

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

ITA No. 31/Ind/2024 (AY: 2020-21)  
ITA No. 57/Ind/2024 (AY: 2021-22)

ACIT, Central-1, Bhopal	<b><u>बनाम/</u></b> Vs.	M/s. Dilip Buildcon Ltd. Plot No. 5, Inside Govind Narayan Singh Gate, Kolar Road, Huzur, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: AACCD6124B</b>		
Assessee by	Shri Hitesh Chimnani and Shri Yash Kukreja, Ld. ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	08.10.2024	
Date of Pronouncement	17.10.2024	

**आदेश / ORDER**

**Per B.M. Biyani, A.M.:**

The captioned two appeals by revenue are directed against two separate orders of first-appeal dated 09.11.2023 and 24.11.2023 passed by learned Commissioner of Income-Tax (Appeal)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 04.03.2022 and 07.12.2022 passed by learned ACIT-(Central)-1, Bhopal ["Ld. AO"] u/s 143(3) of the Income Tax

Act, 1961 ["the Act"] concerning Assessment-Year ["AY"] 2020-21 and 2021-22 respectively.

2. Heard the Ld. Representative of both sides and case-records perused.

3. Since these appeals relate to the same assessee and the issues are also identical; they were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

4. The background facts leading to present appeals are such that the assessee-company filed return of AY 2020-21 and 2021-22 which were subjected to scrutiny-proceedings and statutory notices u/s 143(2)/142(1) of the Act were issued from time to time which the assessee complied with. Finally, the Ld. AO completed assessments of both years u/s 143(3) after making additions on account of (i) disallowance of deduction u/s 80-IA(4) and (ii) disallowance of additional depreciation u/s 32(1)(iia), claimed by assessee in returns. Aggrieved, the assessee carried matters in first-appeal and succeeded. Now, the revenue has come in next appeals before us assailing the orders of first-appeal passed by CIT(A).

5. The grounds raised in these appeals are identical. Therefore, the Ground of AY 2020-21 are re-produced:

*"On the facts and in the circumstances of the case, the Ld. CIT (A)-3 has erred in:-*

- 1. Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 49,01,60,118/- made by the AO on account of disallowance of deduction u/s 80-IA(4) of the Act?*

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2. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 49,01,60,118/- made by the AO on account of disallowance of deduction u/s 80-IA(4) of the Act, without appreciating, among other aspects, the following:*
  - a) *the detailed finding of AO in the assessment order and that the assessee is not engaged in "Development work" rather assessee is a "works contractor" in terms of the provisions of section 80-IA(4) of the Act?*
  - b) *the intention of legislature for grant of benefit u/s 80-IA(4), captured in the Explanation at the bottom of section 80-IA(4), which specifically excludes "works contract"?*
  - c) *the judgment of Hon'ble Gujarat High Court in the case of Katira Construction Ltd. V/s Union of India 31 Taxman.com 250 (4, March 2013)?*
  - d) *That the assessee is making contradictory and opportunistic claims of being a "developer" (for claiming 80-IA(4) benefit) and of being a "manufacturer" (for claiming benefit of additional depreciation u/s 32(1)(ia))?*
  - e) *intention of legislature for grant of benefit u/s 80-IA(4) as the main purpose of providing deduction under section 80-IA was to encourage investment in certain specific industries and to augment the industrialization of the country, whereas in the instant case, when the source of investment is government itself and the purpose cannot be said to be fulfilled, then how benefit linked to such purpose can be granted to the assessee?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO on account of disallowance of deduction claimed u/s 80-IA(4) of IT Act and all by allowing benefit of additional depreciation u/s 32(1)(ia), by not following the judgment of Hon'ble Supreme Court of India in the cases of Commissioner of Customs (Import), Mumbai Vs Dilip Kumar and Company & Other (TS-336-SC-2018-Cust) and Ramnath & Co. [2020] 116 taxmann.com 885 (SC) wherein it has been held, among other aspects, that:*
  - a) *Exemption/deduction provisions should be interpreted strictly?*
  - b) *the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption/deduction clause or exemption/deduction notification?*
  - c) *When there is ambiguity in exemption/deduction notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of revenue?*
  - d) *the ratio applies to any kind of incentives (be it 'deduction' or 'exemption') wherein it has been noted that "incentive is a generic term and 'deduction' is one of its species; 'exemption' is another"?*
4. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 74,88,99,590/- made by the AO on account of disallowance of additional depreciation u/s 32(1)(ia) of the Act without appreciating the provisions of section 32(1)(ia) of the Act?*
5. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO on account of*

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*disallowance of additional depreciation u/s 32(1)(iia) of the Act ignoring the decision of Hon'ble Delhi High Court in the case of Ansal Housing & Construction Ltd Vs CIT, wherein it was held that the activity of construction can, by no stretch of imagination, be treated as manufacturing activity as it does not amount to manufacture or production of an article or a thing?*

6. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO on account of disallowance of additional depreciation u/s 32(1)(iia) of the Act ignoring the decision of Hon'ble Supreme Court in the case of N C Budharaja & Co. [1993] 70 Taxman 312 (SC), wherein Hon'ble Apex Court held that "'manufacture' and 'produce' are normally associated with movables articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a bulding"?*
7. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that assessee is a 'manufacturer', ignoring that its Audit Report in Form 3CD highlights its "non-manufacturer" status wherein it is stated as "Construction - Construction and maintenance of roads, rails, bridges, tunnels, ports, harbour, runways, etc." ?*
8. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in ignoring that a road is 'constructed', it is not 'manufactured' or 'produced", and if the intent of the legislature was to allow benefit of additional depreciation to the "construction" activity, it would specifically included it in s. 32(1)(iia) as had been done in s. 32A(2A)?*
9. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in following ITAT decisions in earlier AYs of the assessee on the two issues (benefit u/s 80-IA(4) and benefit u/s 32(1)(iia)), ignoring:*
  - a) *That there is substantial legal justification, delineated supra as well as in the assessment order, against allowing such benefits to the assessee?*
  - b) *The dictum laid down by Hon'ble Supreme Court in Distributors (Baroda) (P.) Ltd. Vs Union of India [1985] 155 ITR 120 (SC) that: "To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience." ?*

6. Ld. AR for assessee/respondent taking lead in the matter to argue these appeals with the permission of Bench and consent of Ld. DR for revenue/appellant, submitted that there are two grievances raised by revenue/appellant in these appeals, namely (i) the CIT(A) has wrongly allowed the claim of deduction u/s 80-IA(4) and (ii) the CIT(A) has wrongly allowed the deduction of additional depreciation u/s 32(1)(iia).

7. Then, the Ld. AR straightaway pointed out that these issues are not new in assessee's case, they are recurring issues and already settled by previous orders of ITAT in assessee's favour.

8. So far as the first issue of deduction u/s 80-IA(4) is concerned, Ld. AR explained that the department's contention is such that the assessee is a mere 'work contractor' and not a 'developer' and therefore not eligible for deduction. This issue has already been settled in favour of assessee by ITAT, Indore in following orders of earlier years:

- (i) Order dated 27.01.2022 of ITAT, Indore in revenue's ITA No. 816/Ind/2018, ITA No. 881 & 882/Ind/2019 & ITA No. 290/Ind/2020 for AYs 2014-15 to 2017-18 – Vide Para No. 9 to 22
- (ii) Order dated 26.05.2023 of ITAT, Indore in revenue's IT(SS)A No. 162/Ind/2021 for AY 2018-19 – Vide Para No. 3 to 16

8.1 Ld. AR also pointed out that while passing above orders in earlier years, the ITAT has not only discussed the facts of assessee, the legal provision of section 80-IA(4) and judicial precedents but also placed reliance upon the Order dated 29.09.2016 for AYs 2007-08 to 2013-14 passed by Income-tax Settlement Commission in assessee's own case accepting claim of assessee u/s 80-IA(4) holding that the assessee is a developer and not work contractor as upheld by Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) vide order dated 10.07.2019 in revenue's Writ Petition No. 6727/2017. Ld. AR drew us to the concluding para of Hon'ble High Court's order reading as under:

*"The learned counsel for the petitioner further contends that the respondent was only involved in construction of roads as a contractor and, therefore, as he was only a works contractor, the benefit of the provisions relating to work undertaken for infrastructural development would not have been availed by the respondent and has wrongly been allowed by the Settlement Commission.*

*From a perusal of the order, it is apparent that the Settlement Commission has discussed these aspects extensively in its order from paragraph 13 onwards and has recorded a finding in that regard in paragraph 13.4. The aforesaid finding in favour of the respondent, is a finding of fact and does not warrant any interference by this Court in writ proceedings.*

*In view of the aforesaid, the writ petition filed by the petitioner, being meritless, is accordingly dismissed."*

8.2 Ld. AR further submitted that the against the order of Hon'ble High Court, the revenue filed SLP No. 6362/2020 to the Hon'ble Supreme Court which stands already dismissed by Hon'ble Supreme Court vide recent order dated 18.03.2024. Therefore, the findings given by Settlement Commission, which was relied by ITAT, holding that the assessee was a developer entitled for deduction u/s 80-IA(4) has attained finality before Hon'ble Apex Court.

9. With regard to the second issue of additional depreciation u/s 32(1)(iia), Ld. AR explained that the department's grievance is such that the assessee was not entitled for the same but this issue has also been settled in favour of assessee by ITAT, Indore in following orders of earlier years:

- (i) Order dated 27.01.2022 of ITAT, Indore in assessee's ITA No. 782/Ind/2018, ITA No. 819 & 820/Ind/2019 and ITA No.197/Ind/2020 for AY 2014-15 to 2017-18 – Vide Para No. 23 to 36
- (ii) Order dated 20.10.2022 of ITAT, Indore in assessee's ITA No. 163/Ind/2021 for AY 2018-19 – Vide Para No. 3 to 10.

10. Ld. AR also pointed out that there is no change in facts or law, therefore the view taken in earlier years qua both issues has to be carried.

11. Ld. DR for revenue though dutifully relied upon the orders of AO yet could not rebut the submissions made by Ld. AR or bring to our notice any change in fact or change in law or any other reason for non-applicability of the view already taken by Hon'ble Co-ordinate Bench of ITAT, Indore.

12. In the circumstances, we do not find any reason whatsoever to deviate from the view already taken by Hon'ble Coordinate Benches. Respectfully following the same, we are inclined to hold both issues in favour of assessee and against revenue. Hence, the appeals of revenue are hereby dismissed being devoid of any merit.

**13. Resultantly, these appeals are dismissed.**

*Order pronounced in open court on 17/10/2024.*

Sd/-

(VIJAY PAL RAO)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated :17.10.2024

Dev/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*