

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1466/Ahd/2024 & 1467/Ahd/2024
निर्धारण वर्ष /Assessment Years : 2017-18 & 2018-19 respectively

The ACIT Circle-3(1)(1) Ahmedabad - 380 015	<u>बनाम/ v/s.</u>	Rajkamal Builders Infrastrucutre Pvt.Ltd. 54, Park Hill Nr.Heaven Park Ramdevnagar, Ahmedabad (Gujarat) - 380 015
स्थायी लेखा सं./PAN: AABCR 0326 A		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Mehul K. Patel, AR	
Revenue by :	Shri Ritesh Parmar, CIT-DR	

सुनवाई की तारीख /Date of Hearing : 25/10/2024
घोषणा की तारीख /Date of Pronouncement: /10/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

These two appeals filed by the Revenue are directed against the separate orders of the Commissioner of Income Tax (Appeals), NFAC Delhi, [hereinafter referred to as "CIT(A)"] both dated 17/06/2024, for the Assessment Year (AY) 2017-18 and AY 2018-19, wherein the CIT(A) allowed the assessee's claim for deduction under Section 80IA(4) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"]. The Assessing Officer [hereinafter referred to as "AO"], in his orders under Section 143(3), dated

27/11/2019 (for AY 2017-18) and 21/04/2021 (for AY 2018-19), had disallowed the assessee's claim. Since the facts and circumstances of both the assessment years are identical, involving the same nature of projects and disallowance by the AO, these appeals are being disposed of together by this common order for the sake of convenience.

Facts of the case:

2. The assessee filed its return of income for both the assessment years under consideration. In the return(s), the assessee claimed a deduction under Section 80IA(4) of the Act, relating to profits from infrastructure development projects, including road construction and irrigation works. In both the assessment years the AO disallowed the claim of assessee u/s 80IA of the Act along with some other disallowances. The assessee preferred appeals before CIT(A), who partly allowed the appeals. The details of return filed, assessment thereof and the appeals there against are tabulated below for the sake of convenience and clarity:

Particulars	AY 2017-18	AY 2018-19
Date of Order (AO)	27/11/2019	21/04/2021
Section under which AO's order was passed	143(3)	143(3) read with Section 144B
Date of Filing ITR	01/11/2017	31/10/2018
Returned Income	Rs.7,36,99,490/-	Rs.13,45,84,200/-
Deduction Claimed under Section 80IA	Rs.5,03,55,641/-	Rs.8,17,69,563/-
Disallowance under Section 80IA (AO)	Rs.5,03,55,641/- Including Set of losses claimed for Rs. 49,39,271/-	Rs.8,17,69,563/-

Other Disallowances (AO)	1. PF Contribution: Rs.3,06,690/-	Double Disallowance of PF: Rs.16,78,098/-
	2. Interest on Refunds: Rs.7,08,170/-	
Assessed Income (AO)	Rs.12,50,69,991/-	Rs.21,80,31,863/-
CIT(A) Decision on Section 80IA	Allowed in favor of the assessee	Allowed in favor of the assessee
CIT(A) Decision on Other Disallowances	Upheld PF Contribution Disallowance of Rs.3,06,690/-	Directed AO to rectify double PF disallowance
Final Decision of CIT(A)	Partly Allowed	Partly Allowed

3. Aggrieved by the order of CIT(A), the Revenue is in appeal before us with following grounds of appeal:

In ITA No. 1466/Ahd/2024 - A.Y. 2017-18

- a. *The Ld. CIT(A) has erred in law and on facts in justifying that the nature of business of the assessee is of "Developer and allowing claim of deduction u/s. 80IA of the IT Act?*
- b. *The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of deduction claimed u/s. 80IA of the Act of Rs.4,54,16,370/- and not considering the findings of the AO?*
- c. *The Ld. CIT(A) has erred in law and on facts in allowing the entire deduction as such without set-off of losses of Rs.49,39,271/- of loss-making infrastructure facilities?*
- d. *The appellant craves leave to add, alter and or to amend all or any the ground before the final hearing of the appeal.*

In ITA No. 1467/Ahd/2024 - A.Y. 2018-19

- a. *The Ld. CIT(A) has erred in law and on facts in justifying that the nature of business of the assessee is of "Developer" and allowing claim of deduction u/s. 80IA of the IT Act?*

- b. *The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of deduction claimed u/s. 80IA of the Act of Rs.8,17,69,563/- and not considering the findings of the AO?*
- c. *The appellant craves leave to add, alter and /or to amend all or any the ground before the final hearing of the appeal.*

4. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that both the appeals are covered by the decision of Co-ordinate Bench in assessee's own case for the earlier assessment years. The AR also placed reliance on the decision of Hon'ble Jurisdictional High Court in case of **The PCIT (Central), Ahmedabad Vs. Montecarlo Construction Ltd. (Tax Appeal No. 786 of 2023)**. The Departmental Representative (DR), on the other hand, relied on the order(s) of AO.

5. The primary issues raised in these appeals for both AY 2017-18 and AY 2018-19 revolve around whether the assessee qualifies as a developer of infrastructure facilities under Section 80IA(4) of the Act. Under Ground (a) for the both the years, the Revenue contends that the CIT(A) erred in law and on facts by concluding that the assessee is engaged in the business of a developer and thereby allowing the claim of deduction under Section 80IA of the Act. Under Ground (b) the Revenue further argues that the CIT(A) erred in deleting the disallowance of Rs.4,54,16,370/- for AY 2017-18 and Rs.8,17,69,563/- for AY 2018-19, without adequately considering the AO's findings.

5.1. The AO concluded that the assessee was operating as a works contractor rather than a developer. According to the AO, the projects executed by the assessee involved contracts awarded by government

authorities for the construction of roads, irrigation systems, and other infrastructure projects. These were considered civil construction contracts, and the AO believed that the assessee did not qualify for the Section 80IA of the Act deduction based on its role as a contractor. The AO heavily relied on the Explanation added to Section 80IA(13) of the Act by the Finance (No. 2) Act, 2009, with retrospective effect from 01.04.2000. This explanation clarified that entities engaged in works contracts awarded by the government or other authorities were not eligible for deductions under Section 80IA of the Act. The AO interpreted this provision to mean that the assessee, being a contractor, was not entitled to the deduction.

5.2. The CIT(A) observed that the facts and issues pertaining to the assessee's claim for deduction under Section 80IA of the Act for the year under consideration are identical to those in AY 2016-17, where the same sites were involved, and no new sites were introduced during the current year. The CIT(A) carefully reviewed the facts and details on record and noted that they are akin to the material considered in AY 2016-17. The CIT(A) relied upon the decision of this bench in assessee's own case in **ITA No. 118/Ahd/2009 and others (ITA NO. 2202/Ahd/2015 for A.Y. 2016-17)**, dated 13.05.2022, which allowed the deduction under Section 80IA of the Act on similar grounds. The CIT(A) relied on this binding decision and referenced the Order Giving Effect (OGE) dated 31.01.2023, where the AO gave effect to the ITAT's decision for AY 2016-17. Given the similarity of facts and the absence of any contrary orders, the CIT(A) followed the precedent set by the ITAT and held that the assessee's claim for deduction under Section 80IA of the Act for the current year should also be allowed.

5.3. We have gone through the order(s) of the AO and the CIT(A) and noted that the details of deduction claimed by the assessee for A.Y. 2017-18 u/s. 80IA of the Act are as follows:

No.	Name of Work/Site	Contract Awarding Authority
1	50 MLD WTP Dhodka Site Work	Ex. Engr. (Water Works Project), Vadodara Mahanagar Seva Sadan
2	Baroda Site Ring Road Work	Ex. Engr. R&B Dept. Vadodara
3	Gajarwadi Sewage Treatment Plant	Ex. Engr. Mahanagar Seva Sadan, Vadodara
4	Hirabaug BRTS Road Site	Addl. City Engr., Surat Municipal Corporation
5	Motera Sewage Pumping Station	Spl. City Engr., Ahmedabad Municipal Corporation
6	Rajkot STP 56 MLD	Addl. City Engr., Rajkot Municipal Corporation
7	Rajkot STP 70 MLD Gauridad	Addl. City Engr., Rajkot Municipal Corporation
8	Shashtri Bridge Baroda Work	Ex. Engr. (Bridge Project), Vadodara
9	STP Gandhinagar Work	Ex. Engr., Patnagar Yojana Vibhag-3, Gandhinagar
10	43 MLD Sewage Treatment Plant, Kapurai	Ex. Engr. (JANURM), Vadodara
11	STP Patan 25 MLD	Gujarat Urban Development Co. Ltd.
12	Uttkal Nagar Bridge Work	Addl. City Engr., Surat Municipal Corporation
13	Viramgam Nilki Railway Crossing Bridge Work	Ex. Engr., R&B Division, Ahmedabad

5.4. More particularly, we note that the assessee has submitted before CIT(A) a comparative statement of deduction claimed u/s 80IA of the Act for A.Y. 2017-18 which is reproduced here for the sake of clarity and record:

No.	Name of Site	Amount U/s 80IA Allowed by ITAT (AY 2015-16) (Rs.)	Amount U/s 80IA Allowed by ITAT (AY 2016-17) (Rs.)	Amount Claimed by the Appellant (AY 2017-18) (Rs.)
1	50MLD WTP Dhodka Site Work	1,53,85,543	1,32,95,141	-57,158
2	Akota Bridge Site Work	49,84,301	-5,428	-
3	Akota Road Site Work	66,58,384	-32,193	-
4	Baroda Site Ring Road Work	-1,24,288	-	-1,21,334
5	BRTS Surat Road Project	2,49,47,987	-2,72,900	-
6	Delhi gate over bridge at Surat	-62,07,067	-	-
7	Gajarawadi Sewage Treatment Plant	-	-	1,05,151
8	Hirabaug BRTS Road site	1,05,52,636	87,21,143	67,85,948
9	IPCL Fly over bridge	-	-2,30,341	-
10	Motera Sewage Pumping Station	-2,30,331	-20,29,881	-30,90,841
11	Rajkot STP 56MLD Raiyadhar	-98,224	1,19,72,185	3,49,17,888
12	Rajkot STP 70MLD Guaridad	-3,43,73,125	-10,08,958	-
13	Shashtri Bridge Baroda Work	-	42,36,469	16,74,160
14	Soma Talav Over Bridge Approach Road	-2,62,142	-4,839	-
15	STP Gandhinagar work	-	-1,65,909	-
16	43 MLD Sewage Treatment Plant, Kapurai	26,84,292	-12,26,408	-
17	STP Patan 25 MLD	1,03,46,440	24,37,565	21,49,328

18	STP Vasana 106 MLD	7,75,084	-1,75,852	-
19	Utkal Nagar Bridge Work	73,78,060	6,22,475	-16,69,938
20	Viramgam Nikli Railway Crossing Bridge Work	-	-	47,23,167
21	Pratapnagar Over Bridge	-27,765	-	-
	TOTAL 80IA CLAIMED	8,90,88,333	5,31,52,885	5,03,55,641

5.5. During the course of hearing before us, similar comparative statement for the A.Y. 2018-19 was also submitted which is also reproduced here for the sake of clarity and record:

No.	Name of Site	Amount U/s 80IA Allowed by ITAT (AY 2015-16) (Rs.)	Amount U/s 80IA Allowed by ITAT (AY 2016-17) (Rs.)	Amount Claimed by the Appellant (AY 2018-19) (Rs.)
1	50MLD WTP Dhodka Site Work	1,53,85,543	1,32,95,141	43,28,934
2	Akota Bridge Site Work	49,84,301	-5,428	-
3	Akota Road Site Work	66,58,434	-32,193	-
4	Baroda Site Ring Road Work	-1,24,288	-	-
5	BRTS Surat Road Project	2,49,47,987	-2,72,900	-
6	Delhi Gate Over Bridge at Surat	-62,07,607	-	-
7	Gajarawadi Sewage Treatment Plant	-	-	-
8	Hirabaug BRTS Road Site	1,05,52,636	87,21,143	24,44,926
9	IPCL Fly Over Bridge	53,75,614	62,61,908	-

10	Motera Sewage Pumping Station	-2,30,331	-20,29,281	-
11	Rajkot STP 56MLD Raiyadhar	-98,224	1,19,72,185	4,02,32,222
12	Rajkot STP 70MLD Guaridad	-3,43,73,125	-10,08,958	2,10,88,301
13	Shashtri Bridge Baroda Work	42,36,469	-	3,80,260
14	Soma Talav Over Bridge Approach Road	-2,62,142	-4,839	-
15	STP Gandhinagar Work	-	-1,65,909	34,68,938
16	43 MLD Sewage Treatment Plant, Kapurai	26,84,292	-12,26,408	35,94,588
17	STP Patan 25 MLD	1,03,46,440	24,37,565	32,15,468
18	STP Vasana 106 MLD	7,75,024	-1,75,858	-
19	Utkal Nagar Bridge Work	73,78,060	62,28,475	30,15,926
20	Viramgam Nikli Railway Crossing Bridge Work	-	-	-
21	Pratapnagar Over Bridge	-27,765	-	-
	TOTAL 80IA CLAIMED	8,90,88,333	5,31,52,885	8,17,69,563

5.6. We also note the findings of the co-ordinate bench in assessee's own case of earlier years where it was found that the assessee took significant financial and operational risks, including arranging for its own finance, purchasing materials, deploying its own manpower, and handling the entire scope of infrastructure development projects, which goes beyond the role of a mere *works contractor*. The Co-ordinate Bench relied on the ruling in the case of **Radhe Developers v. CIT [(2012) 341 ITR 403 (Guj)]**, which clarified that

a developer's eligibility for deductions under Section 80IA of the Act should not depend on whether they own the land or are merely executing a contract. The critical factor is the assumption of risks and responsibilities, which in this case was demonstrated by the assessee. It was observed that the assessee undertook full responsibility for the infrastructure projects, including financing, technical planning, and execution. It arranged for necessary materials, deployed labour, and even provided safety measures at the sites. This level of responsibility and financial involvement qualified the assessee as a *developer*.

5.7. From the tables above, it is evident that the nature of the projects for which deductions under section 80IA of the Act were claimed in the earlier years (AY 2015-16 and AY 2016-17) remains consistent with the projects claimed in AY 2017-18 and AY 2018-19. The sites for which deductions were allowed previously are largely the same, demonstrating a pattern in the type of infrastructure and public utility projects, such as sewage treatment plants, road projects, and bridges, for which the assessee continues to claim deductions. This consistency supports the contention that the assessee is claiming deductions for similar types of eligible infrastructure projects, indicating adherence to the criteria under section 80IA of the Act across multiple assessment years.

5.8. The Co-ordinate Bench also dealt with the Explanation to Section 80IA(13) of the Act. The Explanation to Section 80IA(13) of the Act, introduced by the Finance Act, 2009, aimed to disallow deductions for entities executing works contracts. The AO had invoked this provision to deny the deduction. However, the Co-ordinate Bench found that this explanation was

inapplicable because the assessee was not merely a contractor, but a developer undertaking comprehensive projects with financial and technical responsibilities. The Co-ordinate Bench concluded that the explanation was not intended to exclude entities like the assessee that undertook the entire development of infrastructure facilities.

5.9. We also note that the Hon'ble Jurisdictional High Court in case of The PCIT (Central), Ahmedabad vs. Montecarlo Construction Ltd. (Tax Appeal No. 786 of 2023) has dismissed the appeal of Revenue. While dismissing the appeal of Revenue the Hon'ble High Court reiterated that the critical distinction between a developer and a works contractor lies in the nature of responsibilities and risks undertaken by the entity. The court emphasized that an entity acting as a developer assumes both managerial and financial risks in the project, including aspects such as design, procurement, and execution, as well as bearing responsibility for timely completion and operational management of the infrastructure. The Hon'ble Court upheld the Tribunal's findings that **Montecarlo Construction Ltd.** took on substantial financial risks for the development of infrastructure facilities, including arranging finances, purchasing materials, managing labor, and ensuring project execution. The responsibility for mobilization of resources and project financing was a key factor in distinguishing the assessee as a developer. The court clarified that even if the projects were funded by the Government through periodic payments, the overall responsibility and risk borne by the assessee in managing the project qualified it as a developer under Section 80IA(4) of the Act. The Hon'ble High Court also relied on judicial precedents, particularly the judgements in the case of **Radhe Developers v. CIT [(2012) 341 ITR 403 (Guj)]** and **ABG Heavy Industries Ltd. v. CIT [(2010) 189**

Taxmann 54 (Bom HC)], which held that entities engaged in comprehensive infrastructure development can claim deductions under Section 80IA(4) of the Act, even if they are labelled as contractors in agreements. The key criterion is the assumption of financial and operational risks. The Hon'ble High Court also ruled the inapplicability of Explanation to Section 80IA(13) of the Act stating that this explanation did not apply in this case, as the assessee's activities went beyond merely executing a works contract and the assessee was involved in the comprehensive development of infrastructure, including the design, construction, and management of the projects, and thus could not be classified as a *works contractor*.

5.10. Given the consistent judicial pronouncements, including the Gujarat High Court's rulings in **Radhe Developers** and **Montecarlo Construction**, and the reliance on the decision of the Co-ordinate Bench of the ITAT, we find no reason to interfere with the decision of the CIT(A). The assessee's activities and responsibilities clearly establish it as a developer, and the deduction under Section 80IA(4) of the Act was rightly allowed by the CIT(A). Accordingly, the appeal of the Revenue is dismissed, and the order of the CIT(A) is upheld.

6. **Ground (c) of ITA No. 1466/Ahd/2024 for A.Y. 2017-18** pertains to the issue raised by the Revenue regarding the CIT(A)'s allowance of the entire deduction under Section 80IA of the Act, without considering the set-off of losses of Rs.49,39,271/- from loss-making infrastructure units. The AO disallowed the deduction on the grounds that the assessee failed to adjust these losses, which, according to the AO, violated the provisions of Section 80A(2) of the Act. The AO contended that the assessee did not appropriately

set off the losses from certain infrastructure facilities before claiming the deduction under Section 80IA of the Act. Section 80A(2) of the Act mandates that the gross total income be computed after adjusting any losses from the eligible business (in this case, infrastructure facilities). Therefore, any profits from infrastructure units should be adjusted against losses incurred by other infrastructure units before the net profit is considered for deduction. Based on this interpretation, the AO disallowed Rs.49,39,271/- from the deduction under Section 80IA on the grounds that the losses from four infrastructure units were not set off against the profits from other units.

6.1. The assessee argued that the overall computation of profits and losses for the infrastructure units was done in accordance with the provisions of the Income Tax Act, and the set-off of losses was factored into the gross total income before claiming the deduction under Section 80IA of the Act. The assessee emphasized that the losses were from certain specific projects, but the total profits from the infrastructure business were positive, justifying the deduction under Section 80IA of the Act without any further adjustment.

6.2. The CIT(A) examined the details of the losses and concluded that the computation of profits and losses from the infrastructure facilities was correct. The CIT(A) was satisfied that the assessee had already accounted for the set-off of losses in the calculation of its gross total income. The CIT(A) relied on the decision of the Co-ordinate Bench in assessee's own case of earlier year. The Co-ordinate Bench relied on the judicial precedent set by the Supreme Court in the case of **Synco Industries Ltd. v. Assessing Officer [(2008) 299 ITR 444 (SC)]**, where it was held that losses must indeed be set off against profits when computing the deduction under Section 80A(2) of the

Act. Since the overall profits remained positive even after adjusting for these losses, the CIT(A) held that the deduction under Section 80IA of the Act was allowable in full.

6.2. In light of the above analysis and the fact that the assessee has appropriately set off the losses as per the requirements of Section 80A(2) of the Act, we find no reason to interfere with the findings of the CIT(A). The deduction under Section 80IA of the Act was correctly allowed in full, after adjusting for the losses from loss-making units. Therefore, Ground (c) raised by the Revenue is dismissed, and the decision of the CIT(A) is upheld.

7. The remaining grounds are generic in nature hence not adjudicated.

8. In the combined result, both the appeals of the Revenue in ITA No. 1466/Ahd/2024 for AY 2017-18 and in ITA No. 1467/Ahd/2024 for AY 2018-19 are dismissed.

Order pronounced in the Open Court on 28 October, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 28/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad