

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1105/Ahd/2024
Assessment Year 2013-14**

Vijay M. Mistry Construction Pvt. Ltd. No. 09, Mistry House, Preyas Society, Opp: Gulbai Tekra Police Choki, Manekbag S.O., Ambawadi, Ahmedabad380015 PAN: AAACV5047K (Appellant)	Vs	NFAC (Delhi) AO Jurisdiction The DCIT, Circle-4(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri M.K. Patel, Advocate
Revenue Represented: Dr. Darsi Suman Ratnam, CIT-DR**

Date of hearing : 03-09-2024
Date of pronouncement : 19-09-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against appellate order dated 31.03.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), confirming the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. The brief facts of the case is that the assessee is a company engaged in the business of development and specialized construction of river Bridges, Railway Over Bridges, flyovers Marine Structures with Pile Foundation. For the Asst. Year 2013-14, assessee filed its Return of Income on 19-09-2013 declaring total income of Rs.3,07,54,010/- after claiming deduction u/s 80IA(4) of Rs.13,34,49,049/-. The claim of deduction u/s 80IA(4) was disallowed by the Assessing Officer on the ground that the assessee was not carrying out the projects as a developer, but only as a works Contractor. Therefore Ld. A.O. initiated penalty proceedings for concealment of income on the claim of deduction u/s 80IA(4) of the Act.

3. During the penalty proceedings, the assessee submitted that there is no concealment or inaccurate particulars of Income filed by the assessee, since the claim of deduction u/s 80IA(4) was being claimed along with audit report u/s. 44AB of the Act. Further for the earlier Asst. Year 2012-13, Ld. CIT(A) allowed the deduction u/s 80IA(4) in favour of the assessee. However the Assessing Officer found that no appellate order is passed for the present Asst. Year 2013-14 thereby levied penalty of Rs.4,53,59,333/-.

4. Aggrieved against the same, assessee filed an appeal before Ld. CIT(A) and submitted that assessee made bonafide claim and all the facts relating to the same are fully and truly disclosed and mere disallowance of the claim cannot be a reason to levy penalty u/s 271(1)(c) of the Act and relied upon various case laws. However the

same was not considered and Ld. CIT(A) dismissed the appeal filed by the assessee confirming the levy of penalty.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. That on facts, and in law, the learned NFAC has grievously erred in confirming the levy of penalty levied u/s. 271(1)(c) of the Act of Rs.4,53,59,333/-, with respect to the bonafide claim of deduction u/s. 80IA(4) of the Act.

2. That on facts, in law, and on evidence on record, the entire penalty ought to have been deleted, as in quantum appeal, the Hon'ble ITAT has allowed the claim of deduction u/s. 80IA(4) of the Act, and hence the entire basis of levy of penalty has become non existent.

3. The appellant craves leave to add, alter and amend any ground of appeal.

5.1. Ld. Counsel Mr. M.K. Patel appearing for the assessee submitted that the quantum appeal in assessee's own case was allowed in favour of the assessee by Co-ordinate Bench of this Tribunal in its order dated 23-12-2022 passed in ITA No. 1145/Ahd/2019 wherein it was held as follows:

*"31. In the light of the above discussion and perusal of various clauses of Tender documents and case laws relied upon by both the parties, it reveals that the tender work under consideration are not for a specific work, rather they are for development facility as a whole. The responsibility is fully assigned to the developer for execution and completion of the work. Various stipulations contained in the Tender documents demonstrate various risks undertaken by the assessee for execution of the project work awarded by the competent authority in terms of financial resources, manpower deployment, both technical and administrative expertise, drawing and designing of the project specifications and getting approval from the competent authority, safety and security of project and human resources, compliances of various statutory rules and laws. Therefore, merely because in the agreement for development of infrastructure facility, assessee is referred to as contractor or because if some basic specifications are laid down, it does not detract the assessee from the position of being a developer, nor will deprive the assessee from claiming deduction u/s.80IA(4) of the Act. **As such, looking to the overall aspects of work undertaken by the assessee we can***

safely come to the conclusion that the assessee is engaged in development of the infrastructure facility and therefore, a developer, which entails the assessee to claim benefits under section 80IA(4) of the Act. Thus, the issue of claim of deduction under section 80IA(4) of the Act is allowed in favour of the assessee and against the Revenue. This common ground raised in all the appeals are accordingly disposed of."

6. Per contra Ld. CIT-DR Dr. Darsi Suman Ratnam appearing for the Revenue could not dispute the decision passed by the Co-ordinate Bench of the Tribunal in the quantum appeal.

7. We have given our thoughtful consideration and perused the materials available on record. It is an undisputed fact that the claim of deduction u/s 80IA(4) which was originally denied to the assessee has resulted in invoking penalty proceedings for concealment of income. Now the Co-ordinate Bench has held that the assessee is eligible to claim deduction u/s 80IA(4) as a developer. Thus the penalty proceedings initiated by the Revenue has no legs to stand. Further the Revenue could not place on record whether the quantum appeal was challenged before Hon'ble High Court of Gujarat. In the absence of the same, we have no hesitation in deleting the penalty levied u/s 271(1)(c) of the Act.

8. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 19-09-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 19/09/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद