

**आयकर अपीलिय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No.1958/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-2018)**

M/s. Lakshmi Narayana
Constructions,
No.10, Kalaimagal nagar,
Kolathur, Chennai 600 099.

Vs. The Income Tax Officer,
Non Corporate Ward 10(6)
Chennai.

[PAN: AACFL 6543K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms.Lekha, C.A.,

प्रत्यर्थी की ओर से /Respondent by

: Mr. V. Justin, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 25.11.2024

घोषणा की तारीख /Date of Pronouncement

: 26.11.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1061414575 (1) dated 23.02.2024. The assessment was framed by the Income Tax Officer, Non Corporate Ward 10(6) Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 20.12.2019.

2. At the outset, it is noticed that the appeal filed by the assessee is time barred by 90 days. The order of CIT(A) dated 23.02.2024 was communicated to the assessee on 23.02.2024 as per Form 36. The appeal has to be filed on or before 23.04.2024 but was filed only on 22.07.2024. The assessee has filed petition for condonation of delay stating that income-tax matters were handled by her husband until he passed away in the year 2019. Until that time all the notices and orders were being served manually only. Further, she has submitted that she was the only person who was taking care of the business after the demise of her husband and that she was under the impression that the orders will be served manually only just the old time. She never knew about the transformation from manual to the digital era. As soon as she came to know about the CIT(A) order, she immediately signed the appeal papers and the same was submitted before the Tribunal on 22.07.2024 with a delay of 90 days. When these facts were confronted to the Id. JCIT-DR, he objected for condoning the delay. We find the cause as reasonable and hence, condone the delay and admit the appeal for adjudication.

03. Brief facts of the case are that the assessee firm is a contractor for laying of roads and is carrying on the work of construction of Storm Water Drain, laying of roads, strengthening and widening of roads etc. During the year relevant to the Asst. year, the assessee firm has undertaken laying of roads for Alandur municipality and Zonal Offices of Corporation of Chennai. The assessee has e-filed his return of income for the AY 2017-18 on 15/10/2017 admitting an income of Rs.3,60,710/-. The case was selected for scrutiny under CASS. Notice u/s 143(2) of the Act dated

17/08/2018 and Notice u/s 142(1) of the Act dated 07/02/2019 were issued and duly served on the assessee. In the meantime the case has been notified to Non Corporate Ward 10(6) by the Pr. Commissioner of Income Tax-3 vide notification No.19/2019 in C.No.3062/PCIT-3/2019-20 dated 13/11/2019. Further a letter dated 15/11/2019 was also issued to the assessee. In response to notices, the assessee had filed required details. For the Asst. Year 2017-18, the assessee admitted Rs.3,60,710/- income after claiming deduction u/s 80IA of the Act to the tune of Rs.71,62,178/-. The Id. Authorized Representative argued that even if an infrastructure is built by taking a contract from the government, then such person becomes a developer and it cannot be treated as a works contractor. It is also argued that the assessee firm was assigned construction and development of the infrastructure facility and hence the claim of the assessee firm is in order. However, Ld. Assessing Officer opined that the assessee firm was given only contracts work and not any independent development work. It was only awarded contracts to execute specific civil works for which an agreed amount was to be paid as in any works contract. As per the Ld. Assessing Officer the explanation to section 80IA(4) of the Act introduced w.e.f 01.04.2000 is clear that the assessee firm is a works contractor only and not a developer. Hence, the assessee firm is not eligible for claiming deduction u/s. 80IA(4) of the Act. The deduction claimed by the assessee u/s 80IA(4) to the tune of Rs.71,62,178/- was disallowed. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. Before the Id. CIT(A), the assessee submitted that the Id. CIT(A) had allowed the similar disallowance u/s.80IA of the Act for the assessment year 2015-2016 on

the same set of facts. Hence, prayed for allowing the claim of the assessee. Ld. CIT (A) was of the view that the appellant firm was not involved, in any endeavor as developer but it executed only works contract awarded by the Roadways Authorities for which the provisions of the explanation to Section 80IA(4) of the Act clearly not applicable. Ld.CIT(A) after perusal of the terms and conditions of the contracts observed that the appellant did not develop any new infrastructure facility but only rendered services of civil work in the form of repairing and maintenance of the existing road. As there was no development of any infrastructure facility, hence the appellant was not eligible for claim of deduction u/s.80IA (4) of the I.T. Act. Accordingly, he confirmed the action of the Id. Assessing Officer. Aggrieved, assessee preferred an appeal before the Tribunal.

5. Before us, the Id. Authorized Representative submitted that the Id. CIT(A) had allowed the similar disallowance u/s.80IA of the Act for the assessment year 2015-2016 on the same set of facts. However for the year under consideration 2017-2018, the Id. CIT(A) had disallowed the claim on the fact that the appellant did not develop any new infrastructure facility but only rendered services of civil work in the form of repairing and maintenance of the existing road. The Id. Authorized Representative submitted Audit Report in form 10BB and Tender project documents to substantiate its claim that the assessee is a developer.

6. On the other hand, Id. Departmental Representative contended that the Id. CIT(A) for the assessment years 2014-2015 and 2015-16 had allowed the appeal of the assessee but on further appeal by the revenue before the Tribunal, the Tribunal only on the ground of the tax effect dismissed the revenue appeals. He further

submitted that assessee firm was awarded works contracts only and was never granted any vested interest in any of the development works. Hence, the Id. Departmental Representative prayed for dismissal of appeal.

7. We have heard rival submissions and have carefully perused the entire record. The case of the assessee is that it is a "developer" as stipulated u/s.80IA(4) of the Act and not "works contractor". The Section 80IA(4) of the Act applies to any enterprise, which carried on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facilities, which fulfill the above conditions. Before us, assessee has submitted paper book consisting of Audit report in form 10BB and also tender project documents to substantiate its claim as developer (Pg 22-66 of Paper Book). In view of the Audit Report in form 10BB and also tender project documents submitted by the assessee, we deem it appropriate that the issue deserves to be set aside to the file of the Id. CIT(A) for fresh consideration to ascertain whether assessee is a developer or works contractor. The Ld.CIT(A) who shall proceed for denovo adjudication of appeal after providing proper opportunity of hearing to the assessee. The Id. CIT(A) will also take into consideration the order of the Id.CIT(A) dated 16.03.2018 for the assessment years 2014-2015 and 2015-16 wherein the similar disallowance u/s.80IA of the Act has been deleted on the same set of facts. The assessee is directed to file all relevant documents/ evidence to substantiate its case forthwith without any fail, failing which Ld.CIT(A) shall be at liberty to proceed with the appellate proceedings as per law.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26th day of November, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 26-11-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF