# | आयकरअपीलीयअधिकरणन्यायपीठ, मुंबई|

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"C" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, HON'BLE JUDICIAL MEMBER**
**&**
**MS. PADMAVATHY S., HON'BLE ACCOUNTANT MEMBER**

## I.T.A. No.4940/Mum/2024
**Assessment Year: 2014-15**

| | | |
|---|---|---|
| **DCIT -1(2)1, Mumbai** | Vs | **Patil Construction and Infrastructure Ltd.**<br>Flat No. 2, Swadhin Sadan<br>C-Road, Churchgate<br>Mumbai - 400021<br>**[PAN: AAECM0806B]** |
| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/** (Respondent) |

## I.T.A. No. 4942/Mum/2024
**Assessment Year: 2015-16**

| | | |
|---|---|---|
| **DCIT -1(2)1, Mumbai** | Vs | **Patil Construction and Infrastructure Ltd.**<br>Flat No. 2, Swadhin Sadan<br>C-Road, Churchgate<br>Mumbai - 400021<br>**[PAN: AAECM0806B]** |
| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/** (Respondent) |

## I.T.A. No. 4944/Mum/2024
**Assessment Year: 2017-18**

| | | |
|---|---|---|
| **DCIT -1(2)1, Mumbai** | Vs | **Patil Construction and Infrastructure Ltd.**<br>Flat No. 2, Swadhin Sadan<br>C-Road, Churchgate<br>Mumbai - 400021<br>**[PAN: AAECM0806B]** |
| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/** (Respondent) |

| | |
|---|---|
| Assessee by : | Mandar Vaidya |
| Revenue by : | Shri Krishna Kumar, Sr. D/R |

सुनवाईकीतारीख/**Date of Hearing : 17/12/2024**
घोषणाकीतारीख/**Date of Pronouncement: 14/01/2025**

**आदेश/O R D E R**

**PER SANDEEP GOSAIN, JM:**

The present appeals by the revenue are preferred against the separate orders passed by the NFAC, Delhi, even dated 22/07/2024 [hereinafter 'the ld. CIT(A)'] pertaining to AYs 2014-15, 2015-16 & 2017-18.

2. Since all the issues involved in these three appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take up ITA No. 4940/Mum/2024, A.Y 2014-15 as lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

> *1. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) was justified in allowing claim of deduction u/s.801A of the Act amounting to Rs.4,40,47,969/-."*
>
> *2. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) failed to appreciate the fact that the assessee has not fulfilled the conditions laid down for claiming deduction u/s.801A of the Act."*
>
> *3. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) failed to appreciate that the assessee was involved in carrying out work in the nature of rehabilitation whereas there is no reference to the term 'road widening' anywhere in work order and has not carried out any work of development of new infrastructure facility or maintaining the same."*
>
> *4. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) failed to appreciate the fact that the assessee upon completion of the contractual obligations has been paid the agreed contract price as per work completed*

*whereas section 801A stipulates development or maintenance of infrastructure facility."*

*5. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) failed to appreciate the fact that the relationship between assessee and the government is that of the contractor and the contractee and the assessee has acted as a contractor only on a specific contract allotted by its principals, cost of which has been reimbursed from the principals who are the actual owner/ developer?"*

*6. "Whether on the facts of case and in law, the Ld.CIT(A) was justified to allow the assessee's appeal by considering additional evidences such as Form No.10CCB and copy of the agreement of the enterprises with the Central Government or a State Government or a local authority or a statutory body for carrying on the tate Government or a local authority or a statutory body for carrying on the business of developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility without following the statutory procedure including Rule 46A of the I.T. Rules in this respect."*

*7. "The Appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ACIT-1(2)(1), Mumbai be restored."*

*8. "The Appellant craves leave to amend or alter any grounds or add a new ground which may necessary. "*

3. There is a delay of 4 days in filing of these appeals by the revenue. After perusing the petition for condonation filed by the revenue dated 24/09/2024 and hearing the parties on this application, we are convinced that the revenue was prevented by 'sufficient cause' from filing the appeals in time. Therefore, keeping in view the principles laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR***

***1353 (SC)***, we condone the delay and hence the appeals are admitted for hearing on merits.

4. All the grounds raised by the Department are inter-related and inter-connected and relates to challenging the order of the ld. CIT(A) in allowing the claim of deduction u/s 80IA of Act, to the assessee. Therefore, we have decided to dispose of all the grounds by way of this present consolidated order.

5. Ld. DR appearing on behalf of the department reiterated the grounds of appeal raised before us and relied upon the orders passed by the AO. It was submitted that Ld. CIT(A) was not justified in allowing the claim of deduction u/s 80IA of the Act as the assessee had not fulfilled the contentions laid down for claiming the deduction and thus wholly relied upon the order of the AO.

6. Whereas on the contrary the Ld. AR reiterated the same arguments as were raised by him before CIT(A) and heavily relied upon the orders passed by the ***Hon'ble Income Tax Settlement Commission*** (referred to as "ITSC") in ***assessee's own case*** and also relied upon the orders of the ***Coordinate Bench of ITAT in assessee's own case for the A.Y 2018-19 in ITA No. 303 and 98/Mum/2023***. The Ld.AR also relied upon the decisions in the following cases:

***1. CIT Vs. ABG Heavy Industries Ltd. 322 ITR 323 (Bom)***

***2. Adhunik Infrastructure Pvt Ltd.,Vs. JCIT, ITA No. 1281/Kol/2015***

***3. Bhinmal Contractors Property and Land Developers P Ltd, Vs. ACIT, [2018] 93 taxmann.com 296 (Bom)***

***4. Pr. CIT Vs. Montecarlo Construction Ltd, [2024] 161 taxmann.com 222 (Guj)***

7. We have heard the counsels for both the parties and have gone through the documents placed on record, judgments cited before us and the orders passed by the revenue authorities.

8. From the records, we noticed that the assessee company is engaged in the business of execution of civil and development contracts and during the year under consideration the return of income was filed declaring taxable income of Rs. 65,43,894/- after claiming deduction u/s 80IA of the Act of Rs. 4,40,47,969/-. However the AO disallowed the claim of the assessee by holding that '*Hence it is crystal clear that the assessee company has not carried out any work of development of new infrastructure facility in these cases' and that ' Simply relying of an existing road would not be classified as a new infrastructure facility for the purpose of section 80IA(4)(i) of the Income Tax Act.*'

9. Mainly relying upon two reasons, disallowance of claim was made. It was also argued by the revenue that

the department has filed appeal against the order of ITSC allowing deduction u/s *80IA(4)(i) of the Act.*

10. In order to support their contentions, Ld. AR submitted that assessee has carried out the contracts of road widening and renovation of existing road and therefore the assessee cannot be termed as work contractor, as the work that is being done by the company is construction and of maintaining the infrastructure and for that assessee has to purchase the material and is bearing the risk by way of indemnifying the agencies of any defect in the construction of road.

11. Apart the assessee has also submitted that the issue in question has been thoroughly examined by the Board and it has been decided that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as ***'new infrastructure facility'*** for the purpose of Sec. *80IA(4)(i)* of the Act.

12. Even otherwise assessee has filed paper book containing details of work orders of eligible projects, which contains Form No. 10CCB, Financial Statements, ITR-V and the computation of total income and order passed u/s 245D (4) dated 19.03.2015.

13. We noticed that assessee has already claimed deduction u/s 80IA of the Act in its returns filed u/s 153A of the Act and had filed applications before ITSC

u/s 245D of the Act for A.Y: 2006-07 to 2012-13. The said applications were disposed off by ITSC vide its order dated 19.03.2015.

14. Before Hon'ble ITSC, assessee had contended its eligibility for claiming the deduction u/s *80IA(4)(i) of the Act,* to which Ld. CIT in his report under Rule 9 raised the objections vis-à-vis merits of the claim, which are identical to the grounds raised in the present appeal by the department. Therefore in this way the grounds raised in the present appeal are identical to the objections raised by the department before ITSC and the same are reproduced herein below:

> *iv. It is stated that there is difference between developing an infrastructure facility and executing a works contrast. The explanation introduced in 2007 w.e.f. 01.04.2000 clarifies that the deduction is not available in the case of execution of works contract'. Since the applicant was only a works contractor and not a developer, the impugned condition is not fulfilled.*
>
> *v. As per the CBDT circular, deduction is to the Highway projects. Even in respect of the Highway projects, it is allowable for new roads or creation of new lanes by widening of the existing roads. Relaying of the existing roads are not covered in the scheme. The applicants have not proved that they satisfy this condition.*

15. Hence in this scenario it has become more important to evaluate the orders of ITSC wherein identical objections were raised by the department and Hon'ble ITSC dealt with the same after thoroughly examining the factual as well as legal propositions.

16. We noticed the assessee in order to meet out the objections of the department had filed documentary evidences before ITSC and raised the contentions which are recorded by ITSC in its order in para No. 35.3 and the same is reproduced below:

> *(i) The applicants have first analyzed the history of the provisions of section 801A and stated that in the present form, the assessee need not be engaged in all the three activities of developing, maintaining and operating the infrastructure. It is enough if it is*
> *carrying on the business of either developing or maintaining and operating or developing, maintaining; and operating the infrastructure facility'*
>
> *(ii) The applicants have then dealt with the meaning of '* ***infrastructure facility****' as envisaged in the Explanation of the Section and highlighted that it will include 'a rood including toll rood', a bridge or a rail system' and 'a highway project including housing or other activities being an integral part of the highway project"*
>
> *(iii) They have then dealt with the* ***Dictionary meaning of the word 'develop'****' and stated that it includes 'act of making some area of land or water more profitable or useful/ or 'cause to grow, to elaborate or expand in detail',*
>
> *(iv) The applicants have then relied upon the CBDT Circular no 3 of 2008 dated 12.3.2008 according to which " where a person makes the investment and himself executes the development work 'i.e. carries out the civil construction work, he will be eligible for tax benefit under sec 80IA'. In contrast to this, a person who enters into a contract with another person including Govt or on undertaking or enterprise referred to in section 801A for executing the works contract, will not be eligible for the tax benefit u/s 801A"*

17. Further in order to support that assessee was ***'developer',*** it was argued that assessee being the

company has met out the basic requirement for claiming deduction and the activities of construction of the road and '***widening of the roads'*** have been clarified to be ***'infrastructure facility'***. For the deduction u/s. 80-IA as per Circular No.4 OF 2010 Dt. 18th May, 2010. It was also contended that the deduction has not been claimed on the entire turnover, but the deduction has been claimed only with reference to those contracts wherein they can be called ***developers*** of the infrastructure facility. It was vehemently argued that conditions as to the purchase of material, taking over and handing over of sites, risk of contract' expertise and skills as laid down in the case of ***Koya & Co (2012) 21 Taxmann.com 35 (Hyd.)*** are satisfied by the assessee and inthis regard our attention was dwawn to the copies of extracts of few contacts as were filed as illustrations.

18. In order to further substantiate in his explanation as to how assessee was a developer, in this regard assessee filed certificate from the Pune Municipal Corporation regarding the contracts and also some other contracts. It was further submitted that even before Hon'ble ITSE, the assessee had explained as to how it was developer and detailed explanation was also furnished for the ambiguities pointed out by the department in the contracts. The explanation of the assesee is contained in the paper book at page No. 107 to

112 at para 35.4 to 36.1 and the same is reproduced below:

> *35.4 In the course of hearing on 06.02.2015, the Department reiterated, its stand as to the first three legal deficiencies in the case of the applicants summarized in para 35.2 above. In respect of the remaining two conditions mentioned therein, the department expressed its desire that the applicants should prove with reference to the individual contracts that their activities were that of a Developer and not of a works contractor. The Bench theri asked the applicants to furnish the details of the individual contracts and show that they fulfill the requirements of being a Developer.*
>
> *35.5 At the time of hearing on 23.02.2015, the learned AR first claborated his stand with regard to the legal issues relating to the allowability of the deduction under Section 801A (i) first time claimed in the returns filed under Section 153A on the book-profits and (ii) claimed in the returns filed under Section 153A on the additional income computed with reference to the seized papers. He dealt at length with the various decisions of the ITAT, as mentioned above.*
>
> *He then explained as to how the impugned contracts should be treated as development - contract as distinct from the works-contract. He filed certificates from the Pune Municipal Corporation regarding 11 (The contracts/ The certificates mention the contract amount and nature of work. They also mention that the works pertained to the road widening, which is part of the Highway Road Project and Infrastructure Development; that the Construction material was not supplied by the Corporation; that the defect liability period is for 60/30 months and that the Company employed its own Machinery and Technical Staff for execution of the work. With reference to the other contracts, the learned AR relied upon the contract documents. As an illustration, the learned AR referred to page 51 of the Paper Book filed on 06.02.2015, wherein the extracts from the contract relating to the work of " widening to two lane in Km.0 to 50 of Widrafnagar Janakpur Balangi Road (SH-3)" in Chhattisgarh are given. The defect liability period is mentioned as 36 months which*

*means that for that much period after the execution of the contract, the risk remained with the applicants. The contract mentions the minimum deployment of 1 Civil Engineer of 10 years' experience, 1 Civil Engineer of 3 years' experience, and 3 Mechanical Engineers/Diploma holders of specified experience. It also gives a list of 15 plant and Machinery to be deployed on the work along with their maximum age. Para 21 gives the details of the possession of the site. This proves the use of expertise and technical skills of the applicants in the execution of the contracts.*

*35.6 In the course of hearing on 23.02.2015, the department first reiterated its stand that the deduction cannot be allowed either in respect of the book profits or the in the case of Charchit Agrawal vs ACIT (129 TTJ438) and Home Tex Vs. CIT(2012) 20 Taxman.com 729 were filed and elaborated. Thereafter, the CIT(DR) proceeded to state that in the Assessment Year 2011-12, M/S Patil Construction & Infrastructure P Ltd took over the running business of road contracts from the proprietary concern, M/S Patil Construction and, as per the notes on accounts, the receipts from the ongoing contracts of the said proprietary Concern were shown by the Company in its receipts. It was further pointed out that the additional income on which the two applicants have claimed the deduction, it cannot be said to have been derived from the development of infrastructure, because the additional income has been arrived at by allocating the peak in the ratio of the turnover. The A.O., who was present during the hearing, then pointed out some specific ambiguities in respect of the following contracts:*

*a) 'Improvement of road from Gulbarga Railway Station to join Ring Road":*

*It is not clear whether it is new road or old road.*

*b) 'Widening of lane of Widraf Nagar Janakpur Balangi Road (SH-3) Chhattisgarh:*

*Contract does not give name of Patil Group Company.*

*c) 'Improvement of*

*It is not clear whether it is new road or old road. Financial details not given.*

*d) Widening of two lane and improvement,NH Division Chaibasa:*

*Only letter asking to proceed with the work (and not all papers) is submitted It is not clear why the Contract was given to M/S Patil construction in Sept 2010 even though its business had already been taken over by the company w.e.f. 01.04.2010.*

*e) Widening to intermediate lane and improvement to Bejurapalli- Parsewadi -Moybinpetta- Venkatpur- Deolmari-Aheri-Allapalli Road(SH-25): PWD Nagpur:*

*Only letter dated 01.01.2011 asking to proceed with the work (and not all papers) is submitted. It is not known as to how much work is done during three months ending 31.03.2011.*

*f) Projects done by PMC:*

*The eleven certificates filed by the applicants describe the work as "improvement of roads".*

*35.7 In the reply, it was stated that*

*i. No deduction has been claimed on the work done by M/S Patil Construction. Since the original bid was made by M/S Patil Construction, the contracts were awarded and cheques were received in that name. The note in accounts is merely given to clarify it.*

*ii. It has been mentioned in the SOF that receipts of the three main entities were from the road contract awarded by the Govt. Agencies and that peak of 'MB Patil-BB Patil' a/c was formed on account of bogus billing resorted by the three main entities, which Deaves no doubt that impugned additional income was out of the development of infrastructure facilities.*

*35.8 In respect of the deficiencies in the information supplied for the individual contracts, it has been further clarified that:*

*a)The applicants have filed a certificate from the concerned Govt. agencies certifying that the contract was for road*

*widening and was a part of the National Highway Project and no materials were supplied to the contractor and the liability period was for 18 months.*

*b) The applicants have filed a certificate from the concerned Govt. agencies certifying that the contract was for road widening and was a part of the National Highway project and no materials were supplied to the contractor and the liability period was for 18 months and the contract was in the name of the applicant.*

*c)The applicants vide their reply dated 06.02.2015 have given details of the contract and as mentioned in clause 9(A) of the Contract Document, the work consists of 'widening of existing carriageways and strengthening including camber correction; construction of new road/ parallel service lane". Further details of the work will be clear from the drawings attached. The bid amount of Rs.62.38 Crores is the value of the contract given which is the agreed amount of the work given. All the details are being filed in the certificate from the concerned Govt. Agencies as required including the defect liability period of the contract.*

*d) The applicants have submitted that the bid was made by Patil Construction much before 01.04.2010, the date w.e.f the firm was converted into a company so the name of the firm is mentioned on the letter filed. A certificate with respect to the work done and other criterion as required for the claim of deduction under Section 801A(4) have been filed.*

*e) Only nominal turnover of Rs.1,73,40462/- has been shown in the books up to 31.03.2011 as against the contract value of Rs.24.49 Crores and profit of Rs.7,95,669/- was claimed as deduction under Section 801A(4).*

*In the lower portion of the certificates it is clearly mentioned that the work consists of widening of roads.*

*36. DECISION*

*We have carefully considered the submissions made by the CIT(DR) and the learned AR of the applicants on the above issue. We have also taken note of the various decisions relied upon by both the parties in respect of the allowability or*

*otherwise of the deduction under Section 801A of the Act. The statutory provisions, the circulars issued by the CBDT and the legal issues arising from the various judicial pronouncements have also been examined with reference to the factual aspects of the contracts carried out by the applicants, in respect of which the deduction under Section 801A has been claimed. We are of the considered opinion that the applicants have satisfactorily established the admissibility of the above deduction on the facts of the cases. We would also like to observe that the department's reliance upon the decision of the Hon'ble Supreme Court in the case of Sun Engineering is apparently misplaced, as the above judgement was rendered in the context of Section 147/148 of the Act and it cannot be applied to the provisions contained under Section 153A of the Act, as reproduced hereunder:-*

*"153A.*

*[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31 day of May, 2003, the Assessing Officer shall-*

*(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as maybe prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

*(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:"*

*36.1 It is very clear from a bare reading of the above provisions that the return of income filed in response to the notice issued u/s 153A is required to be treated as a return*

*filed u/s 139 of the Act. It is altogether a fresh return, requiring assessment or reassessment of the total income, as the case may be. The assessee is entitled to make a fresh claim in the said return, which might not have been claimed in the original return filed u/s 139 of the Act. Similarly, the A.O. is also entitled to reexamine the issues and make a reassessment in respect of such return. However, the assessee is required to comply with the necessary conditions, wherever laid down, in support of its claim. In the present cases, there has been no such failure on the part of the applicants. Further, the assessee is also entitled to make an enhanced claim for such deduction, in respect of the undisclosed income shown in the return filed u/s 153A and/or the additional income offered/computed in respect of the settlement application filed. It has been submitted by the learned AR that the applicants have made claim for deduction u/s 801A of the Act in respect of the eligible contracts only. Further, it has been clarified that the above claim has not been made in respect of the works contract, which are prima-facie not eligible for the same. Under the circumstances, we hold that the applicants are entitled to claim deduction u/s 801A of the Act for the years under settlement, wherever applicable. Accordingly, the above issue gets settled*

19. From the above order we can safely conclude that the assessee was a developer and in this regard we have evaluated the certificates which mentioned the contract amount and nature of the work and that the works ***'pertained to the road widening'*** which is part of the Highway Road Project and Infrastructure Development. The Construction material ***was not supplied by the Corporation (Govt. Body) but was that of the assessee***, that the defect liability period is for 60/30 months and that the ***Company (assessee) employed its own Machinery and Technical Staff for execution of the work***.

20. With reference to the some other contracts, the assessee produced extracts from the contract relating to the work of "widening of two lane in Km.0 to 50 of Widrafınagar Janakpur Balangi Road (SH-3)" in Chhattisgarh. Even the defect liability period is mentioned as 36 months which means that for that much period after the execution of the contract the risk remained with the assessee. The contract mandated the assessee for a minimum deployment of 1 Civil Engineer of 10 years' experience, 1 Civil Engineer of 3 years' experience, and 3 Mechanical Engineers/Diploma holders of specified experience. The contract further gave a list of 15 plant and Machinery to be deployed on the work along with their maximum age, which established that the assessee uses its own expertise and technical skills, in the execution of the contracts.

21. Even the objections of the department were dealt with by observing and referring to documents such as a certificate which was from the concern government agencies certifying that the contract was for road widening and was a part of the National Highway Project and no materials were supplied to the contractor and the liability period was for 18 months. Drawings & other details which stated that the work consisted of widening of existing carriageways & strengthening including

camber corrections, construction of new road/parallel service lane.

22. The Hon'ble ITSC after detailed evaluation of all the facts have rendered the ***decision*** which is reproduced below:

> *We have carefully considered the submissions made by the CIT(DR) and the learned AR of the applicants on the above issue. We have also taken note of the various decisions relied upon by both the parties in respect of the allowability or otherwise of the deduction under Section 801A of the Act. The statutory provisions, the circulars issued by the CBDT and the legal issues arising from the various judicial pronouncements have also been examined with reference to the factual aspects of the contracts carried out by the applicants, in respect of which the deduction under Section 801A has been claimed. We are of the considered opinion that the applicants have satisfactorily established the admissibility of the above deduction on the facts of the cases. We would also like to observe that the department's reliance upon the decision of the Hon'ble Supreme Court in the case of Sun Engineering is apparently misplaced, as the above judgement was rendered in the context of Section 147/148 of the Act and it cannot be applied to the provisions contained under Section 153A of the Act, as reproduced hereunder:-*
>
> *"153A.*
>
> *[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31 day of May, 2003, the Assessing Officer shall-*
>
> *(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the*

*return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as maybe prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

*(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:"*

*36.1 It is very clear from a bare reading of the above provision that the return of income filed in response to the notice issued u/s 153A is required to be treated as a return filed u/s 139 of the Act. It is altogether a fresh return, requiring assessment or reassessment of the total income, as the case may be. The assessee is entitled to make a fresh claim in the said return, which might not have been claimed in the original return filed u/s 139 of the Act. Similarly, the A.O. is also entitled to reexamine the issues and make a reassessment in respect of such return. However, the assessee is required to comply with the necessary conditions, wherever laid down, in support of its claim. In the present cases, there has been no such failure on the part of the applicants. Further, the assessee is also entitled to make an enhanced claim for such deduction, in respect of the undisclosed income shown in the return filed u/s 153A and/or the additional income offered/computed in respect of the settlement application filed. It has been submitted by the learned AR that the applicants have made claim for deduction u/s 801A of the Act in respect of the eligible contracts only. Further, it has been clarified that the above claim has not been made in respect of the works contract, which are prima-facie not eligible for the same. Under the circumstances, we hold that the applicants are entitled to claim deduction u/s 801A of the Act for the years under settlement, wherever applicable. Accordingly, the above issue gets settled.*

23. After having gone through the entire order of ITSC and after meticulously analyzing the facts, we also reach to the conclusion that the assessee is a ***'developer'*** within the meaning of sec.80-IA(4). As the assessee has made investments for carrying out the '***works***' and has not merely supplied labour. The assessee has entered into a contract with the Govt. Bodies, which is one of the conditions for claiming deduction u/s. 80- IA(4) and in this regard the ***Explanatory Memorandum to Finance Bill, 2007{(2007) 289 ITR (St.) 292***} states that the section intends to encourage private investment in developing infrastructure. The said memorandum also clarifies that only a person who enters into a contract with an eligible assessee u/s. 80-IA to carry out work, is ineligible that is not the facts of the present, therefore in our view the assessee is a *'developer'* and not a *mere contractor* for the purpose of Sec. 80IA(4) of the Act. For the above proposition we rely upon the decision in the case of ***Adhunik Infrastructure ITA/1281/Kol/2015***, wherein it was held as under:

> *9.3.2. Thus as per section 194C of the Act also, "works contract" does not include a contract wherein, the contractor in addition to employing labour, procures material from a third party. Thus, contracts involving mere labour of the contractor are included in the purview of "works contract". We find that the Hon'ble Supreme Court in case of Associated Cement Co. Ltd. vs. CIT reported in 201 ITR 435 while interpreting the term 'work' u/s 194C of the Act had held that words 'any work' in section 194C(1) of the Act means any work including supply of labour to carry out work and is not*

*intended to be confined to or restricted to works contract, therefore, a person who credits to the account of or pays to a contractor any sum payable on behalf of organizations specified in section 194C(1) of the Act for carrying out any work (including supply of labour for carrying out any work) is liable to deduct income-tax as required under that sub-section. The words in the sub-section (1) of 194C of the Act `on income comprised therein' appearing immediately after the words `deduct an amount equal to two per cent of such sum as income-tax' from their purport, cannot be understood as the percentage amount deductible from the income of the contractor out of the sum credited to his account or paid to him in pursuance of the contract, but deduction is to be made out of payments made to the contractor. We see no reason to curtail or to cut down the meaning of the plain words used in the section. "Any work" means any work and not a "works contract", which has a special connotation in the tax law. Indeed in the subsection, the "work" referred to therein expressly includes supply of labour to carry out a work. It is a clear indication of the Legislature that the "work" in the sub-section is not intended to be confined to or restricted to "works contract". The issue before the Hon'ble Supreme Court in the aforesaid case was whether the term "work" used in section 194C needs to be restricted to "works contract". The Hon'ble Apex Court laid out that the term "work" used in section 194C need not be restricted to "works contracts" (i.e. labour contracts) because the subsection expressly includes supply of labour to carry out work. In other words, it is implied that works contract means supply of labour to carry out work. Thus from the above we may say that a works contract constitutes a contract under which the contractor is merely employing his efforts or labour. Under such a contract, the contractee provides the material and other requisites (a complete infrastructure) needed to carry out the desired work to the contractor who by applying his labour to the said material turns the material into a desired product. We find further that the memorandum explaining the provisions in the Finance Bill, 2007, reported in (2007) 289 ITR (St.) 292 at page 312 reads as under:*

*"Section 80-1A, inter alia, provides for a ten-year tax benefit to an enterprise or an undertaking engaged in development of*

*infrastructure facilities, industrial parks and special economic zones. The tax benefit was introduced for the reason that industrial modernization requires a passive expansion of, and qualitative improvement in, infrastructure (viz., expressways, highways, airports, ports and rapid urban rail transport systems) which was lacking in our country. The purpose of the tax benefit has all along been (or encouraging private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other works contract."*

*Accordingly, it is proposed to clarify that the provisions of section 80- IA shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the said section. Thus, in a case where a person makes the investment and himself executes the development work, i.e., carries out the civil construction work he will be eligible for tax benefit under section 80- IA of the Act. In contrast to this, a person erson who enters into a contract with another person (i.e., undertaking or enterprise referred to in section 80-IA) for executing works contract, will not be eligible for tax benefit under section 80- IA.*

*This amendment will take retrospective effect from 1st April 2000 and will accordingly apply in relation to the assessment year 2000-01 and subsequent years.*

*The Explanatory Memorandum clearly lays out that purpose of extending tax benefit u/s 80-IA was to encourage investments from the private sector and hence work contracts, i.e. contracts involving merely labour (or mere execution of construction without making investments) are outside the purview of the provisions of section 80-1A. Thus, the term "works contract" used in Explanation to section 80-IA(13) means a contract of developing infrastructure by merely employing labour and making no investments.*

24. The amended provisions of section 80-IA of the Act clarify that to avail the deduction, the assessee could ***either***

***(i) develop; or***

***(ii) operate and maintain ; or***

***(iii) develop, operate and maintain the facility.***

Therefore, any one of the above activities would qualify for the deduction and it is not necessary to carry out all the activities and in this regard we rely upon the case of ***CIT v. ABG Heavy Industries Ltd 322 ITR 323 (Bom)***,

> *Section 80-IA of the Income-tax Act, 1961 Deduction Profit and gains from infrastructure undertakings- Assessment year 1997-98 to 2000-01 and 2005-06-Whether deduction under section 80-IA is available to an enterprise which (i) develops; or (ii) operates and maintains; or (iii) develops, maintains and operates that infrastructure facility inasmuch as subsequent amendment to section 80-1A(4) has made it clear that three conditions of development, operation and maintenance were not intended to be cumulative in nature Held, yes - Assessee was awarded a contract for leasing of container handling cranes at Jawaharlal Nehru Port Trust ('JNPT') in terms of policy of Government of India to encourage private sector participation in development of infrastructure Under contract, assessee was responsible for supplying, installation, testing, commissioning and maintenance of cranes - Contract envisaged two different options, first being one under which assessee would carry out operation and maintenance of equipment, while second consisted of an option to JNPT to carry out operations and only maintenance was to be carried out by assessee - Assessee assumed responsibility of making equipment available for operation for a minimum number of days as stipulated in contract and would become liable to pay liquidated damages for non-availability of equipment after commissioning - After expiry of lease period of ten years, assessee was liable to hand over equipment to JNPT free of cost Whether, on facts, it could be said that assessee had carried on business of developing, maintaining and operating*

*an infrastructural facility so as to entitle it to a deduction under section 80-IA - Held, yes*

25. With regard to the AO's contention that an assessee ought to be performing cumulatively all the above three (3) functions in order to claim the deduction, is therefore erroneous and untenable.

26. In the case in hand, it appears that one of the reasons that prevailed upon the Ld. AO to hold the assessee as a mere contractor, is that the assessee had not conceived the idea of developing infrastructure but it was the Government which had conceived it and the assessee had merely carried out/executed the same. And hence, according to the AO, the assessee was mere contractor.

In this Regard it was submitted that if an assessee is merely developing the infrastructural facility, it is entitled to deduction u/s 80- 1A. Further, condition (b) of section 80- IA(4) stipulates that an assessee enters into an agreement with the Government. Hence, if section 80-IA grants deduction on profits from the activity of development, carried out in pursuance of an agreement with the Government, it presupposes that assessee will earn profits from the amounts it is paid by the Govt/Govt. Bodies and it is such profits which would be eligible for the deduction.

27. And in case, deduction u/s 80-IA is declined on the ground that the assessee had merely entered into an agreement with the Govt. and/or the assessee had received payments from Government, then in that eventuality an assessee who is only a "***developer***" will never be entitled to deduction u/s 80-IA. Therefore in our view, merely because the assessee was paid by the Government for development work, it cannot be denied deduction under section 80- IA(4) of the Act. Similarly, an assessee cannot be declined the deduction on the ground that the assessee has not himself conceived the idea of infrastructure but has merely entered into a contract with the Govt.; entering into a contract with the Govt. is a sine qua non for claiming the deduction u/s. 80-IA(4) in this regard we rely upon the decision in the ***Adhunik Infrastructure ITA/1281/Kol/2015 (supra)*** and the same view was also adopted by the Coordinate Bench of the Tribunal in the case of ***Bhinmal Contractors Property & Land Developers P. Ltd. [2018] 93 Taxmann.com 296 (Mum.),*** even the recent decision of the Hon'ble Gujarat High Court in ***PCIT V/s. Montecarlo Construction Ltd. [2024] 161 Taxmann.com 222 (Guj.)*** also supports the case of the assessee

28. Thus we are of the view that the facts, nature of contracts, nature of works in the present years are '***same***

***& identical'*** to the facts before the ***Hon'ble ITSC***. And the eligibility of the assessee to claim deduction u/s. 80-IA of the Act is ***'squarely covered'*** in favour of the assessee, by the order of the Hon'ble ITSC in the assessee's own case.

29. It is also imperative to mention here that the CIT(A) for A.Y 2018-19 has allowed the deduction under section 80IA of the Act for which the Department had preferred appeal before the Tribunal which was dismissed on technical issue.

30. Even before us the department has not brought anything on record to disturb the order of the Settlement Commission for the prior years and the order of the CIT(A) for A.Y 2018-19 both allowing the claim of the assessee for claiming deduction under section 80IA of the Act and thus, in our view the intermediate assessment years, i.e., A.Y 2014-15, 2015-16 and 2017-18, cannot be disturbed and therefore the deduction under section 80IA of the Act deserves to be allowed considering the facts and circumstances of the case as narrated and discussed above.

31. No new facts or circumstances have been placed before us to rebut or controvert the findings so recorded by the ld. CIT(A). Therefore, after evaluation the entire facts and circumstances of the present case, we find no reason to

interfere into or to deviated from the well-reasoned findings so recorded by the ld. CIT(A). Therefore, the order of the ld. CIT(A) is upheld.

**ITA Nos. 4942 & 4944/Mum/2024, A.Y: 2015-16 & 2017-18**

32. As the facts and circumstances in these appeals are identical to ITA No 4940/Mum/2024 for the A.Y 2014-15 (except variance in figures) and the decision rendered in above paragraph would apply mutatis mutandis for these appeals also. Accordingly, the grounds of appeal of the revenue are dismissed.

33. In the result, all the three appeals filed by the revenue are dismissed.

**Order pronounced in the Court on 14th January, 2025 at Mumbai.**

| | |
|---|---|
| *Sd/-* | *Sd/-* |
| **(PADMAVATHY S.)** | **(SANDEEP GOSAIN)** |
| **ACCOUNTANTMEMBER** | **JUDICIAL MEMBER** |

Mumbai, Dated 14/01/2025
*SC SPS*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. संबंधितआयकरआयुक्त/ Concerned Pr. CIT
4. आयकरआयुक्त (अपील) / The CIT(A)-
5. विभागीयप्रतिनिधि , **आयकरअपीलीयअधिकरण, मुंबई**/DR,ITAT, Mumbai,
6. गार्डफाई/Guard file.

आदेशानुसार/ **BY ORDER,**
**TRUE COPY**

**Assistant Registrar**
आयकरअपीलीयअधिकरण
**ITAT, Mumbai**