

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

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.753/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

TPL-SUCG Consortium, Hyderabad. PAN : AAEAT6639F.	Vs.	The Income Tax Officer, Circle – 6(3), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Malay Kalavadia, C.A.
राजस्व द्वारा/Revenue by: Shri B. Bala Krishna, CIT-DR.

सुनवाई की तारीख/Date of hearing: 24/10/2024
घोषणा की तारीख/Pronouncement on: 14/11/2024

ORDER

PER LALIET KUMAR, J.M:

This appeal is filed by the assessee feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 10.06.2024 for the AY 2018-19.

2. The grounds raised by the assessee reads as under :

1. *The order of the Ld. CIT(A) dated 10.06.2024 for the Assessment Year 2018-19 is contrary to law, facts and in the circumstances of the case.*

2.1. *The Ld. CIT(A) was not justified and grossly erred in facts and in law, in not allowing the claim of deduction u/s 80-IA of the Act on retention money offered to tax in the original return of Income of AY 2018-19.*

2.2. *The Ld. CIT(A) was not justified and grossly erred in holding that receipt of retention money was uncertain and thus deduction u/s 80-IA should not be allowed while considering the same for the purpose of computing taxable profits.*

2.3. *The Ld. CIT(A) was not justified and failed to appreciate the fact that the Appellant follows the Income Computation and disclosure Standard(ICDS) III dealing with construction contract which specifically provides that retention money shall form part of the contract revenue and erred in not considering the fact that the ruling of Hon'ble Kolkata Tribunal in the case of DCIT vs. M/s. McNally Bharat Engineering Co. Ltd. (I.T.A No.100/Kol/2011) pertains to the period prior to the introduction of ICDS provisions and will not apply to the facts of the Appellant.*

2.4. *The Ld. CIT(A) erred in stating that the facts of AY 2017-18 were not identical to AY 2018-19 and in not appreciating the fact that in AY 2017-18 the CIT(A) in its order while allowing deduction u/s 80-IA on retention money had specifically stated that the reasons given by Ld. Assessing Officer for denial of revised deduction u/s 80IA (which included retention money) are not justifiable..*

2.5. *Without prejudice to above, the Ld. CIT(A) was not justified and gr in facts and in law, in disregarding the claim as per the Form 10CCB.*

2.6. *Without prejudice to above grounds, accepting without admitting that deduction u/s 80-IA should not be allowed on retention money due to its uncertain nature, the Appellant prays that the Ld. Assessing Officer be directed to exclude the same from the taxable profits of the Appellant.*

3.1. *The Ld. CIT(A) was not justified and grossly erred in fact in upholding the addition of interest income amounting to INR 1,00,252/- by stating that the same has not been offered to tax even though the same was offered to tax in subsequent years.*

3.2. *Without prejudice to the ground 3.1 above, accepting without admitting that the interest income amounting to INR 1,00,252/- should be added due to not being offered to tax, the Ld. CIT(A) has erred in not allowing the corresponding TDS credit of INR 10,025/- against the said interest income.*

3.3. The Ld. CIT(A) erred in not allowing the TDS credit of INR 60,958/- in AY 2018-19 and erred in not appreciating the fact that the said TDS credit was not claimed in 'subsequent years against the interest income of INR 6,09,583 which was offered to tax in subsequent years.

3.4. Without prejudice to ground 3.3 above, the Appellant prays that the Ld. Assessing officer be directed to grant TDS credit of INR 60,858/- in subsequent years in case the said TDS credit is not allowed in AY 2018-19.”

3. Facts of the case, in brief, are that the assessee is an AOP (Association of Persons), filed its return of income declaring total income of Rs.7,65,80,020/- for AY 2018-19 on 28/11/2018. The case was selected for complete scrutiny to examine expenditure of personal nature, refund claim, deduction claimed for Industrial Undertaking. Notice u/s 143(2) of the Act was issued on 22.09.2019 and thereafter, e-notices u/s 142(1) of the Act were issued on various dates calling for certain details. During assessment proceedings, the AO noted that the deduction claimed by the appellant u/s 80IA included retention money of Rs.31,86,76,819/-. The AO held that since the retention money withheld by the contractor is released to the contractee only after fulfillment of the terms of contract subsequently. Therefore, the AO disallowed the deduction u/s 80IA to the extent of Rs. 31,86,76,819/-. Further AO noted that the appellant had not offered the interest income of Rs.6,09,583/- based on 26AS statement. The appellant explained the difference to the extent of Rs.5,09,331/- but the difference of Rs.1,00,252/- was not explained. Therefore, AO made addition of Rs.1,00,252/- on

account of undisclosed interest income. Further, AO had disallowed the corresponding TDS credit of Rs.60,958/- on Rs.6,09,583/- since interest of Rs.5,09,331/- was offered for taxation in AY 2019-20. Thus, Assessing Officer completed the assessment u/s 143(3) r.w.s. 143(3A) and 143(3B) and passed assessment order on 15.03.2021 by holding as under :

“4 ADDITION OF RETENTION MONEY

During the assessment proceeding, vide notice u/s. 142(1) dtd. 17/12/2020 the assessee was asked to furnish the details of retention money received ruling the year under consideration and its applicability on computation of deduction claimed u/s. 80IA.

In response to this notice vide letter dt. 31/12/2020 the assessee has furnished its reply on perusal of the assessee reply the assessee has stated that the JV has accounted for retention money amounting to Rs. 31,86,76,819/- during the FY 2017-18

In this regard, the meaning of retention money, the purpose of recognizing and its implication on business is discussed as under:

In a normal business parlance, Retention money is described as the sum of money held by the employer as a safeguard for any defective or non-conforming work by the contractor. Retention money safeguards the employer, in case, the contractor fails to meet up to the satisfaction of Contract terms and conditions. As per Para 9 of ICDS III, retention money would be recognized as 'Contract Revenue' in accordance with stage of project completion when there is reasonable certainty of its collection. Therefore, the definition of retention money itself implies that the contract money is retained by the contractor and will be released to the contractee subject to the satisfaction of the contractor. Therefore, there is certain amount of uncertainty and ambiguity whether the retained money will finally be realized in the hands of the contractee. However, an assessee as per the accounting standards and CBDT

Circulars, also have to recognize the Retention money as income in the financial statements, on the basis of the percentage of completion of work. The assessee is at liberty to reduce the income from business in the subsequent financial years if the money retained by the contractor is not released. As per the provision 80IA of the Act, an assessee can claim deduction for 100% percent of profits and gains derived from the eligible business. In this regard, in the instant case, the profit and gains from business of the assessee firm included the portion of Retention money, whose receipts are not certain and subject to the satisfaction of the Jaipur Development Authority. Therefore, the profits and gains computed, considering the retention money, which has an element of uncertainty, shall not be considered for allowing deduction u/s.80IA. In this regard, it is pertinent to mention here that the reasons for revision/enhancement of the 80IA deduction was not mentioned in the audit report and certified by the Auditor in Form 10CCB.

In view of the above, the section 80IA envisages that the deduction is to be allowed on the derived profits, thereby, disallowing the profit attributable to retention money to claim deduction. In this regard, reliance is placed in the case of Cambay Electrical Supply Co. Ltd. 113 ITR 684. Therefore, assessee's claim for deduction u/s.80IA is restricted to the extent of Rs. 72,47,76,001 (1,04,34,52,820 — 31,86,76,819/-) and disallowing the balance claim of Rs.31,86,76,819/-. Penalty proceedings u/s. 270A is separately initiated for under reporting of income.”

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who dismissed the appeal of assessee by holding as under :

“6.2. I have perused the assessment order, grounds of appeal and submission filed by the appellant and arguments made during VC. I find from the assessment order that the appellant had claimed deduction u/s 80IA of Rs.104,34,52,820/- at the rate of 100% of profit and gain derived from business. However, it was noted by the AO that the profit and gain from the business also included retention money of Rs.31,86,76,819/- which has an element of uncertainty hence was not allowable while

computing the deduction u/s 80IA. Therefore, by relying on the decision of Hon'ble Supreme Court of India in the case of Cambay Electrical Supply co. Ltd (113 ITR 684), the AO reduced the claim of deduction u/s 80IA to Rs.72,47,76,001/- as against deduction of Rs.104,34,52,820/- claimed in the return of income.

During appellant proceedings the appellant claimed that it has disclosed the retention money as income as per ICDS III and by relying on various judicial pronouncements claimed that the deduction should be allowed as per Form No.10CCB. Alternatively the appellant submitted on without prejudice basis that if the deduction u/s 80IA is not allowed then the retention money should be reduced from the total income. During the course VC, the appellant contended that the similar addition made by the AO for AY 2017-18, the CIT(A), NFAC has allowed the ground of appeal raised by the appellant.

I have considered the facts of the case and submission filed by the appellant carefully. I find from the CIT(A) order for AY 2017-18 that the facts of that year were different. The appellant had not claimed the deduction u/s 80IA on retention money in the original return of income and in original form No. 10CCB. The appellant had filed revised return of income and revised form No.10CCB in which enhanced deduction u/s 80IA was claimed. The AO had rejected the revised return of income and revised form No.1000B. It is noticed from the appellant order of CIT(A) NFAC that the action of the AO of rejecting the revised return/revised form No.10CCB was decided as incorrect since the revised return was filed within the prescribed time limit. However I find that there was no finding about the allowability of deduction u/s 80IA on the retention money which was included by the appellant in the profit and gains of the business and profession. Thus I find that the facts of AY 2017-18 were not identical to the facts of AY 2018-19, hence the contention of the appellant is not found acceptable.

Regarding the contention of the appellant about the allowability of deduction u/s 80IA on the retention money, I find that Hon'ble'ble ITAT Kolkata in the case of D.C.I.T-Circle-1, -vs.- M/s. McNally Bharat Engineering Co.Ltd. Kolkata in I.T.A No.100/Kol/2011) vide decision dated 01-03-2017 held that that retention money cannot be taken into account while computing the profit and gains of the business and profession. The relevant portion of the finding of the Hon'ble'ble ITAT is re-produced as under:-

38. We have given a very careful consideration to the rival submissions. As far as the question with regard to excluding the retention money while computing the total income under the normal provisions of the Act is concerned, it is not disputed by the revenue that the sum in question is in the nature of retention money. In such circumstances we are of the view that the retention money cannot be regarded as income of the assessee. The issue is no longer *res integra* and has been concluded by the Hon'ble Calcutta High Court in case of *CIT Vs. Simplex Concrete (Piles) India Pvt. Ltd.* [179 ITR 8]. In the aforesaid decision the Hon'ble Calcutta High Court on identical facts held that having regard to the terms and conditions of the contract, it could not be held that either 10 per cent. Or 5 per cent., as the case may be, being retention money, became legally due to the assessee on the completion of the work. Only after the assessee fulfilled the obligations under the contract, the retention money would be released and the assessee would acquire the right to receive such retention money. Therefore, on the date when the bills were submitted, having regard to the nature of the contract, no enforceable liability accrued or arose and, accordingly, it could not be said that the assessee had any right to receive the entire amount on the completion of the work or on the submission of bills. The assessee had no right to claim any part of the retention money till the verification of satisfactory execution of the contract. Therefore, the Tribunal was right in holding that the retention money in respect of the jobs completed by the assessee during the relevant previous year should not be taken into account in computing the profits of the assessee for the assessment year in question.

In view of the above facts, the appellant is not entitled for deduction u/s 801A on the retention money since the same cannot be taken into account while computing the profits and gains of the business. Therefore the contention of the appellant is not found acceptable. Regarding the alternative claim of the appellant that if the deduction u/s 801A is not allowed then the retention money should be reduced from the total income, I find that the AO or CIT(A) has no power to reduce the returned income. Only the appellant can reduce the returned income by way of filing revised return of income within the prescribed time limits. In the instant case the appellant has not filed revised return of income to reduce the retention money from the returned income, therefore the contention of the appellant is not found acceptable. The facts of the case laws relied upon by the appellant are not identical to the facts of the present case

hence the contention of the appellant is not found acceptable. In view of the above discussion, the ground of appeal raised by the appellant is dismissed.”

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

6. Before us, Id.AR has submitted that as per the Income Computation and Disclosure Standard (ICDS) and on the basis of the various pronouncements, the 'retention money' is required to be not added back to the income of the assessee as held by the AO and LD.CIT(A), as it is the mandatory requirement, as per the provisions of Computation of Income and Retention. It is the mandatory requirement as per the Computation of Income and Accounting Standards to offer the same to the tax in the relevant assessment year, under the head 'income from Profits and Gains from Business and Profession'. It was further submitted that the retention money was having the first degree nexus with the income derived for the eligible business from the JV, and it was submitted that the claim of deduction in respect of 80IA of the Act pertaining to the amount of retention money should be allowed, and alternatively, it was submitted that if the retention money offered to tax is not allowable, and in that scenario, the corresponding amount should be reduced from the income of the JV while

computing of the taxable income under the head income from profits and gains from the business and profession.

7. The ld.DR relied upon the orders passed by the lower authorities, as mentioned herein above. Furthermore, he relied upon the decision of the Hon'ble High Court of Calcutta in the case of PCIT Vs. EMC Ltd. reported in (2022) 142 taxmann.com 48. The ld.CIT(A) has submitted that computation of income from the construction and service contracts are required to be prepared and taxed in accordance with Section 43CB of the Act. Our attention was drawn to Section 43CB of the Act, which reads as under :

Section 43CB in The Income Tax Act, 1961

43CB. [Computation of income from construction and service contracts. [Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]

(1)The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:

Provided that profits and gains arising from a contract for providing services, -
(i)with duration of not more than ninety days shall be determined on the basis of project completion method;

(ii)involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.

(2)For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1)-

(i)the contract revenue shall include retention money;

(ii)the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.]

7.1. For the purpose of computation of income from construction and service contracts, furthermore, it was submitted that once the retention money has been taken into account while computing the total income of the assessee, and in that case, the assessed income cannot be lower than the returned income. Therefore, retention from the income of the JV while computing profit and loss under the head 'income from profits and gains from business and profession' cannot be granted.

8. We have heard the rival submissions and perused the material available on record. For the purpose of considering whether the retention money is allowable while computing deduction under Section 80IA or not, the LD.CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of Cambay Electrical Supply Industrial Co., Limited Vs. CIT reported in 113 ITR 684, and thereafter, has disallowed the claim of the assessee.

8.1. The LD.CIT(A) had also distinguished the case for AY 2017-18 and has held that there was no finding about the allowability of deduction under Section 80IA of the Act on the retention money. We have gone through the order of the assessment for AY 2017-18 which was available at page 139 and 140 of the paper book, which is to the following effect :

“5.2 Decision:

I have perused the assessment order arounds of appeal and submission fled by the appellant carefully. I find from the assessment order that the appellant in the original return of income had disclosed income of Rs.76,21,080/- under the normal provisions of the Act after claiming deduction of Rs.2,29,21,296/- u/s 80IA and Income u/s 115JC of Rs,3,05.42.376/- and tax liability under the normal provisions or the Act. Subsequently the appellant had filed revised return of income on 19/03/2018 i.e. within the permitted time limit and had added the retention money of Rs.11,36,37,740/- and also deduction /s 80IA on the same. The AO did not allow the deduction u/s 80IA of Rs.11.36.37.740/- on the ground that the appellant has included portion of retention money in the business income whose receipts are not certain and subject to satisfaction of the contractor i.e. Jaipur Development Authority. Further the AO noted that the reasons for enhancement of deduction u/s 80IA are not mentioned in the audit report.

The appellant has claimed that it has disclosed the retention money as income ICDS II and by relying various judicial pronouncement claimed that the deduction should be allowed as per the revised Form No. 10CCB. Alternatively the appellant claimed that if the deduction u/s 80IA is not allowed, then the retention money income offered for taxation should be reduced from the total income.

*T have considered the assessment order and the submission filed by the appellant. I find that the revised return of income was filed within the prescribed time limit which has been accepted by the AO, Therefore the deductions claimed as per the revised return of income has to be allowed, if admissible, I find that the appellant has also filed the revised audit report in Form No.10CCB. However the reasons given by the AO for denial of revised deduction u/s 80IA are not justifiable. Therefore **Considering the submission filed by the appellant, the disallowance made by the AO of Rs.11,38,54,187/- is deleted. Thus the ground of appeal raised by the appellant is allowed.**”*

8.2. From perusal of the above, it is abundantly clear that the LD.CIT(A) for the assessment year 2017-18 has deleted the disallowance made by the Assessing Officer for retention money to the extent of Rs.11,36,37,740/-. Therefore, the finding of the ld.CIT(A) is not correct to that extent. In our view, the Revenue should take a consistent view unless there is a change of fact or law. We do not approve the approach of the ld.CIT(A) for deciding the issue when the issue has already been considered and examined by the ld.CIT(A) in the earlier assessment year i.e., 2017-18.

8.3 Further, the LD.CIT(A) while deciding the issue against the assessee, has relied upon the decision of Kolkata Tribunal in the case of DCIT, Circle – 1 Vs. M/s. McNally Bharat Engineering Co. Ltd, Kolkata in ITA No.100/Kol/2011 dt. 01.03.2017 (placed at page 85 of the paper book). In our considered opinion, Section 43CB as reproduced hereinabove which was inserted in the statute book w.e.f 01.04.2017 provides the how the retention money was required to be treated while computing the profit and gains arising from the construction contract. Section 43CB(2)(i) clearly provides that for the purposes of percentage completion method, the project completion method or straight-line method, the contract revenue shall include retention money. In view of the clear provision of law, the assessee was right in including the retention money in

contract receipts. Furthermore, it is consistent case of both the parties that the retention money was retained by the contractor pertaining to the construction activities for which the assessee was eligible for section 80IA of the Act. The retention money cannot have a different characteristics than that of the principle amount of the contract as both are part and parcel of the revenue which would be received by the assessee or was received by the assessee for carrying out the construction activities. In view of the above, the order passed by the Id.CIT(A) is without any merit and therefore, the appeal of the assessee is required to be allowed.

8.4 In the present case, the reliance of the Id.CIT(A) in the case of DCIT, Circle – 1 Vs. M/s. McNally Bharat Engineering Co. Ltd (supra) form basis of deciding the issue against the assessee. However, we find that Section 43CB, which came into the statute w.e.f. 01.04.2017 clearly provides for considering the retention money as a contract receipt for computing the profit and gains arising from the construction contract. In light of the above, the appeal of the assessee is allowed.

9. In the result, the appeal of assessee is allowed.

Order pronounced in the Open Court on 14th November, 2024.

Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 14.11.2024.

TYNN/sps

Copy to:

S.No	Addresses
1	TPL SUCG Consortium, 1-7-80 to 87, Mithona Towers, PG Road, Begumpet Policelines, S.O. Secunderabad, Hyderabad – 500003, Telangana.
2	The Income Tax Officer, Circle 6(3), Hyderabad.
3	Pr.CIT(Circle), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order