application before the Tribunal.

18. The learned Counsel for the assessee drew the attention of the Bench to the following table:

S.No	Particulars	Date
1	CIT (A) order passed u/s 143(3) r.w.s. 153A for the A.Ys 2014-15	7.8.2020
2	ITAT Order in the own case of the assessee for the A.Y 2011-12 & 2012-13	5.12.2019
3	M.A filed by the Deptt. against the ITAT order dated 5.12.2019	27.07.2020
4	ITAT order passed disposing M.A. filed by the Revenue	15.02.2021

19. Referring to the above table, he submitted that the M.As filed by the Revenue for the A.Y 2011-12 and 2012-13 were dismissed by the Tribunal vide order dated 15.02.2021. He submitted that since the basis on which the CIT (A) has passed the order denying the deduction u/s 80IA(4)(iv)(b) with respect to electrical project has become null and void, therefore, the grounds raised by the assessee for allowing the claim of deduction u/s 80IA(4)(iv)(b) in respect of electrical projects should be allowed.

19.1 So far as the enhanced claim made in the return filed in response to notice u/s 153A is concerned, the learned Counsel for the assessee submitted that the claim made by the assessee is not a new claim. The enhanced claim is directly attributable to the disallowances made in the search assessment and admission made by the assessee which are related to the business activity of the assessee. With respect to A.Y 2014-15 where the original assessment has been done, he submitted that the disallowance on a/c of which the claim got enhanced is not there in the original assessment. The learned Counsel for the assessee drew the attention of the Bench to the details of the enhanced claim along with original claim which are as under:

Enhanced claim including original claim		
	Enhanced claim	Original claim
A.Y	Electrical Projects	Electrical Projects
2014-15	27,39,13,529	14,59,30,268

20. The learned Counsel for the assessee submitted that even if an expenditure which relate to the business activity of the assessee is disallowed by the Assessing Officer in the assessment and any admission made during the search, the deduction claimed u/s 80IA, that falls in Chapter VI-Assessee needs to be allowed the deduction on the enhanced profits. For the above proposition, he relied on the decision of the Coordinate Bench of the Tribunal in assessee's own case in ITA Nos.695 to 696/Hyd/2020 dated 21.11.2023 for the A.Ys 2011-12 & 2012-13.

21. The learned Counsel for the assessee submitted that the deduction u/s 80IA cannot be rejected for subsequent A.Ys unless a relief for the initial year is withdrawn. He submitted that

based on the nature and terms & conditions of the agreement entered into by the assessee with other party to the contract, the assessee was treated as a Developer of the facility and the profits so earned from such projects were allowed as deduction u/s 80IA (4)(iv)(b) of the Act for earlier A.Ys upto A.Y 2013-14. Therefore, when deduction u/s 80IA(4)(iv)(b) has been granted in earlier years, based on the nature and terms & conditions of the agreement and treating the assessee as Developer of the facility, the same cannot be denied in subsequent years unless there is a change in the original terms and conditions of the agreement. Thus, when the profits earned from projects were allowed as a deduction u/s 80IA of the Act for the A.Ys 2004-05 to 2009-10 and for the A.Ys 2011-12 to 2012-13 by following the order of the Coordinate Bench of the Tribunal for A.Y 2004-05 to 2009-10, the same cannot be denied for the present A.Y i.e. 2014-15. For the above proposition, the learned Counsel for the assessee relied on the decision of the Hyderabad Bench of the Tribunal in the case of Raheja IT Park (Hyderabad) Pvt. Ltd vs. DCIT vide ITA No.691/Hyd/2016 and the decision of the Hon'ble Bombay High Court in the case of M/s. Sample Food Products Pvt. Ltd vs. CIT-II reported in (2017) 84 Taxmann.com 239 (Bom.).

22. The learned Counsel for the assessee accordingly submitted that deduction claimed u/s 80IA with respect to electrical projects for the A.Y 2014-15 to 2018-19 are the projects which were already existing for the A.Y 2012-13 & 2013-14 and continued during the A.Ys 2014-15 to 2018-19 with the same client. When claim of deduction u/s 80IA has been granted in previous year based on the nature, terms & conditions of agreement and treating the assessee as the developer of the facility, the same cannot be denied in subsequent years unless

the assessee has changed the original terms & conditions and any new material was brought on record which suggests that the deduction cannot be claimed by the assessee.

23. He submitted that since the learned CIT (A) without following the precedent of the decision of the Tribunal in assessee's own case for the A.Ys 2011-12 & 2012-13 in ITA Nos. 1017 & 1018/Hyd/2016 dated 5.12.2019, dismissed the appeal of the assessee for A.Y 2014-15 to 2018-19, therefore, the same should be set aside and the grounds raised by the assessee should be allowed.

24. So far as the objection of the Revenue that the assessee has claimed Rs.14,59,30,268/- in Form 10CCB with respect to the electrical projects in original return whereas it has claimed Rs.27,11,29,263/- in the return in response to notice u/s 153A is concerned, he submitted that the Report in Form No. 10CCB can be filed at any stage upto assessment. He submitted that if the assessee fails to file audit report along with the return of income for claiming deduction u/s 80IA but files it subsequently before completion of assessment, deduction can be allowed provided that the delay in filing audit report was for good and sufficient reasons. For the above proposition, he relied on the following decisions:

- i) Hon'ble High Court of Madhya Pradesh in the case of CIT v Panama Chemicals Works [2007], 292 ITR 147 (M.P).
- ii) CIT v AKS Alloys (P.)(Ltd),[2012]18 taxmann.com 25/205 Taxmann 11(Mad.)

25. He submitted that the provisions of section 80-IA(7) requiring filing of audit report along with return are not mandatory but directory and if the audit report is filed at any time before framing of assessment, then requirement of section 80IA(7) would be met. In support of this, he relied on the following decisions:

- iii) CIT v. Contimeters Electricals (P.) Ltd, [2009] 178 Taxman 422 (Delhi).
- iv) CIT v. ACE Multitaxes Systems(P.) Ltd., [2009] 317 ITR 307 (Kar).
- v) CIT v. Medicaps Ltd., [2010] 323 ITR 554 (M.P.).
- vi) CIT v. Sanjay Kumar Bansal [2013] 35 taxmann.com (Uttarakhand).
- vii) Hon'ble Allahabad High Court in the case of CIT v. Fortuna Foundation Engineers & Consultants (P.) Ltd. [2017] 81 taxmann.com 189 (AI)

25.1 Referring to the decision of the Hon'ble Supreme Court in the case of CIT v. G.M. Knitting Industries (P.) Ltd., [2015] 376 ITR 456 (SC), he submitted that the Hon'ble Supreme Court has held that even though necessary certificate in Form No. 10CCB, along with return of income had not been filed but the same was filed before final order of assessment was made, assessee was entitled to claim deduction u/s 80-IB.

26. So far as the grounds raised by the Revenue are concerned, the learned Counsel for the assessee while supporting the order of the CIT (A), submitted that the learned CIT (A) has followed the order of the Tribunal in assessee's own case for the preceding A.Ys and till now the same has not been reversed by the Hon'ble High Court. Referring to the grounds raised by the

Revenue, he submitted that the grievance of the Revenue is that since the appeal has been filed against the order of the Tribunal before the High Court, therefore, the CIT (A) is not justified in allowing deduction u/s 80IA(4)(iv)(i)(c) in respect of irrigation projects. He submitted that the Revenue in the case wants to keep the matter alive. However, the same cannot be a ground to take a different view than the view already taken by the Tribunal in assessee's own case by treating the assessee as a developer and allowed the claim of deduction u/s 80IA(4)(iv)(i)(c) in respect of irrigation project. He accordingly submitted that the ground raised by the Revenue on this issue should be dismissed.

27. So far as the ground raised by the Revenue challenging the order of the CIT (A) in holding that the claim of deduction u/s 80IA is allowable, even if it is not in accordance with Form 10CCB originally filed is concerned, he reiterated his argument while arguing the allowability of deduction u/s 80IA in respect of the electrical projects.

28. So far as the grounds raised by the Revenue challenging the order of the CIT (A) in holding that the disallowance/ additions are to be considered as part of the gross total income for computation of deduction u/s 80IA(v) is concerned, he reiterated his argument while arguing the allowability of the deduction in respect of the electrical projects.

29. He accordingly submitted that the grounds raised by the assessee should be allowed and the grounds raised by the Revenue should be dismissed.

30. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer in denying the claim of deduction u/s 80IA(4)(i)(c) in respect of irrigation project and the order of the CIT (A) to the extent he has confirmed the disallowance u/s 80IA(4)(iv)(b) in respect of electrical project, the learned DR filed the following table.

Appeal	A.Y	Order U/s	Issue	CIT (A)	ITAT	260A HC
697/Hyd/2020	2014-15	143(3) r.w.s. 153A	Addition of Rs.12,51,98,995 for deduction u/s 80IA(4)(iv)(b) Electrical	Dismissed the assessee's appeal	Pending	
750/Hyd/2020	2014-15	143(3) r.w.s. 153A	Addition of Rs.6,45,13,799 for deduction u/s 80IA(4)(i)(c) irrigation	Allowed the assessee's appeal		Departmental appeal before the High Court is pending for the A.Y 2004-05 and 2010-11 on this issue
698/Hyd/2020	2015-16	143(3) r.w.s. 153A	Addition of Rs.17,46,08,792 for deduction u/s 80IA(4)(b) Electrical	Dismissed assessee's appeal	Pending	
751/Hyd/2020	2015-16	-do-	Addition of Rs.91,57,95,147 for deduction 80IA(4)(i)(c) irrigation	Allowed the assessee's appeal	Pending	Departmental appeal before the High Court is pending for the A.Y 2004-05 and 2010-11 on this issue
699/Hyd/2020	2016-17	-do-	Addition of Rs.10,32,97,988 for deduction u/s 80IA(4)(b) Electrical	Dismissed assessee's appeal	Pending	
752/Hyd/2020	2016-17	-do-	Addition of Rs.47,44,19,715 for deduction u/s 80IA(4)(i)(c) irrigation	Allowed	Pending	
		-do-	Disallowance of Rs.62,88,023 w.r.t labour and MNR expenses	Allowed assessee's appeal	Pending	
700/Hyd/2020	2017-18	-do-	Addition of Rs.3,22,64,485 for deduction u/s 80IA(4)(iv)(b) Electrical	Dismissed	Pending	
753/Hyd/2020	2017-18	-do-	Addition of Rs.7,54,95,386 for deduction u/s 80IA(4)(i)(c) (Irrigation)	Allowed	Pending	Departmental appeal before the High Court is pending for the A.Y 2004-05 and 2010-11 on this issue
		-do-	Disallowance of Rs.26,24,850 w.r.t labour and MNR expenses	Allowed	Pending	
701/Hyd/2020	2018-19	-do-	Addition of Rs.1,02,95,226 for deduction u/s 80IA(4)(iv)(b) Electrical	Dismissed	Pending	In original ROI as per Form 10 CCB) assessee claimed deduction of Rs.1,02,95,226 w.r,t Electrical Project. However, the ass is not eligible for deduction u/s 80IA(4)(iv)(b) since it is not a power transmission or distribution undertaking
754/Hyd/2020	2018-19	-do-	Addition of Rs.8,24,78,393 for deduction u/s 80IA(4)(i)(c) irrigation	Allowed	Pending	Departmental appeal before the High Court is pending for the A.Y 2004-05 and 2010-11 on this issue
			Disallowance of Rs.37,43,200 w.r.t labour and MNR expenses	Allowed	Pending	

31. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is a company engaged in execution of electrical, civil and infrastructural projects. It filed its return of income on 30.11.2014 declaring total income of Rs.7,85,99,860/- after claiming deduction u/s 80IA(4)(iv)(i)(b) of the Act in respect of electrical project at Rs.14,59,30,268/- and u/s 80IA(4)(i)(c) in respect of irrigation projects at Rs.7,51,96,418/- We find the order u/s 1143(3) was passed on 9.12.2016 determining the total income of the assessee at Rs.30,96,22,951/- wherein the Assessing Officer disallowed the claim of deduction u/s 80IA(4) in respect of both electrical projects and irrigation projects. In the said order, he also made disallowance of expenditure of Rs.40,00,000/- and bank guarantee charges of Rs.5,90,30,406/-. We find the CIT (A) vide order dated 29.6.2017 deleted the disallowance of deduction of Rs.7,51,96,418/- in respect of irrigation project and the disallowance of Rs.40.00 lakhs on a/c of expenditure. He, however, confirmed the disallowance of deduction u/s 80IA(4)(i)(b) of Rs.14,59,30,268/- in respect of electrical projects and also confirmed the disallowance of Rs.59,03,406/- on a/c of bank guarantee commission. We find a search took place u/s 132 of the I.T. Act on 2.11.2017 in the case of the assessee and in response to notice u/s 153A, the assessee filed its return of income on 3.3.2018 declaring total income of Rs.8,22,37,650/- after claiming deduction u/s 80IA(4)(i)(c) in respect of irrigation project at Rs.13,97,10,217/- and u/s 80IA(4)(i)(b) in respect of electrical project at Rs.27,11,29,263/-. We find the Assessing Officer completed the assessment allowing

the claim of deduction u/s 80IA(4)(i)(c) in respect of irrigation projects to the tune of Rs.7,51,96,418/- which was allowed by the CIT (A) in the appeal filed by the assessee against the original assessment order passed u/s 143(3). He however, rejected the claim of deduction u/s 80IA(4)(i)(c) in respect of additional claim and denied the claim of deduction u/s 80IA(4)(i)(b) in respect of electrical project including the additional claim of deduction which was made in the return filed in response to notice u/s 153A.

32. We find in appeal, the learned CIT (A) allowed the enhanced claim of deduction u/s 80IA(4)(i)(c) in respect of irrigation projects. He, however, rejected the claim of deduction u/s 80IA(4)(i)(b) in respect of electrical projects including the enhanced claim.

33. So far as the claim of deduction u/s 80IA(4)(i)(b) in respect of electrical projects including the additional claim is concerned, we find identical issue had come up before the Tribunal in assessee's own case in the preceding A.Ys i.e. A.Ys 2012-13 & 2013-14 in ITA No.695 & 696/Hyd/2020 dated 21/11/2012. In the said decision, the Tribunal has restored the issue of deduction u/s 80IA(4)(b) in respect of electrical project to the file of the Assessing Officer with direction to verify the record and if the assessee is continuing the same project then to pass appropriate order in the light of the decision of the Tribunal for the A.Ys 2012-13 and 2013-14 by observing as under:

"23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case is engaged in execution of electrical, civil and infrastructure projects as mentioned in the body of the assessment order. Original return of income was filed on 29.09.2012 declaring

total income of Rs.2,86,10,170/- after claiming deduction u/s 80IA at Rs.20,66,95,675/-. The Assessing Officer completed the assessment u/s 143(3) determining the total income at Rs.24,95,95,580/-. The CIT (A) passed the order on 29.3.2016 giving part relief i.e. allowed deduction u/s 80IA(4)(iv)(c) in respect of irrigation projects only and the Assessing Officer passed consequential order giving effect to the order of the CIT (A) dated 19.10.2016 determining the total income at Rs.13,89,25,252/-. We find a search and seizure operation u/s 132 of the I. T. Act was conducted on 2.11.2017 and the assessee in response to notice u/s 153A filed the return declaring income of Rs.2,63,98,078/- by claiming deduction u/s 80IA at Rs.22,25,14,356/- which included enhanced claim of Rs.1,58,18,681/- for both irrigation and electrical projects. We find the Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A on 30.12.2019 at Rs.13,89,25,252/- which is the income determined by the Assessing Officer after the order passed by the CIT (A) on 19.10.2016. In the assessment order, the Assessing Officer allowed the claim of deduction u/s 80IA(4) in respect of the irrigation project.

24. We find in appeal, the CIT (A) allowed the claim of deduction u/s 80IA(4) in respect of irrigation project and rejected the claim of deduction u/s 80IA in respect of the electrical project, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that the Tribunal in assessee's own case for the A.Y 2004-05 to 2009-10 has allowed the claim of deduction u/s 80IA in respect of both the irrigation and electrical projects. Further, the learned CIT (A) while denying the deduction u/s 80IA in respect of electrical projects for the impugned A.Y has not followed the decision of the Tribunal in assessee's own case for the A.Y 2011-12 & 2012-13 on the ground that the Revenue has filed M.A. which is still pending. It is the submission of the learned Counsel for the assessee that since subsequent to the order of the CIT (A) the Tribunal has dismissed the MA filed by the Revenue, therefore, the order of the CIT (A) has to be set aside on this issue and the grounds raised by the assessee should be allowed.

25. We find merit in the above arguments advanced by the learned Counsel for the assessee on this issue. We find the Tribunal in assessee's own case has restored the issue to the file of the Assessing Officer with certain directions to allow deduction u/s 80IA in respect of electrical projects for A.Y 2011-12 and 2012-13 after considering the decision of the Tribunal in A.Y 2010-11 where such claim of deduction u/s 80IA for electrical projects was denied. It is also an admitted fact that the Tribunal in assessee's own case for the A.Y 2004-05 to 2009-10 has allowed deduction u/s 80IA in respect of both the irrigation and electrical projects. We find the Tribunal in assessee's own case for the A.Y 2011-12 and 2012-13, following the decision of the Tribunal in assessee's own case

for the A.Y 2004-05 to 2009-10 has restored the issue to the file of the Assessing Officer to allow the claim of deduction u/s 80IA(4) in respect of the electrical project by observing as under:

6. Regarding Ground Nos.1 to 4 for the AY.2011-12, covering the issues raised in the Grounds of both the appeals for both the years, Ld.Counsel for the assessee made the following written submissions, and the same are extracted as under:

"Issues involved in these appeals are:

Deduction under section 80IA(4)(i)(c) in respect of civil works including irrigation Projects and 80IA(4)(iv)(b) in respect of Electrical Projects

1. Assessee Appeal are in relation to disallowance of deduction under section 80IA in respect of Electrical projects u/s 80IA(4)(iv)(b) :

The CIT(A) based on the appeal order of the CIT(A) & ITAT for the Assessment year 2010-11 in ITA No. 765/Hyd/2014, 740/Hyd/2014 & CO No. 47/Hyd/2014 dated 29-02-2016, differing from the earlier ITAT order in Assessee's own case for Assessment year 2004-05 to 2009-16 ITA No. 347/Hyd/200S & 13 others dated 29-02-2012. The Hon'ble ITAT in its order in ITA No 347/Hyd/2005, at pages 16 to 21 the projects are extracted and the direction of the ITAT is at 44 8th line reads as under:

*"Therefore, in our considered view, the assessee should not be denied the deduction under section 811A of the Act if the contracts involves design, development, operating & maintenance, financial involvement and defect correction and liability period then such contracts cannot be called a simple works contracts to deny the deduction u/s 80IA of Act. in our opinion the contracts which contain above features to be segregated on this deduction u/s 80IA has to be granted and the other agreements which are pure works contracts hit by the explanation section 80IA(13), those works are not entitle for deduction u/s 80IA of the Act. The Profit from the contracts which involves design, development, operating & maintenance, financial involvement and defect correction and liability period is to be computed by assessing Officer on pro-rata basis of turnover. The assessing officer is directed to examine the records accordingly and grant deduction on eligible turnover as directed above.
....."*

In view of the above directions of the ITAT both irrigation projects as well as Electrical projects are eligible for deduction under section 80IA(4)(i)(c) and 80IA(4)(iv) of the Income Tax Act, 1961.

For the Assessment year 2010-11 the CIT(A) as well as the ITAT have denied deduction under section 80IA (4) (vi) (b) the relevant para are:

CIT(A) Order pages 9 para 6.5 reads as under:

Thus, as far as these two electrical works are concerned, the appellant is not eligible for deduction u/s 80IA(4)(iv)(b), since the appellant is not a power transmission or distribution undertaking. The deduction claimed

to the tune of Rs. 3,63,21,718/- is therefore erroneous and is not admissible. Accordingly, the disallowance made to this extent is therefore upheld.

and ITAT order at page 9 & 10 para 8.1 towards end gave a finding:

"we find that though the projects therein included electricity projects as well, ITAT has not brought out the distinction between section 80IA(4)(iv)(b) and therefore, it cannot be said that this issue is covered by those orders. From the above observations and the detailed observations made by the CIT(A) to come to a conclusion that the assessee is not eligible to claim deduction u/s 80IA(4)(iv)(b). Accordingly, we uphold the order of the CIT(A) on this issue and dismiss the ground of appeal of assessee."

We submit that the undertaking referred to in section 80IA(4)(iv) and undertaking referred to in the proviso to section 80IA(4)(iv)(b) are different and cannot be the same. The Undertaking referred to in section 80IA(4)(iv) can be confined to the power transmission or distribution undertaking whereas the undertaking referred to the proviso to this section is different. The proviso reads as under:

"Provided the deduction under this section to an undertaking under sub-clause

(b) shall be allowed only in relation to the profits derived from laying of such 'network of new lines for transmission or distribution."

In case the undertaking involved in transmission and distribution undertakes laying of the such network of new lines will be capital and nature and cannot earn profit for such laying of new lines, therefore, there has to be another undertaking. Hence your appellant is eligible for deduction on profits from electrical projects. It is prayed that deduction under section 80IA(4)(iv)(b) may be allowed.

2. The Department appeal are in respect of deduction allowed by CIT(A) under section 80IA(4)(i)(c) -

The CIT(A) has followed the ITAT order for AY 2004-05 to 2009-10, in ITA NO 347/H/2008 & others, Order of the CIT(A) as well ITAT order for AY 2010-11, the relevant para are:

The Hon'ble ITAT in its order in ITA No 347/Hyd/2008, at pages 16 to 21 the projects are extracted and the direction of the ITAT is at 44 8th line reads as under:

"Therefore, in our considered view, the assessee should not be denied the deduction under section 81A of the Act if the contracts involves design, development, operating & maintenance, financial involvement and defect correction and liability period then such contracts cannot be called a simple works contracts to deny the deduction u/s 80IA of Act. in our opinion the contracts which contain above features to be segregated on this deduction u/s 80IA has to be granted and the other agreements which are pure works contracts hit by the explanation section 80IA(13), those works are not entitle for deduction u/s 80IA of the Act. The Profit

*from the contracts which involves design, development, operating & maintenance, financial involvement and defect correction and liability period is to be computed by assessing Officer on pro-rata basis of turnover. The assessing officer is directed to examine the records accordingly and grant deduction on eligible turnover as directed above.
....."*

For the Assessment year 2010-11 the CIT(A) as well as the ITAT have allowed deduction under section 80IA (4) (1) (c) the relevant para are:

CIT(A) Order pages 6 para 6.2 reads as under:

"The issue in the earlier order before the Hon'ble Tribunal was whether the appellant is a work contractor or not. The tribunal had given a finding that the appellant is not a mere work contractor and is therefore entitled for deduction u/s 80IA. Thus, once an appellant is eligible for the deduction under section 80IA, then, this claim is to be allowed in terms of the order of the Hon'ble ITA T in appellant's own case for earlier years. This finding can therefore be applied to the first three projects namely the claim of deduction u/s 80IA (4)(1)(c). Accordingly, the claim of the deduction u/s 80IA(4)(i)(c) to the tune of Rs. 5,15,54,567/- is therefore allowed."

and ITAT order at page 11 para 10.1 reads as under:

"The revenue has filed an appeal u/s 260A of the Act challenging the above order of ITAT before the Hon'ble High Court. In the said order, it was held that these contracts are not in the nature of works contracts and thereby Explanation to the provisions of section 80IA(13) are not attracted. Hence, just to maintain consistency with the stand of the revenue and to keep the issue alive, AO has disallowed the deduction u/s 80IA(4)(i)(c). Apart from that there is no merit in such disallowance. However, the Id. CIT(A) has allowed assessee's claim u/s 80IA(4)(i)(c) relying on the order of the coordinate bench of this tribunal (supra), hence, we are inclined to uphold the order of CIT (A). in this regard as the order of the CIT(A) is in line with the order of ITAT."

in view of the above, the Department appeals may be dismissed".

6.1. Further, relying on the decision of Hon'ble ITAT vide its order dt.29-02-2012 in ITA No.347/Hyd/2008 and others, Ld.Counsel for the assessee submitted that all these issues have to be remanded to the file of CIT(A) for passing an order in compliance with the said order of the Tribunal. Referring to above note, Ld.Counsel for the assessee submitted that the assessee is entitled to deduction u/s.80IA(4) of the Act in respect of both the types of the Projects. The said order of the Tribunal helps the assessee if an effect is given and the said decision is honoured by the AO. Further, referring to the allowability of deduction u/s.80IA(4)(i)(c) of the Act, Ld.Counsel for the assessee submitted that the ITAT already taken a view in this regard and consequently, the appeals of the Revenue are dismissed.

7. After hearing both the sides and also considering the decision of the Coordinate Bench of the Tribunal in assessee's own case cited supra, we are of the opinion that the directions should be given to the CIT (A) to go

by the said order of the Tribunal. Assessing Officer shall grant an opportunity of being heard. Accordingly, Ground Nos. 1 to 4 are allowed for statistical purposes.”

26. *We find the M.A filed by the Revenue was dismissed by the Tribunal vide order dated 15.02.2021. It is also an admitted fact that the Assessing Officer thereafter has given effect to the orders of the Tribunal by allowing claim of deduction u/s 80IA(4) in respect of electrical projects. Therefore, denying claim u/s 80IA in respect of electrical project, in our opinion, by the learned CIT (A) is not justified especially when the Tribunal in assessee’s own case has already restored the issue to the file of the Assessing Officer with certain directions to allow deduction u/s 80IA with respect to electrical projects. Therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the record and if the assessee is continuing the same project, then to pass appropriate order in light of the directions of the Tribunal for the A.Y 2011-12 & 2012-13 and allow deduction u/s 80IA(4) in respect of the electrical projects. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee. Thus, the first issue raised by the assessee in the grounds of appeal is allowed for statistical purposes.*

27. *So far as the allowability of deduction u/s 80IA of the Act in respect of the enhanced claim of deduction of Rs.73,48,941/- in respect of electrical project is concerned, we find the learned CIT (A) while allowing the enhanced claim of deduction u/s 80IA(4) in respect of irrigation project at Rs.84,69,740/- has already allowed such claim holding that any disallowance/addition made by the Assessing Officer are to be considered as part of the gross total income for computation of deduction u/s 80IA. Since the learned CIT (A) had rejected the claim of deduction u/s 80IA(4) in respect of electrical project and since we have already allowed such claim in the preceding paragraph, therefore, we do not find any reason why the assessee should not be allowed benefit u/s 80IA(4)(iv)(b) in respect of the enhanced claim of deduction due to disallowance/addition of certain expenditure. We are of the considered opinion that the disallowance/addition made by the Assessing Officer are to be considered as part of the gross total income for computation of deduction u/s 80IA in view of the circular issued by the CBDT and various judicial pronouncements. We therefore, direct the Assessing Officer to allow claim of deduction u/s 80IA(4) in respect of the enhanced claim of Rs.73,48,894/- in respect of the electrical projects. The grounds raised by the assessee on this issue are accordingly allowed”.*

34. Respectfully following the order of the Tribunal in assessee's own case in the immediately preceding two A.Ys (cited Supra) we restore the issue to the file of the Assessing Officer with a direction to verify the record and if the assessee is continuing the same projects, then to pass appropriate order in the light of the decision of the Tribunal in assessee's own case for A.Y 2011-12, 2012-13 & 2013-14. In case the assessee has claimed the deduction in respect of new projects for any of the assessment years, then the Assessing Officer shall verify the terms & conditions and decide the allowability of deduction in the light of the decision of the Tribunal in assessee's own case for the earlier years. The grounds raised by the assessee are accordingly allowed for statistical purposes.

35 So far as the grounds raised by the Revenue are concerned, the same relate to the claim of deduction in respect of the irrigation project including enhanced claim of deduction. We find the learned CIT (A) while allowing the claim of the assessee u/s 80IA(4)(i)(c) has followed the order of the Tribunal in assessee's own case in the immediately preceding A.Ys. Merely because the Revenue has challenged the order of the Tribunal before the High Court, the same in our opinion cannot be a ground to take a contrary view than the view taken by the Tribunal especially in absence of any adverse order by the Hon'ble High Court.

36. So far as the ground by the Revenue challenging the order of CIT (A) in allowing enhanced claim of deduction is concerned, the same in our opinion also has to be rejected in the light of the order of the Tribunal in assessee's own case in respect of the electrical projects where similar enhanced deduction was

allowed. Since in the instant case, the assessee is claiming enhanced deduction u/s 80IA(4)(i)(b) and 80IA(4)(i)(c) due to disallowance of expenses, therefore, following the decision of the Coordinate Bench of the Tribunal in assessee's own case for the preceding years, we do not find any infirmity in the order of the CIT (A) in allowing the enhanced claim of deduction in respect of the irrigation projects as per the ground raised by the Revenue.

36.1 Accordingly, the appeal filed by the assessee is partly allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

ITA Nos. 698 to 701 and 752 to 754/Hyd/2020 (A.Y 2015-16 to 2018-19)

37. After hearing both the sides, we find the grounds raised by the assessee and the Revenue in their respective appeals are identical to the grounds raised in ITA No.697 and 751/Hyd/2020. We have already decided the issue and the appeal filed by the Revenue has been dismissed and the appeal filed by the assessee has been partly allowed for statistical purposes. Following similar reasonings, the above appeals filed by the assessee are partly allowed for statistical purposes and the appeals filed by the Revenue are dismissed.

38. In the result all the 5 appeals filed by the Revenue are dismissed and the 5 appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 28th February, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 28th February, 2023.

Vinodan/sps

Copy to:

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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order