आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
677/Hyd/2020	2014-15	M/s. Sushee Infra & Mining Limited, Hyderabad [PAN: AACCS8560Q]	Deputy Commissioner of Income Tax, Central Circle-2(2), Hyderabad
645/Hyd/2020	2015-16		
646/Hyd/2020	2016-17		
647/Hyd/2020	2017-18		
244/Hyd/2022	2019-20		
730/Hyd/2020	2014-15	Assistant Commissioner of Income Tax, Central Circle-2(2), Hyderabad	M/s. Sushee Infra & Mining Limited, Hyderabad [PAN: AACCS8560Q]
731/Hyd/2020	2015-16		
732/Hyd/2020	2016-17		
733/Hyd/2020	2017-18		

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Ms. TH. Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 26/10/2023
घोषणा की तारीख/Pronouncement on: 27/12/2023

आदेश / **ORDER**

PER BENCH:

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("learned CIT(A)"), in the case of M/s. Sushee Infra & Mining Limited ("the assessee") for the assessment years 2014-15, 2015-16, 2016-17, 2017-18 & 2019-20, both the Assessee and Revenue preferred these appeals. For the sake of convenience, these appeals are decided by this common order.

Assessment Year : 2014-15

2. Brief facts are that the assessee is a company and is engaged in the business of development of infrastructure facility and execution of works contracts. For the assessment year 2014-15, it filed its return of income on 29/11/2014 declaring NIL income, after claiming deduction under section 80-lA of the Income Tax Act, 1961 (for short "the Act") of Rs. 48,54,27,201/-. The assessment was completed under section 143(3) of the Act on 25/03/2016 and the deduction claimed under section 80-lA of the Act was disallowed.

3. Aggrieved, assessee filed an appeal before the learned CIT(A), who allowed the appeal in favour of the assessee vide order dated 16/06/2017 and the said order was confirmed by a Co-ordinate Bench of the Tribunal vide order in ITA No.1522/Hyd/2017 dated 24/10/2018.

4. In the meanwhile, there was a search and seizure operations under section 132 of the Act in the case of the assessee and the group concerns on 21/07/2016. According to the assessee, no incriminating material

relating to the assessee was found during the course of such search. The authorities recorded the statement of the Managing Director. In the said statement, the Managing Director mentioned that the complete evidences for disallowance of the expenditure were not available and part of the expenditure amounting to Rs. 1,50,36,489/- would be offered for assessment.

5. In response to the notice under section 153A of the Act on 27/12/2016, on verification of the information available on record, assessee filed a return without offering any additional income as stated by the Managing Director at the time of search. Assessee also filed a letter dated 18.12.2018 before the learned Assessing Officer requesting not to make any disallowance. Assessee also filed copies of the expenditure incurred on all the projects before the learned Assessing Officer and requested not to make any addition. Learned Assessing Officer, however, was of the view that in respect of the project Pranahitha-Chevella Package-27, the total expenditure incurred was Rs.15,10,59,459/- and out of the said amount, Rs.2,05,28,536/- is not allowable as a deduction on the ground that the vouchers were self-made and the bills and vouchers were found to be doubtful. Learned Assessing Officer accordingly made an addition of Rs. 2,05,28,536/- on that count. Further, the learned Assessing Officer did not consider the eligibility for deduction under section 80-IA of the Act.

6. Assessee filed appeal before the learned CIT(A) and submitted that the disallowance cannot be made on a mere doubt. It was contended that the disallowance cannot be made as the project cost is properly recorded in the books of account and the details with regard to the expenditure are

available and such were also filed. It was further submitted that the learned Assessing Officer during the assessment proceedings, did not find any discrepancy in the maintenance of the books of account nor did he find any disallowable expenditure, and, therefore, simply based on a statement recorded at the time of search, the learned Assessing Officer cannot reach a conclusion in respect of disallowance of the expenditure. He further submitted that since the assessment is being made under section 153A of the Act, after the search and seizure operations were conducted, any addition has to be based on the material seized during the search and seizure operations. Since the authorities did not find any such material, no such addition can be made under section 153A of the Act, because the regular assessment under section 143(3) of the Act was complete without making such an addition.

7. In respect of the disallowance, learned CIT(A) recorded that even though there is an admission, in terms of the decision of the Hon'ble Apex Court in the case of Pullangode Rubber Products Co. vs. State of Kerala (1973) 91 ITR 18 (SC), it is always open for the person making such an admission to explain that the said admission is incorrect, but the onus rests on such person to prove the grounds of retraction with convincing material. According to the learned CIT(A), the assessee produced the bills and vouchers in support of its contention that all the expenditure is supported by documents and, therefore, at that point, the onus shifts to the department to make enquiries with reference to such material and point out any specific errors with reference to such material. But, in this case, according to the learned CIT(A), the learned Assessing Officer did not undertake any such enquiry, but disallowed a sum of Rs. 2,05,28,536/-

incurred by the assessee under the head 'labour expenses' intoto. In these circumstances, learned CIT(A) disallowed only 25% of the same which comes to Rs. 51,32,134/- and directed the learned Assessing Officer to delete the balance of Rs. 1,53,96,402/-.

8. Aggrieved by the upholding of 1/4th of the disallowance of expenses assessee preferred appeal in ITA No. 677/Hyd/2020 whereas challenging the deletion of 3/4th of the disallowance of expenditure the Revenue preferred appeal in ITA No. 730/Hyd/2020.

9. Learned AR reiterated the same argument as was made before the learned CIT(A), and further submitted that no incriminating material was found during the course of search regarding inflation of expenditure. He submitted that the learned Assessing Officer cannot make addition on estimate basis in a search assessment and the learned CIT(A) is also not justified in restricting such disallowance instead of deleting the entire addition.

10. Per contra, learned DR heavily relied on the order of the learned Assessing Officer and submitted that when the Managing Director of the assessee in his sworn statement dated 22/07/2016 in reply to Question No.45 admitted the discrepancies and voluntarily admitted disallowance of expenditure of Rs. 55,60,06,464/- for various years, the learned CIT(A) was not justified in restricting the disallowance made by the learned Assessing Officer.

11. We have gone through the record in the light of the submissions made on either side. We also considered the various decisions cited before us. We find that the learned Assessing Officer, during the course of

assessment proceedings, noted that out of the various expenditure amounting to Rs.15,10,59,459/- claimed in the Profit and Loss Account (P&L Account), the assessee could not produce the bills and vouchers completely to his satisfaction and some of the vouchers appear to be doubtful and were self-made. Further, the Managing Director of the assessee by name, Shri Lakshmi Kant Reddy in his reply to Question No.45 in his sworn statement dated 22/07/2016 also conceded disallowance of expenditure of Rs.50,60,06,464/- for the financial years 2013-14 to 2015-16. Since the assessee did not offer the amount of Rs.1,50,36,489/- to tax in the return filed in response to notice under section 153A of the Act and since the assessee could not substantiate with evidence to the satisfaction of the learned Assessing Officer by providing supporting documents in some of the expenses, the learned Assessing Officer rejected the explanation given by the assessee and made addition of Rs. 2,05,28,536/- to the total income of the assessee. We find that the learned CIT(A) restricted such disallowance to Rs.51,32,134/- being 1/4th of such disallowance and deleted the balance amount of Rs. 1,53,96,402/- on the ground that although the assessee retracted the statement after a gap of more than 14 months, however, the assessee during the course of assessment proceedings produced the bills and vouchers and books of account before the learned Assessing Officer and the learned Assessing Officer disallowed an amount of Rs. 2,05,28,536/- without pointing out any specific defect in any of the bills and vouchers. We find that the learned CIT(A) while giving part relief to the assessee relied on the decision of the Hon'ble Supreme Court in the case of Pullangode Rubber & Products Co. Vs. State of Kerala reported in (1973) 91 ITR 18 SC, wherein it was held that though the admission is an extremely important piece of evidence, but it

cannot be said that it is conclusive of the matter and it is open to the person who has made the statement to show that the same is not correct and then retract. Since the assessee produced the bills & vouchers before the learned Assessing Officer along with the books of account and the learned Assessing Officer did not identify or quantify the doubtful bills and simply relied on the admission statement of the Director and made disallowance of Rs. 2,05,28,536/- being the entire labour expenses, the learned CIT(A) restricted such disallowance to Rs.51,32,134/- being 1/4th of such disallowance of Rs. 2,05,28,536/-.

12. In our opinion, the approach of the learned Assessing Officer as well as the learned CIT(A) on this issue is not correct. It is an admitted fact that the assessment in the instant case is under section 153A of the Act and the addition was based on the statement of the Director, but no specific evidence of doubtful bill/vouchers have been identified by the learned Assessing Officer. In our opinion, when the assessee produced books of accounts along with bills and vouchers, the learned Assessing Officer should have verified the bills and vouchers and made addition of the doubtful/non-genuine bills only where the assessee cannot substantiate with evidence to his satisfaction. He should not have resorted to estimation when the bills/vouchers and books of accounts were produced before him. Under these circumstances and considering the totality of the facts of the case, we deem it proper to restore the matter to the file of the learned Assessing Officer with a direction to verify all the bills and vouchers and make addition of only those bills/vouchers which according to him are not genuine or bogus. Learned Assessing Officer shall decide the issue afresh and as per fact and law after giving due opportunity of being heard

to the assessee. We hold and direct accordingly. The Grounds of appeal raised by the assessee as well as the Revenue on this issue are accordingly treated as allowed for statistical purposes.

13. In the result, appeals of the assessee and Revenue in ITA Nos. 677 and 730/Hyd/2020 for the assessment year 2014-15, are treated as allowed for statistical purposes.

Assessment Year : 2015-16

14. Ground No. 1 of assessee's appeal and Grounds No. 1 & 8 of Revenue's appeal are general in nature. Ground No. 2 of assessee's appeal relates to the action of the learned Assessing Officer in treating the book profit for the purpose of section 115JB of the Act at Rs. 75,36,99,384/- whereas according to the assessee, the actual amount of profit before tax was only Rs. 59,74,43,510/- and the book profit admitted by the assessee was Rs. 48,89,22,648/-.

15. It could be seen from the record that the assessee in the return of income declared an amount of Rs.75,36,99,384/- under section 115JB of the Act. During the appellate proceedings, the assessee requested the learned CIT(A) to direct the learned Assessing Officer to adopt the declared income of Rs.75,36,99,384/- under section 115JB of the Act. Learned CIT(A), however, in absence of any written submission, dismissed the ground raised before him. It is the submission on behalf of the assessee that, when the entire material was available before him, learned CIT(A) should have decided the issue on the basis of material available before him and should not have rejected the ground merely because the assessee did not make any written submission on this issue.

16. Considering the totality of the facts of the case and considering the fact that the learned CIT(A) did not adjudicate the issue on the basis of material available before him, we deem it just and proper to set aside the findings of the learned CIT(A) on this aspect and restore the same to the file of the learned CIT(A) with a direction to decide the issue as per fact and law after affording due opportunity of being heard to the assessee. Ground of appeal No.2 raised by the assessee is accordingly treated as allowed for statistical purposes.

17. Coming to Ground of appeal No.3, it relates to the disallowance of sub-contract payments to the tune of Rs. 5,82,60,105 and Rs.5,29,96,903/- respectively, which was confirmed by the order of the learned CIT(A). Record reveals that the learned Assessing Officer, during the course of assessment proceedings, noted that the assessee sub-contracted certain works to the tune of Rs.5,82,60,105/- to 14 sub-contractors the details of which are as under:

S.No	Concerned FY	PAN	Name of the sub-contractor	Amount of payment
1	14-15	EZLPS8284Q	Anjana Sharma	4999903
2	14-15	APAPB4322B	Battula Ushaiah	2000000
3	14-15	DOHPK0633D	Bhanu Chand Kundena	900000
4	14-15	AITPD0238N	Doli Satyanarayana	5000000
5	14-15	ACWPV4970E	Manohar Vemavarapu	2500000
6	14-15	AWFPC3866R	Prabhavathi Chepuri	4000000
7	14-15	AGOPR5032M	R Venkateswalu	1500000
8	14-15	ANGPD3053M	Thirupathi Reddy Dendi	9000000
9	14-15	AIOPB7258B	Indra Reddy Beeravolu	5720202
10	14-15	ALFPK8693P	Koneru Phani Kumar	10000000
11	14-15	ALBPP9520A	Krishna Pashikanti	90000
12	14-15	ASYPS7501G	Naveen Reddy Suravaram	5500000
13	14-15	AJPPC5372H	Ramchandra Reddy Cheruku	5000000
14	14-15	AMAPB1040M	Vikram Reddy B	2500000

18. Learned Assessing Officer noticed that during the course of post search inquiries, summons were issued by the concerned DDIT to examine the issue with a view to verify the correctness of the claim of such sub-contractors. None of the sub-contractors, however, replied nor did they furnish the requisite information during the course of post search inquiries. He, therefore, asked the assessee to produce the sub-contractors since they did not appear despite issuance of summons. Since the assessee failed to produce and also none of the sub-contractors appeared before him, learned Assessing Officer asked the assessee to explain as to why the sub-contractors should not be treated as bogus and payment of Rs.5,82,60,105/- should not be treated as bogus expenditure.

19. The assessee replied to the same and submitted the work orders and the TDS details. Learned Assessing Officer observed from the work orders that two sub-contractors namely Shri Manohar Vemavarapu and Prabhavathi Chepuri have not signed the work order in token of their acceptance. Further, neither the sub-contractors appeared before him nor the assessee was able to produce them for examination by him. In view of the same, learned Assessing Officer made an addition of Rs. 5,82,60,105/- by disallowing the payments made to sub-contractors observing that the assessee failed to establish their identity and creditworthiness and to prove the genuineness of such expenditure.

20. Similarly, learned Assessing Officer noted in para 25 of the order that certain amounts towards sub-contract payments were debited to P&L Account and the work orders were not signed by the sub-contractors. He, therefore, held that the genuineness of the sub-contracts given to the following persons are doubtful:

Name of the contractor	Amount
B. Radha Krishna Reddy	3,435,000
B. Surendra Reddy	4,044,000
V.G. Prasuna	4,500,000
J. Sunitha Reddy	2,625,000
W. Sandesh Reddy	8,657,950
V. Prasoon Reddy	2,500,000
Kotha Venkata Laxma Reddy	2,69,94,953
RajeswarBusa	2,40,000
	5,29,96,903

Thus, learned Assessing Officer made an addition of Rs.5,29,96,903/- to the total income of the assessee.

21. In appeal, the learned CIT(A) sustained both the additions by observing as under:

> *"7.4 I have considered the contentions of the Assessing Officer as well as the appellant's AR. On both these disallowances the AO observed that the sub-contractors have not responded to the summons issued nor any confirmations were filed by the appellant. AO also observed that some of the work orders were not signed by the subcontractors, Therefore the AO doubted the genuineness of these sub-contractors and disallowed the same. During appellate proceedings the AO furnished the ledger accounts and work orders of the sub-contract works. But no confirmation of these sub-contractors was furnished to prove that the genuineness of these sub-contractors. The onus is on the appellant to establish the1demtity genuineness and the business purposes of these sub-contracts entered into by the appellant. The appellant failed to discharge this onus even during appellate proceedings. Therefore, the disallowance on account of the sub-contract payments on both the counts i.e., Rs.5,82,60,105/- at Para 9 and Rs.5,29,96,903/- at Para 25 are confirmed. Accordingly, Ground no.4 of the appellant is DISMISSED."*

Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal.

22. Learned AR submitted that the sub-contract agreements were produced before the learned Assessing Officer, payments were made by account payee cheques or through RTGS which were encashed by the sub-contractors through their bank accounts and TDS has been made. Further, there is no evidence that the money has come back to the assessee in some way or other. Assessee, therefore, fulfilled all the ingredients and merely because of their non-appearance, learned Assessing Officer should not have disallowed the entire amounts. He submitted that since the sub-contractors are working at far of places, it was not possible for them to appear before the learned Assessing Officer. He, however, submitted that given an opportunity, the assessee is in a position to produce the sub-contractors. He accordingly submitted that the addition made by the learned Assessing Officer on account of sub-contract payment of Rs.5,82,60,105 and Rs.5,29,96,903/-respectively needs to be deleted.

23. Per contra, learned DR heavily relied on the order of the learned Assessing Officer and the learned CIT(A). He submitted that merely because the payments have been made through account payee cheques or through RTGS and that the TDS has been deducted, cannot justify the allowance of such expenditure especially when some of the work orders are not signed by the sub-contractors and that none of the sub-contractors appeared before the learned Assessing Officer or produced by the assessee. According to her, in these circumstances, despite meticulous paper work, the identity of these persons and the genuineness of the transactions remain unverifiable. Learned DR accordingly submitted that the order of the learned CIT(A) be upheld and the grounds raised by the assessee on this issue should be dismissed.

24. We have gone through the record in the light of the submissions made on either side. It is an undisputed fact that despite the issuance of summons to the sub-contractors, they did not appear before the learned Assessing Officer. Further, the assessee also did not produce any of the sub-contractors before the learned Assessing Officer for examination by him and some of the work orders are unsigned. At the same time, it is also a matter of fact that all payments were made by account payee cheques to the sub-contractors, proper TDS has been made and barring two or three work orders, the other work orders are duly signed by the sub-contractors. Further, there is no evidence on record that the money has come back to the assessee from these sub-contractors in some way or other. It is the submission of the learned AR that given an opportunity, the assessee is ready and willing to produce the sub-contractors before the learned Assessing Officer for examination by him. In these circumstances, considering the facts of the case in their entirety, we deem it just and proper to set aside the findings of the learned CIT(A) on this aspect and restore the issue to the file of the learned Assessing Officer with a direction to give one last opportunity to the assessee to produce the sub-contractors before him for examination by him and then decide the issue as per facts and law. We hold and direct accordingly. Ground No.3 by the assessee is treated as allowed for statistical purposes.

25. Coming to Ground No. 4 of assessee's appeal as well as Ground Nos. 4 & 5 of Revenue's appeal relate to the disallowance of expenses. learned Assessing Officer made disallowance of Rs. 31,30,65,406/- out of which, the learned CIT(A) confirmed 1/4th thereof to the tune of Rs. 7,82,66,352/- and deleted the balance of Rs. 23,47,99,054/-.

26. On a perusal of the record including the orders of the both the authorities below, we find that an identical issue had arisen in the assessment year 2014-15 and in the foregoing paragraphs, after an elaborate consideration, such an issue is answered dismissing the related ground of appeals of both the Revenue and the assessee. Following similar reasoning for this year also, the grounds raised by the both the parties on this issue are dismissed.

27. Ground No.5 by the assessee relates to the disallowance of sub-contract payment of Rs.47,06,061/- on account of non-deduction of tax at source. Learned AR, at the time of hearing, submitted that the assessee deducted the TDS and, therefore, this issue may be restored to the file of the learned Assessing Officer for due verification.

28. Learned DR reported no objection for the same. Recording the same, we deem it just and proper to restore this issue to the file of the learned Assessing Officer with a direction to give an opportunity to the assessee to substantiate that TDS has been made from the sub-contract payment of Rs.47,06,061/- as per the provisions of the Act. Learned Assessing Officer shall decide the issue as per facts and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. This ground raised by the assessee is accordingly treated as allowed for statistical purposes.

29. Ground No.6 of assessee's appeal and Ground No.7 of Revenue's appeal relate to part relief granted by the learned CIT(A) by giving an amount of Rs.54 lakhs out of the total disallowance of Rs.2,20,95,600/-

being the sub-contract payment made to M/s Sai Earth Movers (Prop. K.Venkat Reddy).

30. On a perusal of record, we find that the learned Assessing Officer noted that an amount of Rs.2,20,95,606/- was paid to Shri Komati Reddy Venkat Reddy (Prop. M/s. Sai Earth Movers). Assessee submitted that the payment was wrongly classified under sub-contracts, whereas it should have been classified as advances. Learned Assessing Officer, however, observed that the amount has been debited to P&L Account, and accordingly made addition of the entire amount of Rs.2,20,95,606/-.

31. In appeal, learned CIT(A) deleted an amount of Rs.1,66,95,606/- and sustained the balance amount of Rs.54 lakhs only on the ground that as per the ledger account furnished before him, the debit balance amount to Sai Earth Movers was only Rs.54 lakhs.

32. Since the learned Assessing Officer noted that the amount of Rs.2,20,95,606/- paid to Shri Komati Reddy Venkat Reddy has been debited to the P&L Account and since the learned CIT(A) observed that the actual debit balance amount is only Rs.54 lakhs, whereas it is the submission of the learned AR that no such amount is debited to P&L Account, it requires verification. We, therefore, considering the totality of the facts of the case and in the interest of justice, deem it just and proper to restore the issue to the file of the learned Assessing Officer with a direction to re-adjudicate the issue by giving an opportunity to the assessee to substantiate its case. Learned Assessing Officer shall decide the issue as per the facts and law. We hold and direct accordingly. Thus, the Ground No. 6 raised by the

assessee and Ground No.7 raised by the Revenue are treated as allowed for statistical purposes.

33. Coming to Ground Nos. 2 & 3 of Revenue's appeal relate to the claim of the assessee for deduction under section 80-IA(4) of the Act. On a consideration of details furnished by the assessee, learned Assessing Officer held that the assessee cannot be granted such a deduction because the assessee entered into a contract with another person referred to in section 80-IA of the Act for executing works contract. Further according to the learned Assessing Officer, for the assessment years 2008-09, 2009-10, 2011-12 and 2012-13 also, the assessee was denied such a deduction but the appeal preferred by the assessee was allowed by learned CIT(A) and confirmed by the ITAT, but since the department did not accept such findings of the first and second appellate authorities by preferring an appeal before the Hon'ble High Court against the orders of ITAT, to keep the issue alive, the claim of the assessee for deduction under section 80-IA(4) of the Act shall not be allowed. Accordingly learned Assessing Officer disallowed the claim.

34. In appeal, learned CIT(A) recorded that the learned Assessing Officer disallowed the 80-IA deduction stating that the joint venture did carry out the work and not the assessee and, therefore, the assessee is not entitled to deduction under section 80-IA of the Act. Learned CIT(A), however, further noted that a similar issue had arisen and decided for the earlier assessment year 2014-15 wherein his predecessor, after an elaborate discussion, held the issue in favour of the assessee. Learned CIT(A) further stated that this issue was settled at the level of the ITAT in assessee's own case for the assessment years 2008-09, 2009-10, 2011-12

and 2012-13 in ITA Nos. 910 & 911/Hyd/2015 by order dated 22/01/2016, upholding the eligibility of the assessee to claim deduction under section 80-IA(4) of the Act. Following the binding precedent, learned CIT(A) allowed the claim of the assessee.

35. Learned DR vehemently contended that there is no concept of res judicata in income tax proceedings and each year has to be considered on its own merits. Apart from this, she submitted that the Revenue preferred appeal against the orders of the ITAT for the earlier years and the matter is pending before the Hon'ble High Court.

36. We have gone through the record in the light of the submissions made on either side. On this aspect, learned CIT(A), while allowing the claim of the assessee for deduction under section 80-IA(4) of the Act observed that,-

> *"6.2 Ground No.3 Is regarding the claim of deduction u/s.80IA(4) of Rs.43,96, 23,203/-. The AO has disallowed the 80IA deduction stating that the Joint venture has entered into agreement with the Government and not the appellant. Therefore, the AO averred that it is the Joint venture which has carried out the work and not the appellant and hence appellant is not entitled to deduction u/s.80IA. Similar issue has been decided by my predecessor in the assessee's own case for the AY 2014-15 on identical reasons recorded in ITA No.0204/2016-17, dated 16-06-2017 wherein the relevant portion of the decision is reproduced as under:*
>
> > *"7.0 I have carefully perused the submissions of the appellant and the observations of the AO in assessment order. The CIT(A)-3, Hyderabad, while deciding the case of the assessee for Assessment Year 2012-13, vide order dated 17.04.2015, discussed in detail the various projects carried out by the appellant, as well as various judicial decisions on the issue. The relevant Portion of CIT(A)-3's order is reproduced as under:*

"5.3 In the course of the appellate proceedings, the AR submitted that the appellant's claim of deduction had been upheld by the IT AT in its order for AY 2008-09 with regard to the construction of HNSS Main Canal KM 20 to KM 42.

5.4 With regard to the other projects, the AR submitted that these works of development of infrastructure facility had been undertaken by the appellant In consortium with other companies, that a company which carried on the work in consortium with other companies was entitled to deduction u/s 80IA(4) and that it had been held in the case of KMC Constructions ltd by the ITAT that deduction u/s 80IA(4) was allowable to a company which carried on the development of infrastructure facility In consortium with other concerns. The AR also submitted that separate accounts had been drawn for each of the projects and that the Assessing Officer was incorrect in his presumption that profit from each of the project was not correctly arrived at by the appellant.

5.5 The AR submitted that the project for construction of BG Tunnel no. 12 was allotted to Maytas _ Sushee IV, of which the appellant was a 45% member, that the other constituent, Maytas, required the appellant to complete its share of 55% of the work and therefore, the appellant completed the entire work. The AR submitted that similarly for the construction of BG Tunnel no. 17. the work had been allotted to Sushee-TTs JV in which the appellant had an 80% share and the work had been completed in Its entirety by the appellant.

5.6 The AR submitted that the APCSS Project was allotted by the Government of Andhra Pradesh, Irrigation and CAD Department, that the appellant was the lead partner in Sushee Hi Tech-Prasad-NCC-Maytas JV which had been awarded the work, that the entire work was executed by the appellant being a lead partner and that the nature of the work was

similar- to the EPC Turn Key System of HNSS Main Canal (where deduction u/s 80IA had been allowed by the ITAT).

5.7 The AR also submitted copies of extracts of the agreements executed with regard to these works.

5.8 I have considered the facts on record and the submissions of the AR. With regard to HNSS Main Canal KM 20 to KM 42, the appellant's claim of deduction u/s 80IA(4) was held allowable by the ITAT in its order in ITA No.414/Hyd/2012. dtd.17.06.2013 in the appellant's own case for AY 2008-09. Respectfully following the decision ofthe ITAT, the Assessing Officer is directed to allow deduction u/s 80IA(4) for this project.

5.9 One of the reasons for disallowance of the deduction for the other three projects is that the agreement for undertaking the projects had been entered into between a Joint venture and the government and not by the appellant directly. The appellant was merely a constituent of the joint venture and had executed the project on behalf of the joint venture.

5.10 Reference may be made In this context to the decision in the case of Transstroy (IndIa) Ltd. (ITA No.540!Vizag/2009). In this case, the assessee had formed a JV In the name of 'Navayuga Transtrov'. The assessee had executed 40% of the work and the other constituent partner executed 60% of the works awarded. Both the constituent partners of the JV raised bills on the JV and the JV in turn raised a consolidated bill on the Irrigation department without making any additions. The claim of deduction u/s 80-IA(4) on the profits derived out of these works was disallowed by the Assessing Officer on the ground that the works were not awarded to the taxpayer but to the JV and consortium, The ITAT, relying on the decision of ITO v, UAN Raju Constructions (ITA No.344!Vizag/2009j, held that there cannot be any relation of contractor and

subcontractor between the JV and its constituents. The ITAT further held that deduction u/s 8D-IA had to be allowed to the enterprises who are actually carrying on the business of developing or operating and maintaining or developing, maintaining and operating any infrastructure facility, even if the contract was awarded to a JV or Consortium. The Tribunal further held that the consortium or the JV was only a paper company and did not execute any work and that accordingly, the works awarded to the JV was executed by Its constituents and therefore deduction should be available to the constituents.

5.11. The facts in the appellant's case are Identical. The work was allotted to a joint venture of which the appellant was a constituent. The work admittedly was executed entirely by the appellant and not by the other constituents of the joint venture or even by the joint venture in Its own capacity. The fact that the appellant was merely a constituent of the joint venture to which the work had been entrusted cannot, therefore, be a reason for rejection of the claim of deduction u/s 80IA(4).

5.12 The Assessing Officer has also held that the appellant had not carried out the work itself but had in turn subcontracted the work relating to single line BG Tunnel no.12. That the work had been subcontracted is not a relevant factor In deciding the appellant's claim. How an assessee chooses to execute a project, whether by hiring labour and procuring material itself or by entrusting it to a subcontractor is immaterial. Sec.80IA(4) does not require that each and every task related to the execution of the project should be carried out by the appellant or by the employees of the appellant. It is well nigh impossible for any assessee to do so. Indeed, even if the assessee were to hire labour directly under the supervision of its own employees, such hired labour not being employees of the assessee, It would still be possible to argue that an assessee had not executed the work Itself. This argument of the Assessing Officer is, therefore, rejected as irrelevant.

> *5.13 A perusal of the agreements entered Into by the appellant/JVs for allotment of the work shows that site was taken over from the government for undertaking the entire development of the Infrastructure, that there was a defect liability period for each of the works, that thereafter, the Infrastructure was handed over to the government, that the entire material was to be procured by the appellant and the government did not supply any material, that the finances were to be brought In by the appellant apart from providing the performance guarantee and that consequently, the entire risk in the process of undertaking the project was that of the appellant. These are the factors that had weighed with the ITAT in holding that the appellant was a developer and not a works contractor with regard to HNSS Main Canal KM 20 to KM 42 In its order for AY 2008-09. Following the ratio of the ITAT's decision, it is held that the other three projects were also eligible for deduction u/s 80IA(4).*
>
> *5.14. In view of the above, the Assessing Officer Is directed to allow the appellant's claim of deduction u/s.80IA(4) for all the four projects".*

7.1 As the projects being carried out during the year under consideration are the same as in A.Y . 2012-13, I have no reason to deviate from the conclusions drawn by my colleague Commissioner of Income Tax (Appeals) in the assessee's own case for Assessment Year 2012-13 that all these projects are infrastructural projects eligible for deduction u/s.80IA(4). Therefore, following the same, and also in view of the fact that the said order of CIT(A)-3, Hyderabad has been upheld by the Hon'ble ITAT, Hyderabad, I hold that all the projects being carried out by assessee are infrastructural projects and not work contracts, and hence assessee is eligible for deduction under section 80lA on the profits from all the projects carried out during the year under reference. Hence I direct the Assessing Officer to allow deduction under section 801A as claimed by the assessee.

The Hon'ble ITAT in appellant's own case for the asst years 2008-09, 2009-10, 2011-12 & 2012-13 in ITA Nos.910,911/Hyd/201S, dated 22-01-2016, has upheld the deduction u/s.80IA(4) of the assessee. Respectfully following the

> *decision of the Ld.CIT(A) in assessee's own case for AY 2014-15 and the Hon'ble ITAT in earlier years, under identical circumstances, the AO is directed to allow the claim of deduction u/s. 80IA of Rs,43,96,23,203/-. Accordingly Ground No.3 is ALLOWED."*

37. There is no dispute that right from the assessment year 2008-09 for successive years, the assessee was allowed the deduction under section 80-IA(4) of the Act by the first and second appellate authorities. It is also not in dispute that the order of the Tribunal for the assessment years 2008-09, 2009-10, 2011-12 and 2012-13 remains undisturbed. In this set of facts, more particularly in the absence of any change in circumstances, we find it difficult to ignore the reasoning and the precedent in the orders of the ITAT for the earlier assessment years. We, therefore, while respectfully following the view taken in assessee's own case for the earlier assessment years, hold the issue in favour of the assessee. Issue is answered accordingly in favour of the assessee.

38. Ground No.6 by the Revenue relates to the order of the learned CIT(A) in deleting the disallowance of Rs.17 lakhs made by the learned Assessing Officer. On a perusal of the record, we find that the learned Assessing Officer made an addition of Rs.17 lakhs on the ground that an amount of Rs.17 lakhs was paid to Shri Madhu Yashki Goud which has been debited to the P&L Account. In appeal, the learned CIT(A), however, deleted the addition on the ground that such an amount of Rs.17 lakhs is reflected in the balance sheet in the name of Shri Madhu Yashki Goud and has not been debited to the P&L Account. Since the learned CIT(A) in the instant case did not obtain any remand report from the learned Assessing Officer before deleting the addition, based on the submission of the

assessee only, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it just and proper to restore the issue to the file of the learned Assessing Officer with a direction to verify the record. In case it is found that the amount is not debited to the P&L Account, learned Assessing Officer shall pass appropriate order as per the facts and law, after giving due opportunity of being heard to the assessee. This ground raised by the Revenue is treated as allowed for statistical purposes.

39. In the result, appeals of the assessee and Revenue in ITA Nos. 645 and 731/Hyd/2020 (assessment year 2015-16), are treated as partly allowed for statistical purposes.

<u>Assessment Year : 2016-17</u>

40. Grounds No. 1 & 9 in assessee's appeal and Grounds No. 1 & 6 of Revenue's appeal are general in nature and do not require any specific adjudication.

41. Ground No. 2 of assessee's appeal relates to the issue under section 115JB of the Act. On a perusal of record, it is found that this issue is identical to the Ground No. 2 in ITA No. 645/Hyd/2020, wherein the findings of the learned CIT(A) were set aside and the issue was restored to the file of the learned CIT(A) for fresh adjudication. Following similar reasonings, this ground is also restored to the file of the learned CIT(A) for fresh adjudication. This ground is accordingly treated as allowed for statistical purposes.

42. Ground No.3 of assessee's appeal relates to the order of the learned CIT(A) confirming the disallowance of sub-contract payments amounting to Rs.1,15,00,000/- made to M/s. Sai Pranav Infra Projects Pvt. Ltd. Facts of the case in brief are that during the course of search operation, it was observed that the assessee sub contracted certain works to the tune of Rs.1,15,00,000/- to M/s. Sai Pranav Infra Projects Pvt. Ltd. It was further found that the assessee received back this amount as per the verification done at the time of search. Learned Assessing Officer, therefore, issued a show-cause notice to the assessee vide letter dated 13/11/2008 and rejecting the various explanations given by the assessee and observing that the entire money was received back by the assessee in cash from the sub-contractor, he held that the sub-contract is bogus in nature. Learned Assessing Officer, therefore, confronted the assessee regarding the same. In absence of any reply from the side of the assessee, learned Assessing Officer added Rs.1,15,00,000/- to the total income of the assessee.

43. In appeal, the learned CIT (A) confirmed the addition made by the learned Assessing Officer by observing that,-

> *"Ground No.5 - Sub-contract payments of Rs.1,15,00,000/-: The Assessing Officer has disallowed the above sub contract payment at two paras in the assessment order namely para 6 and para 7. The Assessing Officer stated that during post search enquiries certain incriminating SMSs were found on the mobile of the accountant wherein cash of Rs.1,15,00,000/- was said to have received back by the appellant company in lieu of cheques issued to M/s. Sai Pranav Infra Projects Private Limited. The AO reproduced the extracts of the messages and relevant portion of the statement in the assessment order. in the written submissions in the appellate proceedings, the assessee company stated that these payments were genuine and were made against the RA bills raised by M/s. Sai Pranav Infra Projects Private Limited. The appellant has filed works contract & ledger account of the sub-contractor during appellate proceedings.*

> *However, the incriminating messages on the phone & the subsequent admission in the statement have not been controverted. Hence the disallowance of Rs.1,15,00,000/- is confirmed. Ground No.5 is dismissed".*

Aggrieved by such an order of the learned CIT(A), the assessee is in appeal before the Tribunal.

44. Having heard both the sides and having perused the material on record, we do not find any infirmity in the order of the learned CIT(A) on this issue. It is an admitted fact that incriminating messages on the phone and subsequent admission of Mr. K. Srihari and Mr. Ranjith Kumar in the statements have not been controverted by the assessee. We further find that during the course of assessment proceedings, Shri K. Srihari Sr. Manager (Accounts) categorically stated that the cash of Rs.50 lakhs and Rs.65 lakhs were received from Sai Pranav Infra Projects Ltd by Shri Ranjit and the transactions were done as per the direction of the management.

45. The submission of the learned AR that Shri K. Srihari was only an employee of the company and, therefore, his statement has no evidentiary value cannot be accepted especially when it was categorically stated by Shri K. Srihari that the money was given to Sai Pranav Infra Projects Ltd., through cheques and RTGS and were received back in cash as per the direction of the management. In the absence of any material to the contrary brought to our notice, we do not find any infirmity in the order of the learned CIT(A) on this issue. Accordingly, the same is upheld and the ground No. 3 raised by the assessee is dismissed.

46. Ground No.5 of assessee's appeal is an alternative ground to ground No.3 above, according to which the disallowance of Rs.1,15,00,000/-

qualify for deduction under section 80-IA(4) of the Act. On this aspect, learned CIT(A)'s findings are that, -

> *"7.3 I have considered the alternative submission of the appellant. The issue whether any additions made to the eligible business income of the assessee would enhance the claim of deduction u/s.80IA has been clarified by the CBDT in its circular no.37/2016, dated 2-11-2016. The relevant extract of the circular is reproduced below:*
>
> > *"3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B etc. of the Act and other specific disallowances, related to the business activity against which the Chapter Vl-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter, VI-A is admissible on the profits so enhanced by the disallowance.*
> >
> > *4. Accordingly; henceforth, appeals may not be fiIed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn/ not pressed upon. The above may be brought to the notice of all concerned".*
>
> *7.4 The above circular clarifies that where disallowances relating to the business activity on which deduction for Chapter VI-A deduction has been claimed results in enhancement of the profits then the deduction under Chapter VI-A is also allowable on the profits so enhanced by the disallowance. Applying the circular to the facts of the present case, the profits enhanced due to the disallowance of sub-contract payments are eligible for disallowance provided the sub-contracts are related to the eligible business. The appellant has furnished a table giving a list of sub-contractors pertaining to 80lA projects and also the list of sub-contractors which are related to non-80IA projects. As per the list, the appellant submitted that the sub-contractors dealing with 80IA projects amounted' to Rs.1,98,98,988/- and non-80IA projects amounting to Rs.58,00,000/-. In view of the above referred circular of the CBDT the disallowance on account of sub contract payments pertaining to 80lA projects would result in enhanced profits of RS.l,98,98,988/- and the deduction u/s.80IA is admissible on profits so enhanced by the*

> *disallowance. Therefore, the AO is directed to increase the deduction u/s.80IA to the extent of Rs.1,98,98,988/-. The appeal of the appellant on this issue is ALLOWED.*
>
> *7.5 The said CBDT circular is not applicable to sub-contract payment of Rs.1,15,00,000/- to M/s. Sai Pranav Infra Projects Private Limited as it was found by the AO that this amount was received back in cash by the appellant. Therefore, enhanced 80IA disallowance is not applicable on the disallowance of Rs.1,15,00,000/-."*

In view of the CBDT circular, the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B etc. of the Act and other specific disallowances, related to the business activity against which the Chapter Vl-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter, VI-A is admissible on the profits so enhanced by the disallowance. Therefore, the assessee is entitled to the deduction under section 80-IA(4) of the Act on the eligible profits due to various disallowances made by the learned Assessing Officer in the assessment order. However, the disallowance of Rs.1,15,00,000/- made by the learned Assessing Officer on account of sub-contractor payments, the moneys of which have come back to the assessee. Therefore, the assessee, in our opinion, is not entitled to deduction under section 80-IA(4) of the Act on account of the disallowance of the same.

47. Now coming to Ground No.4 of assessee's appeal, it relates to the addition of sub contract payment of Rs.2,56,80,988/-. On a perusal of record, we find that the learned Assessing Officer made disallowance of Rs.2,56,80,988/- being the amount paid to sub-contracts on the ground that some of the work orders were not signed by some of the sub-contractors and the genuineness of such sub-contract is doubtful. The details of sub-contractors are as under:

S.No.	Name of the Contractor	Amount Paid
1	B. Radha Krishna Reddy	2525252
2	B. Radha Krishna Reddy	7272727
3	V.G. Prasuna	2525252
4	V.G. Prasuna	2002202
5	V. Saritha Sanjana	2525252
6	Sateesh Addagula	3030303
7	Kothavenkata Laxman Reddy	5800000
	Grand Total	25680988

48. Learned CIT(A), in appeal, sustained the addition by observing as under,-

> *"7.1 In Ground No.7, the appellant challenged the disallowance of payment to sub contractors of Rs.2,56,80,988/-. AO doubted the genuineness of these sub-contracts as some work orders were not signed by them. The appellant has filed details of sub contract payments during appellate proceedings but has not controverted the findings of the Assessing Officer. Therefore, the disallowance of payment to sub-contractors of Rs.2,56,80,988/- is confirmed. Accordingly, Ground No.7 is DISMISSED."*

49. It is submitted by both the counsel that this issue is identical to the ground of appeal No.3 in ITA No.645/Hyd/2020, wherein we have already restored the issue to the file of the learned Assessing Officer for fresh adjudication. Following similar reasonings, this issue is also restored to the file of the learned Assessing Officer for fresh adjudication. Ground is accordingly treated as allowed for statistical purposes.

50. Grounds No. 6 and 8 by the assessee and Grounds No. 3 to 5 by the Revenue, cover the part relief given by the learned CIT(A) on account of the disallowance of expenses. A perusal of record reveals that the above grounds are identical to the grounds of appeal by the assessee and Revenue for the assessment year 2014-15. We have already decided the

issue and dismissed the grounds raised by the assessee and the Revenue. Following the similar reasonings, these grounds are also dismissed.

51. Grounds No.7 and 8 of assessee's appeal relate to the disallowance of Rs.19,630/-. After hearing both the sides, we find that the learned Assessing Officer made addition of Rs.19,630/- on the ground that the assessee made interest payment of Rs.21,24,052/- to M/s. Sushee TTS JV and the assessee made TDS to the extent of Rs.2,05,962/- on the basis of interest part of Rs.20,59,620/- reported in TDS system. Since the assessee did not deduct any TDS on the balance interest of Rs.65,432/-, the learned Assessing Officer invoked the provisions of section 40(a)(ia) and disallowed an amount of Rs.19,630/- being 30% of such expenditure.

52. In appeal, the learned CIT (A) confirmed the disallowance so made by the Assessing Officer by observing as under:

> *"Ground No.9 - Disallowance expenditure u/s.40(a)(ia) The A0 observed that out of interest payment of Rs.21,24,052/- TDS in the system showed only for Rs.20,59,620/-. Therefore, the AO disallowed 30% of the differential amount which has not suffered TDS as per section 40(a)(ia) of the Act. During appellate proceedings, it was stated that the deductee already admitted the interest in its return and alternatively, it was submitted that no disallowance can be made on short deduction. I have considered the submissions. Section 40(a)(ia) clearly stipulated disallowance of 30% of sum payable on which TDS has not been deducted or after deduction has not been paid by the due date specified in section 139(1) of the Act. It is not in dispute that the appellant has not deducted TDS on the differential amount and the Assessing Officer rightly invoked section 40(a)(ia) and disallowed 30% of the same. Accordingly, the disallowance is confirmed. Ground No.9 of the assessee is dismissed".*

Aggrieved with such order of the CIT (A), the assessee is in appeal before us.

53. We have gone through the record in the light of the submissions made on either side. We do not find any infirmity in the order of the learned CIT(A) on this issue. Admittedly, the assessee by not deducting the TDS on the balance interest of Rs.60,432/-, violated the provisions of section 40(a)(ia) of the Act. Nothing was brought to our notice that the payee has paid the tax on the above amount or that the assessee deducted the TDS. In the absence of any material to the contrary, the order of the learned CIT(A) confirming the disallowance of interest of Rs.19,630/- is upheld and the ground No. 7 raised by the assessee is dismissed.

54. So far as the alternate claim of the assessee that the inflation in expenses confirmed at Rs.6,98,90,097/- would qualify for deduction u/s 80IA(4) of the I.T. Act is concerned, we find this issue is already decided in Ground of appeal No.5 above. Following similar reasonings, the alternate ground raised by the assessee is allowed on the inflation in expenses to the tune of Rs.6,98,90,097/-. So far as the deduction u/s 80IA(4) on account of disallowance made u/s 40(a)(ia) amounting to Rs.19,630/- is concerned, in our opinion, the assessee is entitled to get the deduction under section 80-IA(4) of the Act In view of the CBDT circular (supra). Ground raised by the assessee on this issue is decided accordingly.

55. Lastly coming to Ground No.2 of Revenue's appeal relating to the claim of assessee for deduction under section 80-IA(4) of the Act. It is identical to ground of appeal No.2 & 3 in Revenue's appeal for the assessment year 2015-16. We have already decided the issue in favour of the assessee, holding that in view of the consistent view taken in assessee's own case for the earlier assessment years by the learned CIT(A) as well as the Tribunal, such a deduction cannot be denied to the assessee.

Following the same reasoning, we direct the learned Assessing Officer to allow the claim of deduction under section 80-IA(4) of the Act to the assessee in this year also. Accordingly Ground No. 2 of Revenue's appeal is dismissed.

56. In the result, appeal of the assessee in ITA Nos. 646/Hyd/2020 for the assessment year 2016-17, is treated as partly allowed for statistical purposes and the appeal of Revenue in ITA No. 732/Hyd/2020 for the assessment year 2016-17, is dismissed.

Assessment Year 2017-18

57. In this assessment year, in the appeals preferred by the assessee and the Revenue, Grounds No. 1 & 4 of assessee's appeal and Grounds No. 1 and 6 of Revenue's appeal are general in nature and do not need any specific adjudication.

58. Insofar as Ground No. 2 of assessee's appeal is concerned, same relates to the computation of book profits under section 115JB of the Act. We find that it is identical to ground of appeal No.2 in ITA No. 645/Hyd/2020. We have already decided the issue and the matter has been restored to the file of the learned CIT(A) for fresh adjudication. Accordingly, this ground of appeal raised by the assessee is restored to the file of the learned CIT(A) for fresh adjudication. Ground No. 2 of assessee's appeal is treated as allowed for statistical purposes.

59. Ground No.3 raised by the assessee and Grounds No. 3 & 4 of Revenue relate to the order of the learned CIT(A) in granting part relief to the assessee by confirming the disallowance of expenses of Rs.89,69,768/-

out of Rs.3,58,79,073/- made by the learned Assessing Officer on account of inflation in expenses and non-production of bills and vouchers.

60. After hearing both the sides, we find these grounds are identical to grounds of appeal in ITA Nos. 677 & 730/Hyd/2020 for the assessment year 2014-15, where such grounds raised by the Revenue as well as the assessee have been dismissed. Following similar reasonings, the ground raised by both the assessee and the Revenue are dismissed in this assessment year also.

61. Ground No.5 raised by the Revenue relates to the order of the learned CIT(A) in deleting the disallowance of depreciation.

62. On this aspect, we find that the learned Assessing Officer disallowed depreciation to the extent of Rs.15,88,21,325/- on the ground that the assessee could not produce bills in respect of addition to the assets of Rs.15,88,21,235/-.

63. In appeal, the learned CIT (A) deleted the disallowance of depreciation by observing as under,-

> *"8.1 I have considered the contentions of the AO and the AR. It is not in dispute that the AO has simply stated in the assessment order that bills in respect of assets of Rs.15,88,21,325/- were not furnished & disallowed 10% of the amount towards depreciation. No specific bills that were not furnished was pointed out. Nor any reason was given for adopting a uniform rate of 10% without examining the period the said asset was put to use. It is evident that the disallowance was made an ad-hoc basis without any justification and there is no scope for such ad-hoc disallowances when the search assessment was being framed u/s.153A. Therefore, the AO is directed to delete the disallowance of depreciation of Rs.1,58,82,133/-. Accordingly Ground No.6 is ALLOWED."*

Aggrieved by such order of the learned CIT(A), Revenue is in appeal before the Tribunal.

64. On a careful consideration of the matter, we are of the considered opinion that the matter requires re-adjudication at the level of the learned Assessing Officer. The assessee is directed to produce all the bills and vouchers relating to purchase of assets amounting to Rs.15,88,21,325/-. Learned Assessing Officer shall decide the issue as per facts and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground No.5 raised by the assessee is accordingly treated as allowed for statistical purposes.

65. In the result, appeals of the assessee and Revenue in ITA Nos. 647 and 733/Hyd/2020 for the assessment year 2017-18, are treated as partly allowed for statistical purposes.

<u>ITA No. 244/Hyd/2022 – assessment year 2019-20</u>

66. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT(A) in confirming the order passed by the CPC, disallowing the claim of deduction under section 80-IA(4) of the Act.

67. Facts in brief, are that the assessee filed its return of income on 30/09/2020. The CPC vide communication dated 29/06/2020 proposed adjustment under section 143(1)(a) of the Act, disallowing the claim of deduction under section 80-IA(4) of the Act and also TDS of Rs.53,87,55,539/- on the ground that TDS was not paid in time.

68. In appeal, learned CIT(A) allowed the claim of deduction. So far as the disallowance of deduction under section 80-IA of the Act is concerned, the learned CIT(A) upheld the action of the CPC in disallowing the claim of deduction under section 80-IA of the Act in 143(1) intimation by observing as under,-

> *"5.1.2 "The third and fourth grounds pertains to the disallowance of the claim of deduction u/s.801A(4) of the Income Tax Act when such deduction was allowed in earlier years. The AR claimed that CPC has made the disallowance because they were considering the revised return of income which was filed on 30-09-2020. However, the CPC did not consider the original return of income filed on 30-11-2019 wherein the appellant made a claim of deduction u/s 80IA of the Act. It was also claimed that the deduction was allowed in the immediately preceding years on the infrastructure objects and therefore profits on the same is allowable on the same is u/s.80IA. It was pointed out that there was a loss under the head 'income from business/profession' at Rs.3,89,90,692/-. The AO might not have considered the other income of Rs. 13,77,76,239/- after which the net income would be a profit of Rs.9,87,85,547/- on which the appellant claimed deduction u/s 801A. The AR also cited the recent judgment of the Hon'ble Supreme Court in the case of CIT Vs Reliance Energy Limited (127 taxmann.com 69) (SC) (28-04-2021) to substantiate his proposition that the scope of section 8OIA(5) is limited to determine quantum of deduction u/s 801A(1) by treating eligible business as the only source of income. Accordingly, the AR claimed that the income from other sources is also a part of eligible business and therefore is eligible for deduction u/s 801A.*
>
> *5.1.3. I have considered the submissions of the appellant. Section 80A deduction is allowed in respect of profits & gains from industrial undertaking engaged in infrastructure development to the extent of 100% of profits & gains derived from such business for ten consecutive years. As admitted by the AR, there was a loss under the head 'income from business/profession' of Rs.3,89,90,962/- dung the year. Since there is a business loss from eligible business, the assessee is not entitled to deduction u/s 80IA of the Act. The AR cited ratio of the Hon'ble Supreme Court in the case of CIT Vs Reliance Energy Limited (127 taxmann.com 69) (SC) in support of his case. I have perused the ratio. In this case, the assessee i.e., M/s. Reliance Energy Limited has a profit of Rs.492.79 crores from eligible*

> *business. The question there was whether the deduction u/s 80IA was to be allowed to the extent of 'business income' only or should be allowed to the extent of 'gross total income'. This was held by the Hon'ble Supreme Court in favour of the appellant. These facts are totally different from the facts of the present case in as much as there is a loss from eligible business in the case of the appellant whereas there was profit from eligible business in the case of M/s. Reliance Energy Limited. Therefore, this ratio is not applicable to the facts of the present case. Besides, this order is passed u/s.143(1) which deals with the issue of prima facie adjustment while processing the return. Since there was business loss on eligible business, prima facie, the assessee is not entitled to deduction u/s.80IA of the Act. The AR's argument that it had income from other sources and would have a positive gross total income after including the 'income from other sources' and hence is eligible for deduction u/s.80IA is not valid since or claiming deduction u/s.80IA, there needs to be positive eligible business income which is not the present case. The issue of claiming deduction u/s.80IA against gross total income arises only where there is a positive profit from eligible business. When there is a loss in eligible business, there cannot be a claim of deduction u/s.80IA against income from other sources. Besides, the argument of the AR is beyond the scope of prima facie adjustments u/s 143(1) of the Income Tax Act. Therefore, the disallowance of deduction u/s 80IA while processing the return u/s.143(1) of the Act is upheld. Accordingly, Ground Nos.3 & 4 of the appeal is DISMISSED".*

Aggrieved by such an order of the learned CIT(A), the assessee is in appeal before the Tribunal.

69. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that there was a loss of Rs.3,89,90,692/- under the head "income from business and profession" and, therefore, the learned CIT(A), in our opinion, is justified in upholding the action of the CPC in denying deduction under section 80-IA of the Act, which the assessee basically claimed the deduction on account of income from other sources. Learned AR could not substantiate that the deduction under section 80-IA of the Act has been claimed against the gross total

income from the eligible business. Since there is a loss in the eligible business, the assessee, in our opinion, cannot claim deduction under section 80-IA of the Act against the 'income from other sources'. In this view of the matter and in view of the detailed order passed by the learned CIT(A) on this issue, we do not find any infirmity in the order of the learned CIT(A). Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

70. In the result, appeal of the assessee in ITA No. 244/Hyd/2022 for the assessment year 2019-20 is dismissed.

71. To sum up,

Appeal of the assessee in ITA No.	Result
677/Hyd/2020 (AY.2014-15)	Allowed for statistical purposes.
645/Hyd/2020 (AY.2015-16)	Partly allowed for statistical purposes.
646/Hyd/2020 (AY.2016-17)	Partly allowed for statistical purposes.
647/Hyd/2020 (AY.2017-18)	Partly allowed for statistical purposes.
244/Hyd/2022 (AY.2019-20)	Dismissed.

Appeal of the Revenue in ITA No.	Result
730/Hyd/2020 (AY.2014-15)	Allowed for statistical purposes.
731/Hyd/2020 (AY.2015-16)	Partly allowed for statistical purposes.
732/Hyd/2020 (AY.2016-17)	Dismissed.
733/Hyd/2020 (AY.2017-18)	Partly allowed for statistical purposes.

Order pronounced in the open court on this the 27th day of December, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 27/12/2023
TNMM

Copy forwarded to:

1. M/s. Sushee Infra & Mining Limited, Plot No. 246/A, MLA Colony, Road No. 12, Banjara Hills, Hyderabad.
2. Deputy Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
3. Asst. Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
4. Pr.CIT(Central)-Hyderabad
5. DR, ITAT, Hyderabad.
6. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD