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

BEFORE

SHRI MANJUNATHA G. HON'BLE ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER

ITA No.451/Hyd/2024		
Assessment Year – 2017-18		
Prathima Infrastructure Limited, Filmnagar, Hyderabad. PAN : AABCP2098P.	Vs.	The Assistant Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri K.C.Devdas, CA	
Revenue by:	Shri B. Bala Krishna, CIT-DR	
Date of hearing:	10.10.2024	
Date of pronouncement:	27.11.2024	

O R D E R

PER MANJUNATHA G. A.M.

The appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad - dated 28.02.2024, for the assessment year 2017-18.

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

> *"1. The Hon'ble CIT(A) erred both in fact and the law in confirming the disallowance u/s 80IA made by the AO under the Income Tax Act, 1961, and therefore, the addition is liable to be deleted.*

2. The Hon'ble CIT(A) erred in concluding that the Appellant shall have entered into the Contract with the State Government for claiming the deduction, i.e., it shall be the main contractor, while the extant law accepts the execution of the contract with the permission of the State Government by the Assessee as a Sub-Contractor.

3. The Hon'ble CIT(A) failed to consider the law on beneficial exemption/deduction but arbitrarily relied on general exemption law while deciding the appeal matter.

4.The Hon'ble CIT(A) gravely failed to distinguish and consider the case law relied on by the Appellant and erred in arbitrarily deciding the appeal matter in an ad hoc manner."

3. The brief facts of the case are that the appellant, Prathima Infrastructure Ltd., is engaged in the business of Civil contractor and property developer. The assessee filed its return of income for A.Y 2017-18 on 31-10-2017, declaring total income of Rs. 15,22,62,650/-, after claiming deduction under Section 80IA(4) of the Income Tax Act, 1961, amounting to Rs. 51,05,42,952/-. The case was selected for scrutiny, and during the course of assessment proceedings, AO noted that as per the return of income filed for AY 2017-18, the assessee has claimed deduction of Rs. 51,05,42,952/- under Section 80IA(4)(i) of the Act. In this regard, the assessee was asked to furnish supporting evidence in respect of the claim of deduction. The assessee, in reply, submitted copies of the Joint Venture Agreement dated 02-01-2009, entered between M/s. Hindustan Construction Company Limited (HCC), M/s.Megha Engineering and Infrastructure Limited (MEIL), and Bharat Electricals Limited (BHEL), the Letter of Intent dated 16-10-2015, and the Work Order Agreement dated 02-12-2008 issued by the Government of Andhra Pradesh,

Irrigation and C.A.D. Department to M/s.HCC-MEIL-BHEL(JV), in respect of Pranahita Chevella Lift Irrigation Scheme, Link-IV, Package No.10. The assessee further submitted that it has developed Pranahita Chevella Lift Irrigation Scheme, Link-IV, Package No.10, under works contract from M/s.HCC on back-to-back basis and the same has been sub-contracted to the assessee in terms of the agreement entered between the Government of Andhra Pradesh and M/s. HCC-MEIL-BHEL(JV). Therefore, claimed that deduction towards profit derived from eligible project under Section 80IA(4) of the Act, is in accordance with law.

4. The AO, after considering the submissions of the assessee and also taken note of the Joint Venture Agreement dated 02-01-2009, Work Order dt.02.12.2018 issued by Government of Andhra Pradesh, Irrigation and C.A.D Department to M/s. HCC-MEIL-BHEL (JV), observed that the appellant company is not eligible for claiming deduction under Section 80IA(4) of the Act, because three conditions provided therein are not satisfied. The AO further observed that the agreement dated 02.12.2008 is between Government of Andhra Pradesh and M/s. HCC-MEIL-BHEL(JV), and as per the said agreement, the project Pranahitha Chevella Lift Irrigation Scheme, Link IV, Package No.10, has been awarded to the JV, but not to the assessee. Further, as per the said agreement, the civil work in the project is to be executed by M/s.HCC, and the mechanical work in the project is to be

executed by M/s. MEIL and M/s. BHEL. The civil work of M/s. M/s.HCC has been further sub-contracted to the assessee on back-to-back basis vide Work Order No.14020223 dated 22-03-2017, on which the assessee has claimed deduction under Section 80IA(4) of the Act. Since the assessee has not satisfied with the condition of entering into an agreement with Central Government or State Government or local authority or any other statutory body for the development of infrastructure project, the assessee does not satisfy the basic conditions required for claiming deduction under Section 80IA(4) of the Act. Therefore, the AO rejected the explanation of the assessee and disallowed deduction claimed under Section 80IA(4) of the Act, for Rs. 51,05,42,962/- and added it back to the total income of the assessee. The relevant findings of the AO are as under :

> *"3. <u>Deduction u/s 80IA of the Act.</u>*
>
> *As per the return of income filed for AY.2017-18, the assessee has claimed deduction of Rs.51,05,42,962/- under section of the Act. In this regard, the assessee was asked to furnish supporting evidence in respect of deduction claimed. The assessee in reply submitted copies of the Joint Venture Agreement dated 02/01/2009 entered between M/s.Hindustan Construction Company Limited(HCC), M/s.Megha Engineering & Infrastructure Limited(MEIL) and Bharat Electricals Limited(BHEL), Letter of Intent dated 16/10/2015, Work Order Agreement dated 02/12/2008 issued by Govt. of Andhra Pradesh Irrigation & C.A.D. Department to M/s.HCC-MEIL-BHEL(JV) in respect of Pranahitha-CheveII Lift Irrigation Scheme link-IV Package No.10, Work Order No.9CLIS-10 issued to the assessee by HCC and Form 10CCD. The extract of the assessee's reply is also reproduced as under:*
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> > *"We are awarded a work at Pranahitha Chevella Lift Irrigation Scheme Package-IO under works contract from M/S. Hindustan Construction Company. The description of work is construction of Approach channel, CM/CD works including description of Transaction (including inlet Ramp), Construction of new reservoir*

(including Ogee spillway, sluices, surplus course etc), and Construction of Distributor System with lining for an Ayacut of 30,000 acres with minors and sub minors (Ayacut), Surge pool, Pump house & delivery cistern etc. complete including survey, investigation, Design, Construction, Operation & Maintenance with Defects liability period and Execution of the complete scope of HCC, excluding tunnel & Intlet structure for the Pranahitha — Chevella Lift Irrigation Scheme Link IV, (Package No-10) Project in the state of Telangana for an amount of Crones. During the Financial Year 2016-17, we made a Turnover of Rs. 237,33, 13,092/- against the said Work Order The above project is eligible for deduction under Chapter VI- A (80IA) as it was a government irrigation project and falls within the definition of works specified in Sec.80 IA."

3.2 As per the Joint Venture agreement dated 02/0112009, it is noticed that HCC, MEIL and BHEL has entered into a Joint Venture Agreement by the name HCC-MEIL-BHEL(JV) to bid for the Project Pranahitha-Chevella Lift irrigation Scheme link IV Package No. 10 issued by the Govt. of Andhra Pradesh. As per the said Agreement, the Civil work in project are to be executed by HCC and the mechanical works in the project is to executed by MEIL and BHEL, The civil work of HCC has further been sub-contacted to the assessee on back to back basis vide Work Order No, 14020223 dated 22/03/2017 on which the assessee has claimed deduction under section 801A(4) of the Act.

3.3 For the sake of clarity, Section 80IA(4) is reproduced as under.
This section applies to-

(i). any enterprise carrying in the business [of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining] any infrastructure facility which fulfils all the following conditions, namely:-

(a), it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corporation or any other body established or constituted under the central state Act;]

(b), it has entered into an agreement with the Central Government or a state Government or a local authority or any statutory body for (i). Developing or (ii). Operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;]

(c). it has started or starts operating and maintaining the infrastructure facility on or after the 1st Day of April 1995.

***Provided** that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprises (hereafter referred to in this section as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferor enterprises for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.*

As per the above provisions, for claiming deduction under section 80IA(4) of the Act, all the above three conditions are to be satisfied. The MOU dated 15/10/2015 entered between NCC and the assessee is verified and it is noticed that the assessee has not entered into any agreement with Central Government or a state Government or a local authority or any statutory body in respect of Pranahitha Chevella Lift irrigation Scheme link-IV Package No. 10 project, The above work is obtained from HCC a public limited company. Thus the basic condition required for claiming deduction under section 801A(4) of the Act is not fulfilled. The work contract Pranahitha-Chevella Lift irrigation scheme link-IV, package No.10 is actually awarded to M/s.HCC-MEIL-BHEL(Joint Venture) from the Government of Andhra Pradesh, Irrigation & C.A.D. Department vide Agreement No.06/2008-09 dated 02/12/2008. Hence, as per the provisions of section 80IA(4) of the Act, the Joint Venture being a separate entity i.e. Association of Person (AOP) for the purpose of Income tax is only eligible for claiming deduction under section 80IA(4) of the Act. Even HCC, MEIL and BHEL in their individual capacity are not eligible for claiming the said deduction. Since the assessee has obtained sub-contract from HCC, it is not eligible for claiming deduction under section 80IA(4) of the Act. Hence, the deduction claimed by the assessee under section 80IA(4) of the Act of Rs.51,05,42,962/- is disallowed and added back."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the LD.CIT(A). Before the LD.CIT(A), the assessee reiterated its arguments made before the AO and

submitted that, it has satisfied all the three conditions provided under Section 80IA(4) of the Act, for claiming deduction towards profits derived from eligible project. The appellant further contended that the work has been awarded to M/s. HCC-MEIL-BHEL (JV) in terms of agreement dated 02-12-2008, but the civil work in the project to be carried out by M/s.HCC has been sub-contracted to the appellant on back-to-back basis, including, all risks and rewards. The assessee has carried out the development of irrigation project, as per the specification of agreement between the parties and undertaken all risks including, designing, drawing, planning and also undertaken the maintenance of the project. The appellant has also satisfied the conditions, like Enterprise should be owned by Indian company or by a Consortium and further, the project should be an infrastructural project and also the condition of entering into agreement with the authorities, because the work has been undertaken in terms of agreement between the Government of Andhra Pradesh and JV and as per clauses of the agreement, which are ingrained in the main agreement itself, the work has been awarded to the appellant company upon satisfying the eligibility criteria and approval from the Government of Andhra Pradesh. Therefore, the AO is incorrect in rejecting the deduction claimed under Section 80IA of the Act, only on the ground that the assessee has not entered into any agreement with Central Government or State Government or local authority or any other statutory body.

6. The LD.CIT(A) after considering the submissions of the assessee and also by following the decision of ITAT, Hyderabad Bench in the case of DCIT Vs. M/s.HES Infra Private Limited in ITA Nos.184 and 185/Hyd/2018 dated 31-08-2023, rejected the arguments of the assessee and sustained addition made by the AO towards disallowance of deduction claimed under Section 80IA(4) of the Income Tax Act, 1961, towards profits derived from development of irrigation project in terms of agreement with Government of Andhra Pradesh, Irrigation and C.A.D. Department by holding that the assessee has not satisfied the conditions specified in Section 80IA(4) of the Act, because the appellant has not entered into any agreement with the Central Government or State Government or local authority or any statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility on or after the 1st day of April 1995. The LD.CIT(A) further observed that the project Pranahitha Chevella Lift Irrigation Scheme has been originally awarded to M/s.HCC-MEIL BHEL(JV) (Principal Contractor) by the Government of Andhra Pradesh, Irrigation and C.A.D. Department in terms of agreement dated 02-01-2009 and Work Order dated 02-12-2008. The appellant has got sub-contract work from M/s. HCC by way of work order dated 22.03.2017. Therefore, sub-contract agreement between the appellant and M/s. HCC cannot be construed as agreement between Central Government or State Government or local authority or any statutory body, as required under Section 80IA(4) of the Act.

Therefore, the LD.CIT(A) rejected the arguments of the assessee and sustained addition made by the AO. The relevant findings of the LD.CIT(A) are as under :

> *"6.3.8 I have considered the assessment order, submissions of the appellant, remand report of the AO and comments of the appellant on the remand report. It is seen that the Assessing Officer has made the addition of Rs.51,05,42,962/- on account of disallowance of deduction claimed by the appellant u/s 801A(4) of the Act. With regard to this addition, the following observations are made:*
>
> *(i). The deduction u/s 80IA(4) of the Act is available to any enterprise who carry on business [of (i]. developing or (ii). Operating and maintaining or*
>
> *(ii). Developing, operating & maintaining) any infrastructure facility and fulfills all the following three conditions:*
>
> *(a) it should be owned by a company registered in India or by a consortium of such companies or [by an authority or a board or a corporation or any other body established or constituted under the central state Act,*
>
> *(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any statutory body for (i). developing or (i) Operating and maintaining or (ii). Developing, operating & maintaining,*
>
> *(c). It has started or starts operating and maintaining the infrastructure facility on or after the 1st Day of April 1995.*
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> *To verify, whether the appellant has fulfilled all the above three conditions mentioned in section 801A(4) of the Act or not, the Joint Venture Agreement dated 02.01.2009 entered between M/s. HCC-MEIL-BHEL (UV) (Principal Contractor) & Govt. of Andhra pradesh, Letter of Intent dated 16.10.2015, Work Order Agreement dated 02.12.2008 issued by Govt. of Andhra Pradesh in respect of project Pranahitha Chavella Lift Irrigation Scheme link-IV Package No.10, Work Order No.SCLIS- 10 issued to the appellant by M/s. HCC, MOU dated 15.10.2015 entered between HCC & the appellant and Form 26AS of the appellant are perused.*
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> *On perusal of the these documents, it is seen that the project Pranahitha-Chavella Lift Irrigation Scheme link-1V package No.10 on which the appellant has claimed deduction u/s 80IA(4) of the Act, was entered*

between M/s. HCC-MEIL-BHEL (UV) (Principal Contractor) & Govt. of Andhra Pradesh and the appellant was awarded only sub contract from M/s. HCC Ltd. (JV constituent) to execute the said project work. Also, on perusal of Form 26AS, it is seen that TDS was deducted by M/s. HCC Ltd. (principal contractor) on payments made to the appellant under section 194C of the Act which implies that there is an contract-subcontractor relationship between the appellant and M/s. HCC Ltd. Therefore, it is clear that the appellant is not even constituent of the JV M/s. HCC-MEIL-BHEL and no direct agreement was entered between the appellant and Govt. of Andhra Pradesh for execution of said project. Accordingly, the above mentioned condition (b) i.e. agreement has to be entered between appellant and Central Government or State Government or a local authority or any statutory body in respect of project under consideration i.e. Pranahitha-Chavella Lift Irrigation Scheme link-IV Package No. 10 is not fulfilled in the present case.

In view of the discussion above, it is clear that neither Central Government nor state Government nor any local body has awarded any contract to the appellant to qualify it as a developer which is a mandatory condition as per section 80lA(4) of the Act. The appellant has worked as subcontractor and not developer, for execution of the project Pranahitha-Chavella Lift Irrigation Scheme link-IV Package No. 10 and therefore, the deduction available under section 801A is not applicable in the case of the appellant.

The above view has been upheld by Hon'ble Jurisdictional ITAT, Hyderabad in the case of DCIT, Central Ctrcle-2(1) Vs. M/s. HES Infra Private Limited in ITA Nos 184 & 185/Hyd/2018 dated 31/08/2023, wherein it was held that "when the agreement is not entered between the assessee and the Government / Statutory Government. there is a violation laid down by the statute and therefore, the assessee is not entitled to claim deduction u/s 80IA(4) of the Act". The relevant portion of said decision is reproduced as under:

"13. We have heard the rival submissions and perused the material on record. Section 801A(4) provides as under:
(4) This section applies to--
(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely :

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (i) operating and maintaining or (ii) developing, operating and maintaining a new infrastructure facility;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

14. From the perusal of section 801A(4) of the Act, it is abundantly clear that for the purpose of claiming deduction, it is essential for the assessee to prove that the agreement has been entered by the assessee with the government/ statutory body. Admittedly, in the present case, the agreement was not entered between the assessee with the government body and the agreement was entered into by the Joint Venture company namely, HES-MEIL ZVS, whereas the deduction was claimed by assessee which happens to be one of its constituent member. In our view, the statue is unambiguous and clear which only provides that the enterprise in whose favour the work has been allotted or agreement has been entered shall alone be entitled to claim deduction under section 801IA(4) of the Act.

Therefore, in our view, the contention raised by the ld. DR for the Revenue is in accordance with the law and therefore, this legal issue is required to be decided in favour of the Revenue. However, the co-ordinate Bench of the Tribunal in the case of M/s. KNR Constructions (supra) has decided the issue in favour of the assessee. In our view, the above said proposition cannot be said to be binding on this Bench in view of the fact that in later decision of the Hon'ble Supreme Court in the case Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company, the issue has been decided by the Hon'ble Supreme Court in Paras 40 to 42 which read as under:

"40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: It is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption notification must be exemption clause of and such exemption should Conferred in favour of revenue be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the cl imants satisfy all the Conditions precedent for availing exemption. Presumably for this

reason the Bench which decided Surendra Cotton 0il Mills Case (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Case (supra) that the ambiguity in an exemption notification should interpreted in favour of the assessee.

41. After thoroughly examining the various precedents some of which we re cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

42. In Govind Saran Ganga Saran V. Commissioner of Sales Tax, 1985 Supp (SCC) 205, this Court pointed out three Components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See Mathuram Agrawal v. State of Madhya Pradesh, (1 999) 8 SCC667; Indian Banks' Association vs. Devkala Consultancy Service, (2004) 4 JT 587 = AIR 2004 SC 2615; and Consumer Online Foundation Vs. Union of India, (2011) 5 SCC 360.]"

16. From the reading of the above, it is clear that in case a person seeking the deduction under the provisions of the Act, then onus is on the assessee to prove strictly that assessee fulfills all the parameters laid down by the statute for claiming the deduction. In the present case, admittedly, the agreement was not entered between the assessee and the Government/ Statutory Government and there was a violation laid down by the statute and therefore, the assessee is not entitled to claim deduction. In light of the above, with respect to the binding nature of the co-ordinate Bench of the Tribunal, it will be suffice to say that the co-ordinate Bench of the Tribunal has not had the benefit of applying the decision of the Hon'ble Supreme Court in case of Dilipsingh (supra), which was later on followed in many cases. Therefore, the decision of the co-ordinate Bench of the Tribunal in the case of M/s. KNR Constructions Limited (supra) is not binding on this Bench. Therefore, the grounds raised by the Revenue are required to be allowed.

17. In the result, the appeal of the Revenue is allowed."

(i). The case laws relied by the appellant during appeal proceedings are distinguished in view of above decision of Hon'ble ITAT, Hyderabad.

In view of the above observations, the addition of Rs.51,05,42,962/- made on account of disallowance u/s 80IA(4) is hereby confirmed. Accordingly, the ground no.4 of the appeal is dismissed."

7. Aggrieved by the order of LD.CIT(A), the assessee is now in appeal before the Tribunal.

8. The Learned Counsel for the assessee, Shri K.C. Devdas, C.A., submitted that, the LD.CIT(A) has erred both in facts and in law in confirming the disallowance of deduction under Section 80IA(4) of the Act, made by the AO, without appreciating the fact that the appellant is eligible for claiming deduction under Section 80IA of the Act, on profits derived from development of infrastructure project. The learned counsel for the assessee referring to the provisions of Section 80IA(4) of the Act, submitted that, the appellant undertook the construction, operation, and maintenance of irrigation project designed to provide irrigation for approximately 30,000 acres of land. Although, the appellant did not enter into direct agreement with the Government of Andhra Pradesh, but in terms of clauses of agreement between the JV and the Government of Andhra Pradesh, Irrigation and C.A.D. Department, one of the constituent partners of the JV has subcontracted entire civil work on back-to-back basis to the appellant in consultation and approval from the Government of Andhra Pradesh. Further, the appellant used its own financial

resources, machinery, and materials and executed all stages of the project, including, investigation, designing and drawing, construction, operation and maintenance, and therefore satisfies the condition of a 'developer' within the meaning of Section 80IA(4) of the Act. In fact, the AO never disputed the fact that the appellant has carried out the entire civil works of the project, as per the agreement between the Government of Andhra Pradesh and M/s.HCC-MEIL-BHEL(JV), however, rejected the claim of the assessee only on the ground that the appellant has not satisfied the condition of entering into any agreement with Central Government or State Government or local authority or any statutory body, but fact remains that the main agreement itself provided for clauses and as per the said clauses, the portion of work has been sub-contracted to any other developer, who is having requisite experience and financial resources, but the only condition was that the sub-contract should be approved by the Government of Andhra Pradesh. In the present case, the Executive Engineer, Construction Division, Kaleswaram Project, after appraising the experience and expertise of the appellant, has sanctioned approval for sub-contracting the work to the appellant and upon permission from the Government of Andhra Pradesh, M/s.HCC has sub-contracted the work in total to the appellant and therefore, it can be said that the appellant has satisfied the condition of entering into agreement with Central Government or State Government or local authority or any statutory body.

9. The learned counsel for the assessee, referring to the decision of Hon'ble Madras High Court in the case of CIT Vs. Chettinad Lignite Transport Services (P.) Ltd reported in (2019) 107 taxmann.com 12 (Madras), submitted that, the Hon'ble High Court has examined the eligibility of deduction claimed under Section 80IA of the Act, in light of proviso to Section 80IA(4) of the Act, and held that even the sub-contractor can claim deduction under Section 80IA of the Act, provided all other conditions have satisfied. Therefore, he submitted that the LD.CIT(A) without appreciating the relevant facts, simply sustained the addition made by the AO only on the ground that the appellant has not satisfied the condition of entering into agreement with specified authority. The learned counsel for the assessee further submitted that, the sole basis for the LD.CIT(A) to sustain addition made by the AO towards disallowance of deduction under Section 80IA of the Act is that he had followed the decision in ITAT in the case of DCIT Vs. M/s.HES Infra Private Limited (supra), however, the fact remains that the said order of the Tribunal did not consider the issue of Section 80IA(4) of the Act, in light of the provisions of the Act, and the facts of the case, but bases its decision only on the basis of the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company and others reported in (2018) 95 taxmann.com 327 (SC) on the interpretation of taxing statutes. But the fact remains that, the Co-ordinate Bench of the Tribunal had considered an identical issue and also by referring to the decision in the case of DCIT Vs.

M/s.HES Infra Private Limited (supra) and also by following the decision of Hon'ble Apex Court in the case of Government of Kerala and another Vs. Mother Superior Adoration Convent in Civil Appeal No.202 of 2012, distinguished the decision in the case of DCIT Vs. M/s.HES Infra Private Limited (supra). Therefore, submitted that, the decision relied upon by the LD.CIT(A) in the case of DCIT Vs. M/s.HES Infra (supra) is not applicable and needs to be rejected.

10. The learned CIT-DR, Shri B. Bala Krishna, on the other hand, supporting the order of the LD.CIT(A) submitted that, the AO and LD.CIT(A) had brought clear facts to the effect that the appellant is only a sub-contractor, who executed civil construction work for the main contract, i.e., M/s.HCC-MEIL-BHEL(JV), in terms of Work Order No.14020223 dated 22-03-2017. As per the provisions of Section 80IA(4) of the Act, one of the conditions for claiming deduction under Section 80IA of the Act, is an Enterprise developing an infrastructure facility shall enter into agreement with Central Government or any State Government or local authority or any statutory body. In the present case, the agreement for development of infrastructure facility was entered into by M/s.HCC-MEIL-BHEL(JV) with Government of Andhra Pradesh, Irrigation and C.A.D. Department. If at all profit derived from infrastructure facility is eligible for deduction under Section 80IA(4) of the Act, then only the person, who entered into agreement with Government can claim deduction. In the present

case, one of the constituent partners of J.V. i.e., M/s. HCC has sub-contracted the civil work to the appellant on back-to-back basis, and the appellant has simply carried out civil construction work, and therefore, it cannot be said that the appellant is a developer of infrastructure facility and the profits derived by it from development of infrastructure facility is eligible for deduction u/s 80IA(4) of the Act. The CIT-DR further referring to the findings of LD.CIT(A) submitted that, the LD.CIT(A) has brought out clear facts in light of TDS deducted on payment made by the Irrigation Department and observed that the bill has been submitted by the M/s.HCC-MEIL-BHEL(JV) to the Irrigation Department and TDS has been deducted in the name of JV and in turn, the JV partner has transferred the amount to the appellant company. From the above, it is undisputedly clear that the appellant is only a sub-contractor, but not a principal contractor to the infrastructure facility. The LD.CIT(A), after considering the relevant facts, has rightly sustained the addition made by the AO towards disallowance of deduction u/s 80IA(4) of the Act, and thus, the order of the LD.CIT(A) should be upheld.

11. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant case laws relied upon by the AO and LD.CIT(A) in support of their reasoning and also case laws relied upon by the assessee in support of their contentions. The AO disallowed deduction claimed under Section

80IA(4) towards profits derived from infrastructure project Pranahita Chevella Lift Irrigation Scheme, Link-IV, Package No. 10, on the ground that the appellant had not entered into any agreement with Central Government or State Government or local authority or any statutory body and which is a pre-condition for claiming deduction under the said provisions of the Act. It was the contention of the assessee before the AO that the appellant is a 'developer' of infrastructure facility, as defined under Section 80IA(4) of the Act, and the profit derived from the development of infrastructure facility, is eligible for deduction under Section 80IA(4) of the Act. In order to resolve the dispute, it is necessary for us to refer to the provisions of Section 80IA(4) of the Act, and conditions provided therein for claiming deduction towards profits derived from eligible project. The provisions of Section 80IA(4) of the Act, deal with deduction in respect of profits and gains from industrial undertaking or enterprise engaged in infrastructure development etc. Sub-section (4) of Section 80IA of the Act, deals with deduction towards profits derived by any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility, which fulfills all the following conditions, namely…

> *"(a) it should be owned by a company registered in India or by a consortium of such companies or [by an authority or a board or a corporation or any other body established or constituted under the central state Act,*

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any statutory body for (i). developing or (i) Operating and maintaining or (ii). Developing, operating & maintaining,

(c). It has started or starts operating and maintaining the infrastructure facility on or after the 1st Day of April 1995."

12. As per the said section, an "Enterprise" should be owned by a company registered in India or by a consortium of such companies. Further, it shall enter into agreement with the Central Government or a State Government or any local authority or any other statutory body for developing or, operating and maintaining or developing, operating and maintaining any infrastructure facility. Finally, it should start operating and maintaining the infrastructure facility on or after the 1st day of April of 1995. In other words, for claiming deduction under Section 80IA(4) of the Act, any enterprise engaged in the business of developing or, operating and maintaining or any developing, operating and maintaining any infrastructure facility and satisfy the above conditions can claim deduction towards profit derived from development of any infrastructure project. In the present case, there is no dispute with regard to satisfying the conditions of enterprise owned by a company registered in India or by a consortium of such companies. In fact, the appellant is owned by an Indian company. The only dispute is with regard to entering into an agreement with the Central Government or a State Government or any local authority or any other statutory body. In fact, the AO never disputed the fact that the Enterprise is owned

by an Indian company and also satisfied the other conditions, however, disputed the condition of entering into an agreement with the Central Government or a State Government or any local authority or any other statutory body. According to the AO, the appellant has not satisfied the condition of entering into agreement with the Central Government or a State Government or any local authority or any other statutory body for developing infrastructure facility. In other words, the AO never disputed the fact that deduction claimed towards profit derived from development of infrastructure facility is eligible for claiming deduction under Section 80 IA(4) of the Act. According to the AO, the appellant is only a sub-contractor, who executed civil contract work for M/s. HCC, in terms of Work Order No.14020223 dated 22-03-2017. Therefore, the Assessing Officer rejected the claim of deduction under Section 80IA(4) of the Act.

13. We have given our thoughtful consideration to the reasons given by the AO and LD.CIT(A) to reject deduction under Section 80IA(4) of the Act, towards profits derived from development of infrastructure project in light of arguments advanced by the learned counsel for the assessee and we ourselves do not subscribe to the reasons given by the LD.CIT(A) for the simple reason that, there is no dispute with regard to the project developed by the assessee, which is an infrastructure facility, as defined under Section 80IA(4) of the Act. On perusal of the documents submitted by the assessee, it is seen that the project

Pranahitha Chevella Lift Irrigation System, Link-4, Package No.10, on which the appellant has claimed deduction under Section 80 IA(4) of the Act, has been awarded by the Government of Andhra Pradesh, Irrigation and C.A.D Department to M/s.HCC-MEIL-BHEL(JV) in terms of Agreement dated 02-12-2008. As per the agreement between the JV and Government of Andhra Pradesh, the civil work is to be carried out by M/s.HCC and mechanical work of the project is to be carried out by M/s.MEIL and M/s.BHEL. The agreement between Government of Andhra Pradesh and JV provides for certain clauses, including sub-contracting certain portion of work to any other contractor, who fulfills eligibility criteria, as per the tender document floated by the Government of Andhra Pradesh for development of said infrastructure project, but the only condition for sub-contracting work to other contractor is, the person, who executing the works should have eligible criteria and work experience and further, the sub-contract should be approved by the developer of the project, i.e., Government of Andhra Pradesh, Irrigation and C.A.D. Department. In terms of agreement with Government of Andhra Pradesh, Irrigation and C.A.D. Department, one of the JV partners, M/s. HCC, in terms of Clause 43 of Agreement dated 02-12-2008, sub-contracted entire civil work in the project on back-to-back basis to the appellant with all risks and rewards. Further, before entering into sub-contract work with the appellant, the Principal Contractor M/s.HCC has taken permission from the Government of Andhra Pradesh, Irrigation and C.A.D Department

and the developer of the project has approved the appellant for executing the civil works. Therefore, it is necessary for us to examine the eligibility of the appellant to claim deduction under Section 80IA of the Act, in light of the infrastructure project developed by the Government of Andhra Pradesh, Irrigation and C.A.D. Department, the JV agreement between the constituent partners dated 02-12-2009, bid document for the Project Pranahitha Chevella Lift Irrigation Scheme, issued by the Government of Andhra Pradesh and the Work Order issued by M/s.HCC to the appellant company.

14. The project Pranahitha Chevella Lift Irrigation Scheme is a huge irrigation Scheme developed by the Government of Andhra Pradesh for lifting 88.24 TMC of water from Mid Manair to new reservoir at Ananthagiri Village, Illanthakunta Mandal, Karimnagar District by water conveyor system with all associated components to irrigate an ayacut of 30,000 acres. The total size of the contract value as per revised estimate was Rs.2715 crores. If you go by the type of infrastructure project undertaken by the JV partners and the size of the contract value, it is impossible for a single person to execute such a huge infrastructure facility, within a short time. Therefore, considering the nature and size of the infrastructure facility, the developer i.e., Government of Andhra Pradesh, Irrigation and C.A.D. Department itself has provided for sub-contracting up to 50% of the work to the other

eligible contractors upon satisfying the eligibility criteria and having required experience and strength to carry out the development work, which is provided in Clause 43 of the Agreement between the JV and the Government of Andhra Pradesh. Further, M/s.HCC-MEIL-BHEL(JV) has sub-contracted the entire civil work to the appellant company, after considering the experience and strength of the appellant and also after obtaining necessary permission from the authorities, as required under the BID document. Since the condition of sub-contracting portion of work to other contractor is ingrained in the agreement between the JV and Government of Andhra Pradesh itself, in our considered view, the agreement between the appellant company and M/s.HCC for developing the project (civil works) is akin to agreement with the Central Government or a State Government or any local authority or any other statutory body. In our considered view, once the project is considered to be 'eligible project' in terms of provisions of Section 80IA(4) of the Act and there is a provision for sub-contracting portion of the work to the other contractor, as per clauses of the agreement between the parties, in our considered view, the agreement between the appellant company and one of the JV partners is as good as, the agreement between the authorities and the developer for developing the project and it goes back to the date of original agreement. Therefore, we are of the considered view that Assessing Officer, upon satisfying the fact that the profits derived from the project of development of infrastructure facility is eligible for

claiming deduction under Section 80IA(4) of the Act, erred in disallowing the claim of the appellant only on the ground that the agreement between the appellant and M/s.HCC is not in terms of section 80IA(4) of the Act, and thus, in our considered view, reasons given by the Assessing Officer is incorrect and cannot be accepted.

15. Having said so, let us come back to the nature of work undertaken by the assessee. As we have said in earlier part of this order, the appellant has developed an infrastructure facility, in the nature of irrigation project, which satisfies the conditions for claiming deduction under Section 80IA(4) of the Act. Further, if you go by the scope of the project work, as defined in the BID document, it is a huge irrigation project for drawing 88.24 TMC water from Mid Manair Reservoir in 120 days with a static head of about 88 mtrs lift in single stage at Anantagiri Village and the project requires large-scale civil, mechanical, and electrical works. Therefore, going by the nature of the project and size, in our considered view, the appellant has undertaken all the entrepreneurial and investment risk that any developer would have undertaken. The appellant has also undertaken the risks of the project. There was no reduction in quantum or quality of risk undertaken by the appellant in whatsoever manner, as the project was undertaken from a JV partner on back-to-back basis. A look at the business profile of the appellant clearly demonstrates that entrepreneurial and investment risk undertaken by the appellant

in this venture. For example, the appellant has undertaken the following activities including, investigation of land and deciding the location of facilities, project design associated risks, defect liability risk of 24 months after project completion, inherent risk of delayed payment, arbitration and litigation, and development work to be completed as per the agreement within time and as such, the assessee was faced with the risk of incurring heavy expenses of correction or redoing the work. Therefore, going by the nature of work and the work executed by the assessee, it is not less than to any developer, who develops a big infrastructure project like irrigation projects. Therefore, having noticed that the assessee has carried out development of infrastructure project, as defined under Section 80IA(4), upon satisfying the conditions of the BID document, in our considered view, the AO ought not to have rejected the claim of the appellant merely for the reason that the appellant has not entered into any direct agreement with the Central Government or a State Government or any local authority or any other statutory body. In our considered view, if you go by the provisions to Section 80IA(4) of the Act, it even allows deduction under Section 80IA(4) of the Act, to a successor entity, in case of transfer of project to other entity for operating and maintaining of infrastructure facility, and thus, in our considered view, the proviso does not require that there should be a direct agreement between the transferee enterprise and the specified authority for availing the benefit under Section 80IA of the Act, and this legal principle is supported by the decision of Hon'ble

Madras High Court in the case of CIT Vs. Chettinad Lignite Transport Services (P.) Ltd (supra).

16. We further noted that the professed goal of the legislation of Section 80IA(4) as per explanatory memorandum to Finance Bill, 2001 is measures to accelerate economic development – liberalization of tax holiday provisions for infrastructure under the existing provisions of Section 80IA i.e., roads, highways, bridges, airports, ports etc., Therefore, the legislation has extended the scope of deduction under Section 80IA of the Act, keeping in view the capital intensive nature of big infrastructure projects like irrigation projects etc. The CBDT issued a Circular No.4 of 2010, dated 18.05.2010, which was issued after introduction of the explanation by the Finance Act 2009, and a reading of the Circular would indicate that the Board clearly mentioned that the widening of existing road is an infrastructure facility, and any enterprise carrying out the widening of an existing road would be eligible for deduction under Section 80IA(4) of the Act. This also shows that it was never in contemplation of Legislature to assign a literal and constricted meaning to development vis-à-vis a simple contract. Therefore, from the intention of the legislation and clarifications issued by the CBDT, it is absolutely clear that the sole motive of the provisions of Section 80IA of the Act, is to provide deduction towards profit derived by the enterprise from development of an infrastructure facility and further, by way of

proviso to Section 80IA(4), the Legislature has provided deduction for remaining period to any enterprise, who succeeds the project by way of amalgamation or transfer, etc. Therefore, in our considered view, once the successor entity is eligible to claim deduction under Section 80IA, then there is no question of denying the said benefit to any enterprise, which is a joint partner of said infrastructure facility. Since the appellant is one of the partners of the development of irrigation project, in our considered view, the appellant is entitled for deduction under Section 80IA(4) of the Act.

17. The appellant has relied upon the decision of Hon'ble Madras High Court in the case of CIT Vs. Chettinad Lignite Transport Services (P.) Ltd (supra), wherein the Hon'ble High Court has considered an identical issue of deduction under Section 80IA(4) of the Act, in light of claim made by successor entity upon transfer of enterprise to other authority for operation and maintenance of infrastructure facility, and after considering the relevant facts and also provisions of Section 80IA(4) of the Act, held that even the sub-contractor is eligible for deduction as per the proviso of Section 80IA(4) of the Act, and there is no requirement of direct agreement between the specified authority and the transfer enterprise. The relevant findings of the Hon'ble High Court of Madras are as under :

"8. From a reading of the aforesaid Provisos to Section 80IA (4), it is clear that the Legislature intended to extend the said bene fit under section 80IA of the Act to an enterprise involved in (i) developing or; (ii) operating and maintaining Or; (iii) developing, operating and maintaining any infrastructure facility. The term "infrastructure facility" has been defined in the Explanation and the same includes a toll road, a bridge or a rail system, a highway project, etc. These are, obviously, big infrastructure facilities for which the enterprise in question should enter into a contract with the Central Government or State Government or Local Authority. However, the Proviso intends to extend the benefit of the said deduction under Section 80IA of the Act even to a transferee or a contractor who is approved and recognised by the concerned authority and undertakes the work of the said development of infrastructure facility or only operating or maintaining the same. The Proviso to sub-section (4) stipulates that subject to the fulfillment of conditions, the transferee will be entitled to the said benefit as if the transfer in question had not taken place. It has been found by the Assessing Authority himself, the present assessee in Transport Services Private Limited under M/s. Chettinad, the present case that an Agreement dated 16.04.2002 captioned as Lignite Transport System with M/s. ST-CMS Electric Company Private Limited, had undertaken the work of developing the said railway sidings and was operating and maintaining the same. ***The only ground on which the Assessing Authority denied the said benefit was that the assessee himself did not enter into any such contract with the Railways or with the Central Government.***

9. The learned Tribunal, however, in our opinion, rightly applied the Proviso to Section 80IA(4) of the Act and held that ***since the assessee was recognised as contractor for these railway sidings, which undoubtedly fell under the definition of "infrastructure facility," it was entitled to the said benefit under Section 80IA of the Act.*** *The grounds on which the Assessing Authority denied the said benefit to the assessee ignoring the effect of Provisos to Section 80IA(4), therefore, could not be sustained. The Tribunal, in our opinion, has rightly held that the law does not require that there should be a direct agreement between the transferee enterprise and the specified authority availing the benefit under Section 80IA of the Act. There is no dispute before us that the assessee was duly recognised as transferee or assignee of the principal contractor M/s. ST-CMS Electric Company Private Limited and was duly so recognised by the Railways to operate and maintain the said railway sidings at Vadalur and Uthangal Mangalam Railway Stations. The findings of fact with regard to the said position recorded by the learned Tribunal are, therefore, unassailable and that clearly attracted the first Proviso to Section 80IA(4) of the Act. [Emphasis supplied]."*

18. The assessee had also relied upon the decision of ITAT Hyderabad Bench, in the case of ACIT Vs. Megha Engineering & Infrastructure Ltd., in ITA No.1499/Hyd/2019 dated 25.09.2024, wherein the Coordinate Bench of the Tribunal has considered the deduction claimed under Section 80IA(4) of the Act, by a constituent partner of JV, in light of agreement between the JV and specified authority, and after considering the relevant provisions held that partner of JV is also eligible for deduction, if such deduction is not claimed by the JV. The Co-ordinate Bench of the Tribunal further held that in case of agreement with the specified authority, if the JV is entered into agreement with the specified authority, it is as good as the constituent partner is entered into agreement with the specified authority and further held that it satisfies the conditions provided under Section 80IA(4) of the Act. The relevant findings of the Tribunal are as under :

> *"10. We have heard both parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has executed several development projects as enumerated in the assessment order and among the works, some projects were directly awarded to the appellant as main developer / builder, while some projects were awarded to the JVs/Consortium, but executed by assessee company, as constituent partner of the said JV in proportion to their share. It is also not in dispute that the appellant has satisfied all the conditions except clause (b) of Section 80IA(4), as noted by the Assessing Officer. In other words, the AO accepted the fact that the projects executed by the appellant, including those projects which were awarded to JVs/ Consortiums, but executed by the assessee are infrastructure projects, as defined under Section 80IA(4) of the Act and thus, on being satisfied with the relevant provisions therein, the assessee is eligible for deduction under Section 80IA(4) of the Act. The only dispute is with regard to not satisfying clause (b) of Section 80IA(4)(1), which states that in order to claim deduction under Section 80IA(4) of the Act, the enterprises shall enter into an agreement with the Central government or State Government or local authority or any authority for*

developing, operating and maintaining or developing, operating and maintaining a new infrastructure facility. The appellant claims that it has satisfied clause (a) of Section 80IA(4) of the Act, because as a constituent partner of JV /Consortia, it has signed agreement with relevant Central or State Government or local authority for development of infrastructure project. Further, as per clause (a) of Section 80IA(4) of the Act, in order to claim deduction under Section 80IA(4), the enterprise should be owned by a company registered in India or by a consortium of such companies. Further, Clause (a) makes it clear that a company registered in India, or a consortium of such company registered in India should be owned the undertaking and Clause (b) states that such entity should be entered into agreement with the relevant authorities. Going by the above provisions, in our considered view, the assessee being one of the constituent partners of JV / Consortia has signed the agreement with the Central or State Government or local government for development of infrastructure project. Therefore, in our considered view, once the appellant, being a constituent partner JV / Consortia has entered into an agreement with relevant authorities, then it is as good as the appellant has entered into agreement in its individual capacity for development of infrastructure project. This fact has been further strengthened by the relevant JV / Consortium agreement between the JV partners, wherein it has been clearly specified that this JV / Consortia has been constituted for the purpose of preparing or submitting qualification document and joint bid for the project. The said agreement further states that in the event of the contract being awarded to the JV / Consortium, being the members of the said JV / Consortium, the development works as contemplated by the above contract shall be executed as per the development and scope of works, but for no other purposes. We further noted that the JV / Consortia agreement between members clearly specify the scope of undertaking, its exclusivity, role and responsibility of the JV partners and risk to be undertaken by each of the JV partners. Further, immediately after JV / Consortium, the same has been informed to relevant authorities and also the plan of action has been submitted to the principles for execution of development projects. Further, in few cases, the appellant, being the constituent partner of the JV has directly submitted bills to the authorities and the principles has directly paid to appellant, instead of JV / Consortia, after deducting the TDS applicable as per law in the name of the appellant. From the above, it is undisputedly clear that although the JV/Consortium is a separate entity for the purpose of assessment, but all other activities, including designing, development, and maintenance of the project are undertaken by the assessee. Therefore, we are of the considered view that once the assessee, being a constituent partner of the JV/Consortium, has executed the project and also undertaken relevant risks, including financial risks, the assessee becomes a developer of the infrastructure project and also as a constituent partner of the JV/Consortium, satisfied

the condition of entering into an agreement with relevant Central or State government or any authority as specified in clause (b) of Section 80IA(4)(1) of the Act. This is further fortified by the provisions of Section 80IA(4) of the Act and as per the proviso, the deduction is allowed to a successor entity in case one enterprise developed such infrastructure facility and after development, transfer such infrastructure facility to another Enterprise for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with agreement with the Central / State Government or local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period. Going by the above provisions, when the law itself allowed the benefit to successor entity in case of transfer, then there is no reason as to why such deduction shall not be allowed to constituent partner JV / Consortium, more particularly, when the facts of said JVs / Consortium clearly established the fact that the appellant has carried out all the activities, including design and development of project and maintaining of said project.

11. The appellant has relied upon the decision of Income Tax Appellate Tribunal, Hyderabad in assessee's own case for assessment years 2010-11 to 2015-16, in ITA No.607 to 601/Hyd/2016 dt.15.02.2019. We find that the co-ordinate bench of ITAT for earlier years has considered very similar issues and by following the decision of Income Tax Appellate Tribunal, Visakhapatnam in the case of M/s. Transstory (India) Ltd. Vs. ITO (supra) has held that the assessee is entitled for deduction under section 80IA(4) of the Act on the profits earned from the execution of the projects awarded to JV / Consortium. The relevant findings of the Tribunal are as under.

> *"9.2 With regard to other issue, i.e. contracts awarded to JVs and whether the assessee can claim the same as a constituent of the above JVs, the coordinate bench of ITAT, Visakhapatnam in the case of Transstory (India) Ltd. (supra) held that the constituents of JVs are eligible to claim deduction u/s 80IA. For the sake of clarity, we reproduce the findings of the Bench in the said case, as under:*
>
> > *"Undisputedly the joint venture or the consortium was formed only to obtain the contract from the Government bodies. At the time of execution of the joint venture or the consortium, it has been made clear that work/project awarded to the joint venture would be executed by the joint venturers or the constituents. As per mutually agreed terms and conditions between them, it was also agreed that each party shall be responsible for the provisions of contract*

without limitation on resources required for the purpose of fulfilment of the scope and also solely responsible for the performance of its scope of work and shall bear all technical, commercial and facing risk involved in performing its scope of work. It was also agreed that none of the party shall assign its rights and obligations to any other party without written consent of other party. From a careful perusal of this joint venture agreement and the consortium agreement, it is evidently clear that the joint venture and the consortium was formed only with an object to bid contract. Once the project or contract is awarded to the joint venture or the consortium, it is to be executed by its constituents or the joint ventures in a ratio agreed upon by the parties. In the instant case in case of a joint venture agreement, the assessee was entitled to execute the 40 per cent of total work awarded by the Andhra Pradesh Government to the joint venture and in case of a consortium it was agreed that the entire work is to be executed by the assessee itself. Therefore for all practical purposes, it was the assessee who executed the work contract or the project awarded to the joint venture. No doubt the joint venture is an independent identity and has filed its return of income and was also assessed to tax but it did not offer any profit or income earned on this project/works awarded to it nor did he claim any exemption/deduction under s. 80 - IA(4). These facts clearly indicates that the joint venture was only a de jure contractor but in fact the assessee was a de facto contractor.

There is no dispute with regard to the fulfilment of other requisite conditions. The dispute was only raised that the contract was awarded only to the joint venture and not to the assessee and therefore assessee is not entitled for deduction. Joint venture and the consortium was formed only to obtain the contract from the Government body and they in fact did not execute the work awarded to it. In a joint venture agreement or a consortium agreement, it was agreed that the awarded work had to be executed by the joint venturers or parties to the agreement in an agreed manner. The work was Megha Engg. & Infrastructure Ltd. awarded by the Andhra Pradesh Government and the KSHIP, a body of the State Government of Karnataka to the JV and consortium but the work was executed by the assessee and the other constituents. In case of joint venture agreement, 40 per cent works were executed by the assessee and in case of consortium, the 100 per cent work was executed by the assessee. Whatever bills were raised

by the assessee for the work executed on JV and consortium, the joint venture and consortium in turn raised the further bill of the same amount to the Government. Whatever payment was received by the joint venture, it was accordingly transferred to their constituents. Therefore, the joint venture or the consortium was only a paper entity and has not executed in contract itself. They have also not offered any income out of the work executed by its constituents, nor did they claim any deductions under s. 80 -IA(4). Therefore, in all practical purposes, the contract was awarded to the constituents of the joint venturers through joint venture and the work was executed by them. As per provisions of s. 80-IA(4), the benefit of deduction under this section is to be given only to the enterprise who carried on the classified business. Therefore, in the light of this legal proposition, the assessee is entitled for the deductions under s. 80 -IA(4) on the profit earned from the execution of the work awarded to JV and consortium."

Respectfully following the above decision, we dismiss the ground raised by the revenue in this regard."

12. A similar view has been taken by ITAT, Lucknow Bench in the case of PMC Constructions Co. P. Ltd Vs. DCIT (supra), wherein it has been held that the appellant is eligible for deduction under Section 80IA(4) in respect of the profits derived from the projects awarded to JV / Consortium but executed by the appellant. The decision of the ITAT Lucknow Bench has been upheld by the Hon'ble Allahabad High Court. The sum and substance of the ratios laid down by the various benches of the Tribunal is that when the appellant has satisfied all the conditions prescribed under Section 80IA(4) of the Act, but merely for the reason that the agreement is entered into by JV / Consortium, the deduction under Section 80IA(4) cannot be denied."

19. Coming back to the case laws relied upon by the ld.DR in the case of DCIT Vs. M/s.HES Infra Private Limited (supra). The co-ordinate Bench of the Tribunal by following the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company and others (supra), rejected the claim of the appellant deduction under Section 80IA

of the Act, for not satisfying the condition of entering into agreement with specified authority. We find that the Co-ordinate Bench of the Tribunal of ITAT in the case of ACIT Vs. Megha Engineering and Infrastructure Ltd, (supra) has considered the decision relied upon by the ld.DR in the case of DCIT Vs. M/s. HES Infra Pvt. Ltd. (supra) and upon giving reasons, distinguished the decision of the co-ordinate Bench of the Tribunal in the case of DCIT Vs. HES Infra Pvt. Ltd. (supra) and relevant findings of the Tribunal are as under :

> *"13. Coming back to case laws relied upon by the ld.DR for the Revenue. The ld.DR relied upon the decision of ITAT, Hyderabad Bench in the case of DCIT Vs. HES Infra Pvt. Ltd (supra), We have gone through the decision of ITAT, Hyderabad Bench in the above case, and we find that, the Tribunal has gone on sole premise of interpretation of statutory provisions in light of the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company (supra) and held that in case of a person claiming deduction under the provisions of Section 80IA(4), the onus is on the assessee to prove that the assessee has fulfilled all the parameters laid down by the statute for claiming deduction. Since the appellant has not entered into agreement with these Government / statutory authorities, there is a violation as laid down by the statute and the assessee is not entitled to claim deduction. With due respect, we are unable to follow the decision relied upon by the ld.DR for the simple reason that, in the above case, the Tribunal has not discussed whether the appellant is otherwise eligible for deduction under Section 80IA(4) of the Act or not. Secondly, while deciding the issue, the Tribunal has not considered the decision of co-ordinate bench in appellant's own case for earlier years and other decisions rendered by the co-ordinate bench of the Tribunal. Further, the Hon'ble Supreme Court, in a subsequent decision in the case of Government of Kerala and another Vs. Mother Superior Adoration Convent in Civil Appeal No.202 of 2012, after considering its earlier decision in case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company (supra) held that the 5-Judge Bench did not refer to line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. The Court further held that they cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well*

settled that a decision is only an authority for what it decides and not what it matters logically follow from it. This being the case, it is obvious that the beneficial purpose of exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of those cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand should be eschewed. Going by the subsequent decision of the Hon'ble Supreme Court in the above case, it is undisputedly clear that exemption provisions should be interpreted liberally in order to achieve the objectives of the legislature and going by the above ratio, in our considered view, there is no dispute with regard to the fact in the present case, the appellant is engaged in the business of developing infrastructure project like irrigation project, water supply system, hydropower plants and roads and railway lines and the statute provides for specific exemption under section 80IA(4) of the Act in respect of infrastructure projects, in our considered view, going by the liberal interpretation of the statute, the assessee must be given the benefit of deduction, having been satisfied all the conditions, including the condition of entering into an agreement with the State Government or Central Government or with any local authority, as a constituent partner of the JV/Consortium, more particularly, except entering into agreement, all other activities were carried out by the assessee. Further, the earlier order of ITAT in assessee's own case was dt.15.02.2019 and order of the Hon'ble Apex Court in Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company (supra) is dated 31.07.2018. The Co-ordinate Bench of the ITAT had also taken note of the Judgment of the Hon'ble Apex Court in Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company (supra) while adjudicating the issue of deduction u/s 80IA(4) of the Act. Therefore, in our considered view, the arguments of the learned counsel for the revenue in light of the order of ITAT in the case of DCIT Vs. HES Infra (P) Ltd., that the earlier order of the Tribunal in assessee's own case, has not considered the Hon'ble Apex Court's decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company (supra), is not correct. Therefore, we prefer to follow the decision of ITAT, Hyderabad Bench in assessee's own case, rather than the decision relied upon by the ld. D.R. in the case of DCIT Vs. HES Infra Pvt. Ltd (supra)."

20. In this view of the matter, considering the facts and circumstances of the case, and also, by following the decision of Hon'ble Madras High Court in the case of CIT Vs. Chettinad Lignite

Transport Services (P.) Ltd (supra) and the decision of ITAT in the case of ACIT Vs. Megha Engineering and Infrastructure Ltd., (supra), we are of the considered view that the appellant is entitled for deduction u/s 80IA(4) of the Act, towards profits derived from development of infrastructure facility. The LD.CIT(A) without appreciating the relevant facts, simply sustained the addition made by the Assessing Officer towards disallowance of deduction claimed under Section 80IA(4) of the Act. Thus, we set aside the order passed by the LD.CIT(A) and direct the AO to delete the addition made towards disallowance of deduction claimed under Section 80IA(4) of the Act.

21. In the result, the appeal filed by the assessee is allowed.

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

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 27.11.2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Prathima Infrastructure Limited, Plot No.213, Road No.1, Film Nagar, S.O. Shaikpet, Hyderabad – 500096, Telangana.
2	The Assistant Commissioner of Income Tax, Central Circle – 2(4), Basheerbagh, Hyderabad.
3	Pr.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order