आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं /**ITA Nos. 905 & 906/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2017-18 & 2018-19)

Lanco Solar (Gujarat) Private Limited, Hyderabad PAN:AABCL1095J	Vs.	Income Tax Officer Ward 16(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Rakesh Joshi, CA	
राजस्व द्वारा/Revenue by::	Shri Gudimella V P Pavan Kumar, DR	
सुनवाई की तारीख/Date of hearing:	13/11/2024	
घोषणा की तारीख/Pronouncement:	27/11/2024	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These two appeals by the assessee are directed against two separate orders, both dated 29/08/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Ys.2017-18 & 2018-19 respectively

2. The assessee has raised common grounds in these 2 appeals except the quantum of disallowance/additions. The

grounds raised by the assessee in ITA No.905/Hyd/2024 for A.Y 2017-18 are reproduced as under:

> *"1. On the facts and circumstances of the case as well as in law, the learned CIT (A) has erred in confirming the action of the learned Assessing Officer in disallowing the deduction of section 80IA(4)(iv) of Rs.1,10,28,713/- of the I.T. Act, 1961 on the alleged plea that the assessee is not eligible to claim the deduction due to conditions prescribed under the section was not complied by the assessee, without considering the facts and circumstances of the case.*
>
> *2. The appellant craves leave to add, amend, alter or delete the said ground of appeal".*

3. The solitary common issue arises in these appeals is, as to whether in the facts and circumstances of the case, the learned CIT (A) has erred in confirming the disallowance of claim of deduction u/s 80IA of the I.T. Act, 1961. Since common issues has been raised in both these appeals arises from the same facts and circumstances, therefore, for the sake of convenience, these two appeals are consolidated for the purpose of hearing and are being disposed of by this composite order.

4. The brief facts leading to the controversies are that the assessee company is engaged in the business of generation and distribution of power. During the financial year 2016-17, the assessee purchased a solar division from its holding company i.e. M/s. Lanco Infratech Ltd under slump sale transfer vide business transfer agreement dated 23/02/2017. The assessee filed its return of income for the A.Y 2017-18 on 17/10/2017 declaring loss of Rs.138,87,12,930/-. Later on, noticing a mistake in the

return of income, the assessee filed a revised return of income on 6/9/2018 declaring 'Nil" income after claiming deduction u/s 80IA of the Act of Rs.1,03,46,624/-. Thereafter, the assessee has filed another revised return of income wherein a suo motto dis-allowance of Rs.6,82,089/- was made towards provision for gratuity and leave encashment and declared business income at Rs.1,10,28,730/- which was claimed as eligible for deduction u/s 80IA of the Act hence, the assessee declared 'Nil' taxable income. In the scrutiny assessment, the Assessing Officer denied the claim of deduction u/s 80IA on the ground that the assessee does not fulfil the conditions laid down in the provisions of section 80IA(3)(ii) r.w. Explanation 2 to section 80IA of the I.T. Act, 1961.

4. Being aggrieved, the assessee challenged the action of the Assessing Officer before the learned CIT (A), but could not succeed.

5. Before the Tribunal, the learned AR of the assessee submitted that the assessee has acquired the solar power division from its holding company, by way of slump sale as an ongoing concern basis. He has referred to the business transfer agreement dated 23/2/2017 and submitted that as per clause (2) and (2.1) of the agreement, the nature of the transaction has been specified as slump sale and transfer of business undertaking on a going concern basis and thus, there is no split of any business undertaking in the process of transfer of the business

undertaking under slump sale. The learned AR has contended that it is only a change of ownership of the business undertaking being transferred as going concern and therefore, the undertaking would continue to be eligible for deduction u/s 80IA as it was prior to the said transfer under slump sale. He has accordingly referred to the CBDT Circular No.1/2013 dated 17/01/2013 and submitted that an identical issue relating to the export of computer software has been examined by the CBDT and the same has been clarified in Para 2(iv) of the said circular wherein the CBDT has clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed for the unexpired period at the rate as applicable for the remaining years subject to fulfilment of the prescribed conditions. Thus, the learned AR has submitted that when there is no change in the undertaking in the process of slump sale except the change of ownership, then the claim of deduction u/s 80IA cannot be denied merely on the ground of change of ownership. He has relied upon the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Prisma Electronics reported in (2014) 51 Taxmann.com 77 (Allahabad) and submitted that the Hon'ble High Court has considered an identical issue as to whether transfer of undertaking under slump sale would amount to formation of undertaking by splitting or re-construction of existing business and held that the change of ownership of business from proprietorship concern to a

partnership firm is not a case of forming undertaking by spilling up of or reconstruction of existing business. Only transfer of industrial undertaking as a whole along with assets and liabilities would not constitute formation of undertaking by splitting up or reconstruction of existing business. He has also relied upon the decision of the Hon'ble Madras High Court in the case of CIT vs. Heartland KV Information Ltd, reported in 359 ITR 1 (Mad.) as well as the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Tata Communications Internet Services Ltd reported in 251 CTR 290 (Del.) and submitted that the Hon'ble Delhi High Court has considered an identical issue of 80IA and held that a mere change of ownership/ pattern of shareholding does not make any difference for the benefit u/s 80IA of the Act available to the undertaking because the undertaking continue to carry on business without any re-construction of business already in existence. The learned AR has then relied upon the decision of the Mumbai Bench of the Tribunal in the case of Dy. CIT vs. M/s. JSK Industries (P) Ltd in ITA No.2639/Mum/2014 dated 23/02/2018 and submitted that the issue of availability of benefit u/s 80IB of the Act on account slump sale has been considered and decide in favour of the assessee. Thus, the learned AR has submitted that the disallowance of claim of deduction u/s 80IA of the Act by the Assessing Officer and confirmation of the same by the learned CIT (A) is highly unjustified and contrary to the law.

6. The learned DR, on the other hand, has submitted that section 80IB(3) debars the undertaking to claim the benefit of section 80IA(4), if the undertaking is formed by re-construction or splitting up of business already in existence. Therefore, in order to claim the benefit of deduction u/s 80IA, the undertaking is not formed by transfer of machinery and plant previously used for any purpose to a new business. In the case of the assessee, the undertaking was transferred from one company to another and as per section 80IA(3)(ii), the assessee is not eligible to deduction u/s 80IA(4)(iv) of the Act. The learned DR has also referred to the Explanation 2 to section 80IA(3)(ii) of the Act and submitted that the profits even in case where the machinery or plant is transferred to a new business, the same shall be deemed to be complying with the provisions of section 80IA(3)(ii), if the total value of the machinery or plant or part so transferred, does not exceed twenty per cent of the total value of the machinery or plant used in the business. In the case in hand, the transfer is 100% of plant & machinery and therefore, it does not fall even in the limits provided in Explanation 2 to section 80IA(3)(ii) of the I.T. Act, 1961. He has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as the material available on record. The assessee has claimed deduction u/s 80IA(4)(iv) in respect of the income of its undertaking acquired from Lanco Infratech Ltd vide business transfer agreement dated 23/02/2017. As per clause (2) and (2.1)

of the said agreement, the nature of the transfer is specified as slump sale and is an ongoing concern basis. For ready reference, clause 2 and 2.1 of the said agreement is reproduced as under:

> *"2. TRANSACTION*
>
> *2.1 Subject to the provisions of this agreement, LSGPL hereby agrees and undertakes to purchase from LITL and LITL hereby agrees and undertakes to sell to LSGPL, on the closing date, the business undertaking on a going concern basis by way of a slump sale, such that:*
>
> *(a) The business undertaking shall be deemed to have been transferred and vested in LSGPL;*
> *(b) LSGPL will be entitled, subject to the terms & conditions of this Agreement, to all rights, title and interest in the Business Undertaking;*
> *(c) LSGPL shall have the full ability, right, power and authority necessary for conducting and carrying on the business and operations in respect of the business undertaking;*
> *(d) LITL shall have transferred all the business assets to LSGPL*
> *(e) The business contracts and business permits and licenses shall have been assigned/novated (as the case may be) in favour of or otherwise transferred to LSGPL;*
> *(f) LITL shall have transferred all the Business Data and Records (including customer and vendor records) in relation to the business to LSGPL; and*
> *(g) LITL shall have transferred all the business liabilities and business obligations to LSGPL".*

8. Thus, the assessee has purchased the business undertaking as an ongoing concern basis by way of slump sale from its holding company. The Assessing Officer has denied the claim of deduction u/s 80IA(4)(iv) of the Act on the ground that the conditions specified in section 80IA(3) are not satisfied in case of the assessee. The concluding findings of the Assessing Officer in Para 5 to 7 are as under:

5. In its reply, the assessee has tried to establish that the transaction of acquiring assets from its group concern i.e.M/s. Lanco Infratech Limited cannot be treated as 'reconstruction'. But, the same is not relevant to the present case. In the show cause notice of this office, reference is made to the Section 80-IA(3) as whole. However, in particular, it is to say that the assessee failed to fulfill the conditions laid down in the provisions of section 80-IA(3)(ii) read with its explanation 2. The 'explanation-2' of the section stipulates that to avail the deduction u/s.80-IA(4), the transferred value of the machinery or plant should not be more than 20% of the total value of the machinery or plant used in the business.

6. The assessee referred case laws which only helpful in determination of 1. Reconstruction ((1959) 35 ITR 662 (Bom), (2006) 100 ITD 125 (Delhi), 2011 ITR (8)(Trib) 76 (Jaipur)). Hence, not squarely applicable to the present case. Further, the assessee's reference to the case laws in CIT vs.Heartland Delhi Transcription Services and CIT vs P.K.engg. & Forging Pvt.Ltd. in which decisions were made with regard to the slump sale and splitting or reconstruction of existing business and acquisition of business entity as going concern. These references are also not squarely applicable as the reasons discussed in Para-5 of this order. Further, no mention of the provisions of section-80-IA(3)(ii) and its explanation-2 were dealt in these orders and also no question was raised about its applicability or rationality. The assessee itself expressed the possibility of disallowance on account of sub-section (3) of Section 80-IA of the act in its reply dated 16.12.2019. At this juncture, it is very appropriate to refer the orders of Hon'ble ITAT, Chennai in ITA No.113/Mds/2012 dated 04.01.2013 in the case of M/s.Armstrong Knitting Mills Private Limited Vs. DCIT wherein the Hon'ble ITAT dismissed the appeal of the assessee and the facts of which similar to the present case.

7. In view of the above discussion, the deduction of Rs.1,10,28,713 claimed by the assessee under section 80-IA(4)(iv) of the Act for the assessment year 2017-18 is not allowable and accordingly the same is added to the total income of the assessee.

(Addition: Rs.1,10,28,713)

9. Thus, the Assessing Officer has given the emphasis to the maximum limit of 20% of the total value of machinery or plant as given in Explanation 2 to section 80IA(3). The Assessing Officer has not disputed the fact that the business undertaking under

consideration has been acquired by the assessee as a going concern basis by way of slump sale and under the said transaction of transfer of the business liabilities and obligations as well as assets have been transferred by the seller to the assessee. Therefore, there is no change in the assets and liabilities of the business undertaking acquired by the assessee except the change of ownership that too under the slump sale. The Assessing Officer has misconceived the explanation 2 to section 80IA(3) by taking of outer limit of 20% of total value of machinery or plant in case of the assessee whereas the Explanation 2 is an exception to the conditions stipulated in section 80IA(3)(ii). Clause (ii) of sub-section (3) of section 80IA stipulates that an undertaking is not formed by transfer to a new business of machinery or plant previously used for any purpose. In the case in hand, it is not a transfer of a plant or machinery to new business, but it is a transfer of an existing ongoing business undertaking under slump sale and therefore, the undertaking remains intact and only the ownership got changed. Therefore, there is no transfer of any plant or machinery already used for any purpose to a new business, rather the undertaking is not a new business in the hands of the assessee because it is already existed business undertaking acquired by the assessee because it is way of slump sale as an ongoing concern basis. Thus, if the undertaking is otherwise eligible for deduction u/s 80IA(4)(iv), then the mere change of ownership would not disentitle the undertaking from benefits u/s 80IA of I.T. Act, 1961. This situation of transfer of

undertaking under slump sale has been duly considered by the CBDT in Circular No.1/2013 dated 17/01/2013 and clarified this issue in para 2(iv) of its order as under:

> *"F.No.178/84/2012-ITA.I*
> *Government of India*
> *Ministry of Finance*
> *Department of Revenue*
> *Central Board of Direct Taxes*
> *New Delhi, the 17th January 2013*
>
> *Circular No. 01/2013*
>
> *Subject: Issues relating to export of computer software – Direct tax benefits – Clarification reg*
>
> *The Indian Software Industry has been the beneficiary of direct tax incentives under the provisions like sections 10A, 10AA & 10B of the Income -tax Act, 1961 in respect of their profits derived from the export of computer software. These provisions prescribe incentives to "units" or "undertakings", established under different schemes, which are/were deriving profits from export of computer software subject to fulfilling the prescribed conditions.*
>
> *2. It has been represented by the software companies that several issues arising from the above mentioned provisions are giving rise to disputes between them and the Income-tax authorities leading to denial of tax benefits and consequent litigation and, therefore, require clarification. Various issues highlighted by the Software Industry have been examined by the Board and the following clarifications are hereby issued –*
> *xxxxxxxxxxxx*
> *2(i) xx 2(ii)xxxx (2(iii) xxxxxx*
>
> *2 (iv) Whether tax Benefits under sections 10A, 10AA and 10B would continue to Remain available in case of a slump Sale of a Unit/Undertaking.*
>
> *The vital factor in determining the above issue would be facts such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. These are factual issues requiring verification of facts. It is, however, clarified that on the sole ground of change in*

> *ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfilment of prescribed conditions."*

10. Thus, the CBDT has clarified that, the benefit of deduction cannot be denied to an otherwise eligible undertaking, on the sole ground of change of ownership of an undertaking. Though the tax holiday can be available by the undertaking for the unexpired period, at a rate as applicable for the remaining years, subject to fulfilment of the prescribed conditions. The Hon'ble Allahabad High Court in the case of CIT vs. Prisma Electronics (Supra) has also considered an identical issue in respect of section 80IB(2) in para 10 to 14 as under:

> "*10. Our view is fortified by another similar provision. which were earlier existing under Section Sot the Act. which was subsequently. omitted. For facility, Section 84 of the Act as it existed at the relevant moment of time is extracted hereunder:*
>
> *"Income of newly established industrial undertaking of hotels:- (1)Save as otherwise hereinafter provided, income tax shall not be payable by an assessee on so much of the profits and gains derived from any industrial undertaking or business of a hotel from any ship, to which this section applies, as does not exceed six per cent per annum on the capital employed in such undertaking or business or ship. computed in the prescribed manner.*
>
> *(2) This section applies to any industrial undertaking which fulfills all the following conditions, namely:*
>
> *(i) it is not formed by the splitting up, or the reconstruction of a business already in existence:*
>
> *(ii) it is not formed by the transfer to a new business of a building machinery or plant previously used for any purpose,*

(iii) it manufactures or produces articles or operates one or more cold storage plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at any time within the period of twenty-three years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking."

11. From a perusal of the aforesaid provision, it is clear that Section 84 is more or less the same as provided in Section 80-IB of the Act. The Central Board of Direct Taxes issued a circular F. No. 15/5/63-IT(A-l) dated 13th December, 1963 indicating that the benefit of Section 84 is attached to the undertaking and not to the owner thereof and consequently, the successor would be entitled to the benefit for the unexpired period of 5 years provided the undertaking is taken over as a running concern.

12. The same principle is applicable in the instant case. Admittedly, the undertaking was in existence since 2002. The proprietorship concern changed into a partnership firm. The benefit under Section 80IB of the Act is available to the partnership firm and the conditions imposed under Section 80IB(2)(ii) does not come in the way.

13. In CIT v. Bullet International. [2012| 349 |TR 267/2014|44 taxmann.com 354 (All.) a Division Bench of this Court held that the exemption granted to a proprietorship concern, which converted from a proprietorship into a partnership concern was still entitled for exemption under Section l0A of the Act.

14. In the light of the aforesaid. we hold that the Tribunal was justified in dismissing the appeals of the revenue holding that the assessee was entitled lor deduction under Section 80-IB of the Act and was not hit by the provisions of Section 80-IB(i) of the Act. The Tribunal was also justified in holding that upon conversion of the proprietorship concern to a partnership concern there was no transfer of plant and machinery to the partnership firm, inasmuch as there was a transfer of the industrial undertaking as a whole along with its assets and liabilities."

11. It has been observed that the formation of an undertaking should not be confused with ownership of the business if the undertaking is formed by splitting up or by reconstruction in that case the undertaking will not be qualified for exemption. However, if the undertaking was already in existence and was not formed by splitting up or reconstruction of the business, then mere change of ownership on conversion of proprietorship into partnership firm would not amount to transfer of plant and machinery to a new firm. A similar view has been taken by the Hon'ble Delhi High Court in the case of CIT vs. Tata Communication Network Services Ltd (Supra) and in para 11 to 14, held as under:

> *"11. Be that as it may, Clause (ii) of Section 4 of Section 80IA was inserted in sub clause 3 of Section 80IA with effect from 1.4.2005 and the business of the assessee had been formed and started much prior to that. The restriction placed by Section 80IA(3) to the provisions of 80IA(4) (ii) would not bar the assessee for continuing its claim of deduction under Section 80IA. Since the provisions of 80IA(3) are not applicable to the present assessee, it having commenced its business much prior to 1.4.2005, Section 80IA(3) would not disentitle it from claiming deduction under Section 80IA on its income from internet services and internet telephony services.*
>
> *12. In our view, the Tribunal was right in holding that the assessee could not be said to have been formed by splitting up or reconstruction of the business already in existence as its business had commenced after 1.4.1995 and before 31.3.2005 and the assessee had started its business of fax and email services right from the financial year 2003 and 2005 and it continued to carry on the business of internet telephony.*
>
> *13. Insofar as the objection of the revenue that there had been change in the name of pattern of shareholding it does not make any difference as it is a well settled rule of law that benefit under Section 80IA of the Act is available to an*

undertaking and not to the assessee since the undertaking continues to carrying on its business without any reconstruction of business already in existence.

14. Even otherwise, on merits the conditions under Section 80IA(3) of the Act are seen to be fully met by the assessee and on this ground also the assessee is entitled for deduction under Section 80IA of the Act. The first contention is that section 80IA(3) of the Act provides that the eligible business is not formed by splitting up or reconstruction of the business already in existence. Based on the facts discussed above, it may be noticed that the assessee started its new business in the existing company and the said business could not be said to have been formed either by splitting up or reconstruction of the existing business. It is to be noted herein that the business of providing internet services was awarded by the government to the assessee in the year 1999. The second contention of applicability of section 80IA (3) regarding use of old plants and machinery is also not relevant in the case of the present assessee as the business of assessee had not come into existence or formed by transfer of any old plants and machinery. The license was granted to the assessee on 5.1.1999 and it purchased new plants and machinery worth Rs. 5.65 crore during the financial year 2000-01 for this telecommunication business."

12. The Hon'ble High Court has observed that, change in the name of pattern of shareholding, does not make any difference to avail the benefit u/s 80IA of the Act, already available to an undertaking, since it will continue to carry on its business without any reconstruction of the business already in existence. Following the judgement of the Hon'ble Delhi High Court as well as other judicial precedents, the Mumbai Bench of the Tribunal in the case of Dy. CIT vs. M/s. JSK Industries Pvt Ltd (Supra) has considered this issue in para 8 to 14 as under:

"8. For second/other objection regarding non-applicability of the benefit of deduction on account of slump sale, we find that

the assessee has acquired the entire undertaking of M/s Hiren Aluminum Ltd. which was declared eligible for deduction under section 80IB. In our view, when the entire undertaking is transferred, merely because the ownership of undertaking changes the hand, the deduction under section 80IB is connected with the undertaking and is still available to the assessee. The ld. AR of the assessee during his course of submission relied upon the Circular No. 1/2013 issued by CBDT on 17.01.2013. The perusal of Clause-(iv) of paragraph 2 of said Circular provides that the benefit under section 10A/10AA and 10B would continue to remain available in case of slump sale of undertaking. The Clause (iv) of Circular is extracted below:

"(iv) WHETHER TAX BENEFITS UNDER SECTIONS 10A, 10AA AND 10B WOULD CONTINUE TO REMAIN AVAILABLE IN CASE OF A SLUMPP-SALE OF A UNIT/UNDERTAKING,

The vital factor in determining the above issue would be facts such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. These are factual issues requiring verification of facts. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfilment of prescribed conditions."

9. The Hon'ble Delhi High Court in case of CIT vs. Heartland Delhi Transcription Services Pvt. Ltd. (supra) while examining the scope of exemption under section 10B held that formation of undertaking, when it was formed satisfied and duly fulfilled the requirement of the Clauses of section 10B(2) or Clause (2) & (3) as it was not formed by splitting up of reconstruction of business already in existence and there was no factual finding that at the time of establishment of formation of undertaking business already in existence was split or reconstructed. There was no bar in section 10B on transfer or sale of undertaking by assessee which has formed sister concerned.
10.The Hon'ble Punjab & Haryana High Court in case of CIT vs. Mega Packages (supra) held that the benefit admissible to an undertaking could not be denied to the assessee for remaining period on the ground that sub- section (12) of section 80IA empresses only in case of amalgamation or

demerger of an Indian company and therefore, such benefit would not be available in case of change from proprietorship to partnership.

11.The Hon'ble Bombay High Court in case of CIT vs. Sonata Software Ltd. [343 ITR 397] while discussing the condition precedent for exemption under section 10A held that there are two condition cast in negative term;

(i) Industrial undertaking is not firmed by splitting up reconstruction of business already in existence (ii) Industrial undertaking is not firmed by transfer to a new business machinery or plant previously used for any purpose.

12.Further, the Hon'ble Delhi High Court in ACIT vs. IIS Infotech Ltd. [82 TTJ 174] while discussing the scope of exemption under section 10B held that benefit under section 10 is always attached to the industrial undertaking irrespective of the fact who owns it 100% export oriented unit and enjoying tax exemption under section 10B merged with assessee, would be entitled to same benefit with respect to said unit even after merger of unit being of an independent unit.

13.The careful reading of sub-section (2) of section 80IB make it clear that there are two conditions are provided in negative term i.e. (i) Industrial undertaking is not formed by splitting up reconstruction of business already in existence, (ii) is not formed by transfer of new business of machinery or plant previously used for any purpose. The Assessing Officer has not disputed about the manufacturing or produce product of any article or things not being any article or things specified in XI Schedule or operate one or more Cold-Storage or plant in any part of India. Further, there is no dispute that industrial undertaking manufactures or produce articles or things undertaking employed 10 or more workers in a manufacturing process carried out with the aid of power, or employed 20 or more workers in manufacturing process carried on without the aid of power. The AO has not disputed anyone of two negative terms. Even otherwise, the assessee has placed on record the sufficient evidence to substantiate the requirement of fulfilment of condition laid down under section 80IB consisting of evidence related with the challan of Provident Fund of more than 21 employees with the undertaking during the relevant period. Moreover, there is no dispute that the industrial undertaking is situated in industrial backward state.

> *14. In our view, there is no bar or prohibition in section 80IB on sale (slump- sale) of eligible undertaking to another assessee and the benefit attached with eligible undertaking cannot be denied to another assessee. There are only two negative terms prescribed under sub-section (2) of section 80IB, which we have referred above. Thus, we have no hesitation in accepting the submissions of learned AR for the assessee that he benefits of section 80IB are travelled (Transferred) with the undertaking and the fact of change of ownership does not affect the deduction. Sub-section (1) & (2) of section 80IB categorically refers to the business carried out by industrial undertaking. Thus, mere change of ownership would not affect the claim of deductions. With the above factual and legal discussion, we confirmed the order of ld. CIT(A) and dismissed the appeal of Revenue."*

13. Thus, it is now a settled proposition that, mere change of ownership cannot be a ground to deny the benefit of section 80IA(4) so long as the undertaking under consideration remains intact and same without any change in the Plant & Machinery or business already in existence. The conditions, as stipulated u/s 80 IA(3)(iii) of the Act contemplate a situation of forming an undertaking by splitting up or reconstruction of existing business as well as transfer of Plant & Machinery already used to a new business but, none of those transaction/incidents are part of the acquisition of the business undertaking by the assessee under consideration. Accordingly, in view of the facts and circumstances as discussed above, we are of the considered opinion that, the disallowance of deduction u/s 80IA(4) to the assessee by the Assessing Officer and confirmed by the learned CIT (A) is highly unjustified and not sustainable. Hence we allow the claim of the assessee u/s 80IA(4)(iv) of the I.T. Act, 1961. The issue is common

in both the A.Ys, therefore, this finding is also applicable for both the A.Ys i.e. 2017-18 and 2018-19.

14. In the result, appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 27th November, 2024.

Sd/-	Sd/-
(MANJUNATHA, G) **ACCOUNTANT MEMBER**	**(VIJAY PAL RAO)** **VICE-PRESIDENT**

Hyderabad, dated 27th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
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2	Income Tax Officer Ward 16(1) IT Tower, AC Guards, Masab Tank, Hyderabad 500004
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order