

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "B" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.359/Hyd./2022 & ITA.No.389/Hyd./2020  
Assessment Years 2016-2017 & 2017-2018

SRK Constructions And Projects Private Limited, Hyderabad – 500 082 PAN AAHCS6140B	vs.	The DCIT, Circle-3(1), Hyderabad.
(Appellant)		(Respondent)

ITA.No.1415/Hyd./2019  
Assessment Year 2016-2017

The DCIT, Circle-3(2), Hyderabad.	vs.	SRK Constructions And Projects Private Limited, Hyderabad – 500 082 PAN AAHCS6140B
(Appellant)		(Respondent)

For Assessee :	Shri Mohd. Afzal, Advocate
For Revenue :	Shri LV Bhaskara Reddy, CIT-DR

Date of Hearing :	28.01.2025
Date of Pronouncement :	24.04.2025

**ORDER****PER MANJUNATHA G. :**

The above twin appeals ITA.No.359/Hyd./2022 & ITA.No.389/Hyd./2020 are filed by the assessee against the separate orders of the learned PCIT, Hyderabad-1, Hyderabad, dated 29.03.2021 passed u/sec.263 of the Income Tax Act, 1961 [in short “the Act”] and learned CIT(A)-3, Hyderabad, dated 11.03.2020, relating to the assessment years 2016-2017 and 2017-2018. The Revenue has filed it’s appeal ITA.No.1415/Hyd./2019 against the order of the learned CIT(A)-3, Hyderabad dated 15.07.2019 relating to the assessment year 2016-2017. Since, common issues are involved in these appeals, these appeals were heard together and are being disposed of by this single consolidated order for the sake of convenience and brevity. First, we take-up appeal of the assessee ITA.No.359/Hyd./2019 for the assessment year 2016-2017.

ITA.No.359/Hyd./2019 – A.Y. 2016-2017 :

2. The assessee has raised the following grounds in the instant appeal :

1. *“The order of the learned Pr. Commissioner of Income Tax is against the law, weight of evidence and probabilities of case.*
2. *The learned Pr. Commissioner erred in assuming that return of income was not filed on 17.10.2016.*
3. *The learned Pr. Commissioner ought to have appreciated that the verification of the return of income was made on 17.10.2016 itself, whereas, the 3 acknowledgment received on 18.10.2016 at 01.04 (AM) and should have further appreciated that the delay in receipt of acknowledgement is not attributable to the assessee.*
4. *The learned Pr. Commissioner ought to have appreciated that the acknowledgement is received with the date 18.10.2016, at 01.04 (AM) on account of last minute heavy rush on the income tax site, which may be on account of capacity of the site to handle the rush.*
5. *The learned Pr. Commissioner ought to have appreciated that the Income Tax Dashboard mentions the filing section as 139(1), therefore, erred in assuming the return of income is not u/s 139(1) of the IT Act.*

*6. The appellant craves leave to add to, amend or modify the above grounds of 6 appeal either before or at the time of hearing of the appeal, if it is considered necessary.”*

3. At the outset, Shri Mohd. Afzal, Learned Counsel for the Assessee submitted that, there is a delay of 445 days in appeal filed by the assessee, for which, a petition for condonation of delay along with affidavit explaining reasons for delay has been filed. Learned Counsel for the Assessee, referring to the petition filed by the assessee submitted that the learned PCIT has issued show cause notice under section 263 of the Income Tax Act [in short “the Act”] on 29.03.2021 and the said show cause notice has been issued to the email ID [rkandco@gmail.com](mailto:rkandco@gmail.com) as per PAN data base and the same has not been noticed by the appellant-company due to on-going Covid-2019 pandemic and during the relevant time, the normal life of every citizen was disturbed. Further, the Managing Director of the appellant-company who was looking-after affairs of the company was suffering from cancer and was admitted to M.S. Ramaiah Hospital, Bangalore, for treatment and he was undergoing

treatment of more than 1 year and finally demised on 08.11.2022 which is one of the reason for not giving attention to the income tax matters including filing of the present appeal before the Tribunal. Further, after receipt of the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s 263 of the Act on 30.03.2022, an application was made to the learned PCIT on 07.04.2022 under RTI to provide details of service of notice and also copy of the order. The learned PCIT stated that the order was served on email available in PAN data and a copy of the order passed u/sec.263 was also provided. Therefore, the Learned Counsel for the Assessee submitted that, the appellant was not aware of the proceedings before the learned PCIT taken-up u/sec.263 of the Act. Further, it has come to the knowledge only after receipt of the consequential assessment order passed by the Assessing Officer on 30.03.2022. Thereafter, the appellant has moved an application to the learned PCIT and obtained relevant copy of the order passed by the learned PCIT and filed the appeal on 16.08.2022 before the Tribunal, which caused

delay of 445 days in filing the appeal. Learned Counsel for the Assessee further referring to the decision of Hon'ble Supreme Court in M.A.No.21 of 2022 dated 10.01.2022 submitted that, in view of the order of Hon'ble Supreme Court by considering Covid-2019 pandemic, the limitation for various proceedings pending under Courts/Tribunals has been finally extended up-to 01.03.2022 with a grace period of 90 days and if the Tribunal exclude the said period covered by Hon'ble Supreme Court, then, the actual delay is only 79 days, which is on account of collecting relevant information from the authorities including DGIT Systems, New Delhi to ascertain documents with regard to filing of return of income and generation of all relevant acknowledgements by DGIT Systems, New Delhi. Therefore, he submitted that, delay in filing of the appeal is neither wilful nor for want of any undue benefit, but, beyond the control of the appellant. Therefore, the delay in filing of the appeal may be condoned in the interest of justice.

4. The Learned CIT-DR Shri LV Bhaskara Reddy, on the other hand. submitted that, there is no merit in the petition filed by the appellant for condonation of delay of 445 days which is evident from the reasons provided therein and if we go by the reasons, there is no 'sufficient and reasonable cause' for the appellant by virtue of filing appeal on or before the due date provided under the Act by filing appeal before the Tribunal. Although, the appellant claims to have not aware of the show cause notice issued by the learned PCIT dated 29.03.2021, but, going by the proceedings before the learned PCIT, the appellant represented before the learned PCIT in the proceedings u/sec.263 of the Act, which is evident from the order of the learned PCIT passed u/sec.263 of the Act. Further, the appellant has also appeared before the Assessing Officer in the consequential assessment proceedings taken up in pursuant to the directions of the learned PCIT, which is evident from the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s 263 of the Act dated 30.03.2022. Further, as admitted by the appellant itself in their petition

filed for condonation of delay, it was stated that after receipt of the assessment order passed u/sec.143(3) r.w.s 263 of the Act dated 30.03.2022, an application was made to the learned PCIT on 07.04.2022 under RTI to collect relevant information about service of notice and also copy of the order. From the above, it is very clear that, the appellant was aware of the proceedings before the learned PCIT and also appeared in response to show cause notice and, therefore, the pleading of the appellant in the condonation of delay petition that, it was not aware of the show cause notice issued by the learned PCIT is devoid of merits and cannot be considered as “reasonable” and “bonafide” reasons for not filing the appeal in time before the Tribunal. The ld. DR, referring to the application of the appellant in light of the ill-health of the Managing Director of the Company submitted that, although, the appellant claims that the Managing Director of the appellant company was admitted to hospital on 06.08.2022 and finally demised on 08.11.2022 and because of this, it could not file appeal before the Tribunal, but, the fact remains that, in between

i.e., on 16.08.2022, the appellant has filed appeal against the order passed by the learned PCIT u/sec.263 of the Act. Therefore, the arguments of the appellant in light of the ill health of the Managing Director of the company is also devoid of merit and cannot be accepted. He, therefore submitted that delay in filing of the appeal should not be condoned and appeal filed by the appellant should be dismissed as un-admitted.

5. We have heard both the parties and perused relevant reasons given by the appellant in the petition filed for condonation of 445 days delay in filing the appeal before the Tribunal. Admittedly, there is a delay of 445 days in filing the appeal before the Tribunal and this fact is not disputed by the appellant and the Revenue. The learned PCIT has passed order u/sec.263 of the Act on 29.03.2021 and in ordinary course, an appeal should have been filed on or before 28.05.2021. But the appellant has filed appeal on 16.08.2022 and thus, there is a delay of 445 days in filing the appeal before the Tribunal. The appellant has given two reasons for not filing the appeal before the Tribunal on or

before the due date and the first and foremost reason given by the appellant is, order passed by the learned PCIT u/sec.263 of the Act dated 29.03.2021 was not noticed because the same might have been or may have been sent to the email ID [rkandco@gmail.com](mailto:rkandco@gmail.com) as per PAN data base and this fact has been confirmed by the learned PCIT in reply to RTI application. The appellant further contended that, the Managing Director of the appellant-company was suffering from cancer and was admitted to hospital for treatment and demised on 08.11.2022. This is one of the reasons for not filing the appeal. It was further contended that, after receipt of consequential assessment order passed by the Assessing Officer u/sec.143(3) r.w.s 263 of the Act dated 30.03.2022, the appellant has filed RTI application on 7.04.2022 to the learned PCIT to provide the details of service of notice and also copy of the order and due to this reason, there is a delay of 445 days. Further, the said delay is neither willfull nor for any undue benefit, but, beyond the control of the appellant. Therefore, submitted that delay may be condoned in the interest of justice.

6. The condonation of delay in filing of the appeal before any Court or Tribunal is the sole discretionary power of the authorities, considering the reasons given by the appellant in the application filed for condonation of delay. There is no hard and fast Rule for condonation delay, but, it depends only on facts of each case and the reasons given by the appellant. Various Court's including Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST. Katiji (1987) 167 ITR 471(SC) held that, when merits and technicalities are pitted against each other, then, merit alone deserves to be prevailed because if we throw-out a meritorious case out of judicial scrutiny on the ground of technicality, then, we may deprive right of filing and pursuing case on merits. In the very same Judgment, the Hon'ble Supreme Court very categorically held that, it is the duty of the petitioners to explain each and every day delay with "sufficient cause". Therefore, the delay in filing of the appeal needs to be condoned by considering the relevant reasons which prevented an appellant to file the appeal before the time allowed under the Act. Therefore, while

exercising the powers of condonation of delay, the Court's must always give preference to the merits of the case, rather than technicalities. Keeping in view of the above legal position, if we examine the facts of the present case, we need to understand, whether the reasons given by the appellant in the petition filed for condonation of 445 days delay is sufficient and bonafide reasons for condonation of delay or not. The appellant has filed appeal against the order passed by the learned PCIT u/sec.263 of the Act dated 29.03.2021 on 16.08.2022 with a delay of 445 days and claimed that, said order was not served on the appellant or un-noticed by the appellant because as admitted by the learned PCIT, the same has been served to the email ID provided in the PAN database.

7. Let us, first advert to the reasons given by the appellant that it was not aware of the order passed by the learned PCIT u/sec.263 the Act. The learned PCIT has passed order on 29.03.2021 and if we go by the show cause notice issued by the learned PCIT dated 12.03.2021 which was served on the appellant, for which, the appellant has

responded through its Authorised Representative and furnished relevant evidences. The learned PCIT after considering the details submitted by the appellant, has passed the order u/sec.263 of the Act on 29.03.2021. The Assessing Officer has taken-up consequential assessment proceedings in pursuance to order of the learned PCIT u/sec.263 and issued relevant statutory notice under section 142(1) of the Act, for which, the appellant had filed its reply on 25.03.2022 and filed relevant details. The Assessing Officer has passed order u/sec.143(3) r.w.s 263 of the Act on 30.03.2022 and served on the appellant. In fact, the appellant has claimed in its petition that, after receipt of the order from the Assessing Officer dated 30.03.2022, the appellant-company has filed RTI application on 07.04.2022 before the learned PCIT to obtain necessary information. From the above facts, it is undisputedly clear that, the appellant was aware of the proceedings before the learned PCIT u/sec.263 of the Act and also participated in the proceedings by filing relevant evidences. Therefore, in our considered view, the reasons given by the appellant in

the petition for condonation of 445 days delay that, the appellant was not aware of the order passed by the learned PCIT u/sec.263 dated 29.03.2021 till the Assessing Officer passed his consequential assessment order u/sec.143(3) r.w.s 263 of the Act on 30.03.2022 is devoid of merit and contrary to the facts available on record. Therefore, we are of the considered view, that the reasons given by the appellant for delay in filing appeal does not come under “sufficient and reasonable cause”.

8. Having said so, let us come back to the second reason given by the appellant, the appellant claims that the Managing Director of the company was suffering from cancer and he was admitted to M.S. Ramaiah hospital at Bangalore and diagnosed cancer in February 2021. Further, he has been admitted in hospital for treatment on 06.08.2022 and finally demised on 08.112022 and due to this reason and further his younger son being 22 years old, did not aware of the affairs of the company and that the appeal could not be filed within the time allowed under the Act. We have considered relevant reasons given by the

appellant in light of facts available on record and we find that, although, the claim of the appellant that it's Managing Director was suffering from cancer and was admitted in hospital, but, the fact remains that when the Director of the company was in hospital, the appellant company has filed appeal against the order passed by the learned PCIT u/sec.263 the Act on 16.08.2022 which is evident from the date of admission into the hospital and date of death of the Managing Director. Further, in a company there are more than one Directors and in case one Director or Managing Director is not able to attend any proceedings because of ill-health or for some other reasons, but, the other Director can very well attend the proceedings. Therefore, in our considered view, the reasons given by the appellant in the petition that due to ill-health of the Managing Director of the company, the appeal could not be filed on or before the due date is devoid of merits and does not come under "reasonable and sufficient cause" going by the facts available on record. Therefore, on this reason, the delay of 445 days cannot be condoned. For this proposition, we draw

support from the decision of Hon'ble Supreme Court in the case of Director of Income Tax-II, International Taxation vs., Western Union Financial Services Inc. [2023] 153 taxmann.com 304 (SC) and also decision of Hon'ble Bombay High Court in the case of Vama Apparels (India) (P.) Ltd., vs., ACIT [2-19] 102 taxmann.com 398 (Bom.-HC).

9. Coming back to the arguments of the appellant in light of Covid-2019 pandemic period and the order passed by the Hon'ble Supreme Court in MA.No.21 of 2022 dated 10.01.2022, Learned Counsel for the Assessee submitted that, if we exclude the delay covered in the order of Hon'ble Supreme Court, then, the actual delay is 79 days and, therefore, considering the short delay of 79 days, the appeal may be admitted in the interest of justice. In our considered view, once there is a delay, it is the duty of the appellant to explain the total delay including the delay covered under Covid period and delay not covered under Covid period. Therefore, even if we exclude delay covered by the Covid period, still there is a delay 79 days, which could not be explained by the appellant with "sufficient reasons".

Therefore, we are of the considered view that, the reasons given by the appellant on this account also cannot be accepted.

10. In this view of the matter and considering the facts and circumstances of the case and also in light of above two case laws considered hereinabove, we are of the considered view that, the reasons given by the appellant in the petition for condonation of delay, does not come under “sufficient and reasonable cause” for condonation of huge delay a 445 days in filing the appeal before the Tribunal. Therefore, we are of the considered view that, the appeal filed by the appellant is not maintainable and, therefore, the appeal filed by the appellant/assessee is dismissed as unadmitted.

11. In the result, appeal ITA.No.359/Hyd./2022 for the assessment year 2016-2017 is dismissed.

ITA.No.1415/Hyd./2019 – A.Y. 2016-2017 :

12. The Revenue has raised the following grounds in the instant appeal :

1. *“The Ld. CIT (A) erred both in law and on facts of the case.*
2. *On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the addition made u/s 801A amounting to Rs.4,09,53,977/- without appreciating the fact that the assessee earned the profit from the execution of work awarded to JV ad consortium by ignoring the fact that the assessee has not entered into an agreement with the Central Government or a state Government or a local Authority or any other Statutory Body.*
3. *Whether the Ld. CIT(A) is correct in not appreciating the fact that the assessee herein is not a developer but merely a contractor in respect of the profit related to JV, whereas Section 801A(4) applies to any enterprise carrying a business of developing or operating or developing, operating and maintaining any infrastructure facility.*
4. *Any other ground(s) that may be urged at the time of hearing.”*

13. Brief facts of the case are that, the assessee company is engaged in the business of infrastructure development, filed its return of income for the assessment year 2016-2017 on 18.10.2016 admitting income of Rs.28,06,85,620/- under normal provisions of the Income Tax Act, 1961 [in short "the Act"]. The assessee filed its revised return of income on 23.08.2017 and admitted income of Rs.7,00,46,470/- after claiming deduction u/sec.80IA of Rs.21.06,39,150/- towards profit derived from development of infrastructure projects. The case was selected for scrutiny under CASS and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has executed various infrastructure projects and claimed deduction u/sec.80IA of the Act for profit derived from the said projects and, therefore, called-upon the assessee to file relevant evidences including agreement, if any, entered with Central or State Government or any Local Authority for development of infrastructure projects etc., In response, the assessee has filed complete details of works awarded by various Central or State Government or

any Local Authority for development of infrastructure projects and also furnished relevant agreements and work orders in respect of claiming deduction u/sec.80IA(4) of the Act. The assessee has also supported it's claim of deduction u/sec.80IA(4) of the Act in light of decision of ITAT, Hyderabad Bench in the case of M/s. Sushee Hi-tech Constructions in ITA.No.26/Hyd./2009 dated 16.03.2012.

14. The Assessing Officer after considering the relevant evidences and also taking note of agreement copies submitted by the assessee for each of the projects observed that, as per the provisions of sec.80IA(4) of the Act, in order to claim deduction under the said section, the appellant should enter into agreement with any Central or State Government or any Local Authority for development of infrastructure projects. Further, the scope of the contract should be for either development or operation or maintenance or both in respect of infrastructure facility. Further, the contractor should be liable for any defects arising in all projects for a specific period and further, the developer has to bear all the risk involved with the projects.

Since the assessee has furnished relevant evidence to prove satisfaction of various conditions provided u/sec.80IA(4) of the Act in respect of infrastructure projects where the assessee has directly awarded by the work done by various Central or State Government or any Local Authority/Body, has allowed deduction claimed u/sec.80IA(4) of the Act. However, in respect of two projects viz., Holangi [BPL-SRK JV] and MJ-03 [SRK-KCL-JV] denied the claim of deduction u/sec.80IA(4) of the Act on the ground that in the above two projects, the agreement was entered into by the Joint Venture [in short "JV"] and not by the Assessee and, therefore, wherever the JV is entered into agreement with the Authorities, the assessee cannot claim deduction u/sec.80IA(4) of the Act. In otherwards, out of the total deduction claimed by the assessee for Rs.21,06,39,150/-, the Assessing Officer allowed deduction towards profit derived from four projects referring to in Sl.No.1, 3, 5 and 6 of table provided by the Assessing Officer in page-2 of his order. However, denied deduction in respect of Sl.Nos. 2 and

4 of the table provided at page-2 of the assessment order and made addition of Rs.4,09,53,977/-.

15. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee reiterated its submissions made before the Assessing Officer and claimed that, it was engaged in the business of development of infrastructure projects as defined u/sec.80IA(4) of the Act and also satisfied various other conditions provided therein except satisfying the conditions of entering into agreement with Central or State Government or any Local Authority in respect of two projects where the Assessing Officer has denied deduction. It was further submitted that, even in respect of projects where the agreement was entered into by the JV/Consortium, but the assessee being a constituent partner of the said JV/Consortium can claim deduction u/sec.80IA(4) of the Act. In this regard, the assessee relied upon certain judicial precedents including decision of ITAT, Hyderabad Bench, Hyderabad in the case of M/s. Sushee Hi-tech Constructions in ITA.No.26/Hyd./2009 dated

16.03.2012 and also decision of ITAT, Hyderabad Bench, Hyderabad in the case of M/s. Ramky Infrastructures in ITA.Nos.472/Hyd./2009 dated 17.07.2013 and NCC-ECCI (JV) vs., ITO in ITA.Nos.124 and 125/Hyd./2009.

16. The learned CIT(A) after considering the relevant submissions of the assessee and also taking note of decisions of ITAT, Hyderabad Bench, Hyderabad in the case of M/s. Sushee Hi-tech Constructions in ITA.No.26/Hyd./2009 dated 16.03.2012 and also decision of ITAT, Hyderabad Bench, Hyderabad in the case of M/s. Ramky Infrastructures in ITA.Nos.472/Hyd./2009 dated 17.07.2013 (supra), has allowed deduction claimed by the assessee towards profit derived from development of infrastructure projects where the assessee has executed the projects with JV/Consortium and has entered into agreement with Central or State Government or any Local Authority/Body on the ground that once the assessee has satisfied with the conditions provided therein including the development of infrastructure projects with all risk, then, merely for the reason of not directly entering into agreement

with the concerned Authorities, the benefit of deduction provided u/sec.80IA(4) of the Act, cannot be denied. The relevant findings of the learned CIT(A) are as under :

“VIII). Ground Nos. 2 and 3 in appeal relate to the appellant's claim u/s.801A despite the appellant complying with the condition as required and despite the decision of the ITAT, Visakhapatnam in the case of M/s Transtroy India Ltd., (134 ITD 269). Facts of the case, grounds of appeal, assessment order and submissions of the appellant were perused. It is noted that the disallowance of Rs.4,09,53,977/- was on account of contract being allotted in names Joint Ventures and the same was executed by the appellant being a constituent of the JVs. It is seen from the facts and issues, the decision of the Hon'ble ITAT, Visakhapatnam relied upon by the appellant in the case of M/s Transtroy India Ltd. merits consideration. In this decision, it was held that practically the contract was awarded to the constituent of JVs and the works was executed by them and therefore, it was held that as per the provisions of Section 801A(4), the benefit of deduction was to be given only to the enterprise/constituent who carried on the business. The facts and circumstances of the appellant's case and that of the case M/s. Transtroy India Ltd. are similar. The appellant also relied on the case of DCIT vs Megha Engineering & Infrastructure Ltd. It is noted that the Hon'ble ITAT, Hyderabad in DCIT vs Megha Engineering & Infrastructure Ltd. (in ITA No. 607, 608, 609 & 610/H/2016, 1375/H/16 & 1540/H/17) for A.Ys 2010-11 to 2013-14, 2014-15 & 2015-16 vide order dated 15.02.2019, dismissed the grounds taken by revenue. In this judgement, the Hon'ble ITAT, Hyderabad had held in Para 9.2 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 801A. 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.801A(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 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 ITAN 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 & 80-1A/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 80-1A/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. 80-1A(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."*

*The decisions of the jurisdictional ITAT are binding on the Revenue Authorities under its jurisdiction and in this case, the decision of the ITAT, Vishakapatnam and the Hon'ble ITAT, Hyderabad is binding, unless the said order is stayed or suspended by a Superior Court or a different view is taken by the another Tribunal in the said jurisdiction.*

*The canons of judicial discipline which have been brought out by the Hon'ble Supreme Court in Jain Exports (P) Ltd., and Others vs. Union of India. & Others (3 SCC 579), Union of India & Others vs Kamlakshi Finance Corporation 155 ELT 433](SC) and*

*the Hon'ble AP High Court in the case of State of Andhra Pradesh vs. CTO (169 ITR 564/68 STC 177) are respectfully followed. The Hon'ble AP High Court in the case of State of Andhra Pradesh vs. CTO (169 ITR 564) while adjudicating a contempt of court case held:*

*"It is clear from the judicial pronouncements above referred to that the authorities and the tribunals functioning within the jurisdiction of the court in respect of whom this court has the power of superintendence under article 227 are bound to follow the decisions of this court unless on an appeal, the operation of the judgment is suspended. It is not permissible for the authorities and the Tribunals to ignore the decisions of this court or to refuse to follow the decisions of this court on the pretext that an appeal is filed in the Supreme Court which is pending or that steps are being taken to file an appeal. If any authority or the tribunal refuses to follow any decision of this court on the above grounds, it would be clearly guilty of committing contempt of this court and is liable to be proceeded against.*

*We have come across innumerable instances where the authorities below, especially authorities entrusted with the collection of taxes and excise duties, refused to follow the decisions of this court on the ground that appeals were either filed or steps were being taken to file appeals, and raised fantastic tax demand and initiated proceedings for recovery of such taxes. The result was that this court was flooded with innumerable writ petitions. We need hardly observe that all this is totally irregular and should have been avoided. We cannot help putting on notice all the authorities concerned that this court would not hesitate to take stern action for contempt if decisions of this court are disregarded unless the operation of the*

*judgments of this court is suspended by the Supreme Court."*

*The ratio of the division bench decision of the Bombay High Court [S.H. Kapadia & V.C. Daga, JJ.] in the case of Bank of Baroda vs H.C. Shrivatsava (256 ITR 385) as brought out in Para 16 of the judgment/findings are brought to note as they are on the issue of judicial discipline. Para 16 of the judgment reads as follows:*

*"At this juncture, we cannot resist from observing that the judgment delivered by the Tribunal was very much binding on the assessing officer. The assessing officer was bound to follow the judgments in its letter and spirit. It was necessary for the judicial unity and discipline that all the authorities below the Tribunal must accept as binding the judgment of the Tribunal. The Assessing Officer being inferior officer vis-a-vis the Tribunal, was bound by the judgment of the Tribunal and the assessing officer should not have tried to distinguish the same on untenable grounds. In this behalf, it will not be out of place to mention that in the hierarchical system of courts which exists in our country, it is necessary for each lower tiers including the High Court, to accept loyally the decisions of the higher tiers. It is inevitable in hierarchical system of courts that there are decisions of the Supreme Appellate Tribunals which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word, and that last word once spoken is loyally accepted. The better wisdom of the court below must yield to the higher wisdom of the court above as held by the Supreme Court in the matter of CCE v. Dunlop India Ltd. AIR 1985 SC 330."*

*Considering the totality of the facts, issues and circumstances of the instant case and respectfully following the canons of judicial discipline, it is held that the claim of the appellant of deduction u/s.801A is held to be allowable and Ground Nos.2 & 3 in appeal are allowed.”*

17. Dr. Sachin Kumar, Learned Sr. AR submitted that learned CIT(A) was erred in law and in facts in holding that provisions of Section 80IA(4) of the Act is applicable to the constituent of the JV Consortium without appreciating the fact that assessee has not entered into any agreement with the Central/State Governments or Local Authority or any Other Statutory Body. The learned CIT(A) without appreciating the relevant facts simply allowed relief to the assessee by following the decision of ITAT Visakhapatnam Bench in the case of M/s. Transtroy India Ltd., 134 ITD 269 and the decision of ITAT, Hyderabad Bench, Hyderabad in the case of DCIT vs., Megha Engineering & Infrastructure Ltd., ITA.Nos.607 to 610/Hyd/2016 etc., order dated 15.02.2019, Judgment of Hon'ble Supreme Court in the case of Jain Exports (P) Ltd., and others vs., Union of India & others 3 SCC 579 and Judgment of Hon'ble A.P. High

Court in the case of State of A.P. vs., CTO 169 ITR 564 and other cases. Learned DR further submitted that the decision of ITAT Visakhapatnam Bench in the case of Transtroy India vs. ITO (supra), was not accepted by the Revenue and has filed further appeals before the Hon'ble High Court of Andhra Pradesh and Telangana which are pending for adjudication. Learned CIT-DR further submitted that in order to claim deduction u/sec.80IA(4) of the Act, the assessee should fulfil certain conditions and one of such condition is the person who claims deduction shall enter into an agreement with Central/State Governments or any Local Authority or Statutory Body. In the present case, with respect to two projects i.e., Holangi [BPL-SRK-JV] and MJ-03 [SRK-KCL-JV], on which, the assessee has claimed deduction u/sec.80IA(4) of the Act, are infrastructure projects, but, the fact remains that in these projects, the assessee has not entered into agreement with Central/State Governments or any Local Authority or Statutory Body. Therefore, the Assessing Officer has rightly denied the benefit of deduction u/sec.80IA(4) of the Act for the

impugned assessment year. Learned CIT(A) without appreciating the relevant facts simply allowed the relief to the assessee. The Learned DR, therefore, submitted that order of the learned CIT(A) should be set-aside and the additions made by the Assessing Officer in the above two projects for the assessment year 2016-2017 should be sustained.

18. Shri Mohd. Afzal, Learned Counsel for the Assessee, on the other hand, strongly relied on the order of the learned CIT(A). He submitted that the learned CIT(A) has rightly allowed the claim of deduction u/sec.80IA(4) of the Act to the assessee in respect of projects i.e., Holangi [BPL-SRK-JV] and MJ-03 [SRK-KCL-JV] where the assessee has entered into agreement through JV/Consortium by relying on the decisions of ITAT Visakhapatnam Bench in the case of M/s. Transtroy India Ltd., 134 ITD 269 and the decision of ITAT, Hyderabad Bench, Hyderabad in the case of DCIT vs., Megha Engineering & Infrastructure Ltd., ITA.Nos.607 to 610/Hyd/2016 etc., order dated 15.02.2019, Judgment of Hon'ble Supreme Court in the case of Jain Exports (P)

Ltd., and others vs., Union of India & others 3 SCC 579 and Judgment of Hon'ble A.P. High Court in the case of State of A.P. vs., CTO 169 ITR 564 and other cases. He accordingly submitted that since it is the settled position of law to allow the deduction claimed by the assessee u/sec.80IA(4) of the Act and as the assessee has fulfilled all the conditions therein, the learned CIT(A) has rightly allowed the claim of deduction u/sec.80IA(4) of the Act. He, therefore, pleaded that the order of the learned CIT(A) be confirmed in the interest of justice.

19. We have heard both the parties, perused the material on record and the orders of the authorities below. We find that, admittedly there is no dispute between the parties that the assessee was engaged in the business of development infrastructure projects and, therefore, the Assessing Officer allowed deduction claimed by the assessee u/sec.80IA(4) of the Act in respect of projects viz., ABC Packages (MP), Pasighat, Marripadu and Nandipalli as tabulated in para-2 of his order at Sl.Nos.1, 3, 5 and 6. However, the Assessing Officer disallowed the claim of

deduction u/sec.80IA(4) of the Act made by the assessee in respect of projects viz., Holangi [BPL-SRK-JV] and MJ-03 [SRK-KCL-JV] tabulated at page-2 of the assessment order at Sl.Nos.2 and 4 on the ground that the assessee had not directly entered into agreement with Central/State Governments or any Local Authority or Statutory Body, but, entered into agreement through JV/Consortium and, therefore, the Assessing Officer disallowed the claim of deduction u/sec.80IA(4) of the Act to the assessee. However, in appeal, the learned CIT(A), after considering the various judicial precedents on this issue referred to hereinabove, has allowed the claim of deduction u/sec.80IA(4) of the Act to the assessee. In this connection, we note that 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 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-A(4) on the profit earned from the execution of the work awarded to JV and consortium."*

20. In view of the above and since the learned CIT(A) has followed the decisions of Coordinate Bench of ITAT, Visakhapatnam and Hyderabad, Judgment of A.P. High Court besides the Judgment of Hon'ble Supreme Court referred to hereinabove in the preceding paragraph of this order, respectfully following the ratio laid down in the above decisions, we dismiss the ground raised by the Revenue in this regard. Accordingly, the appeal of the revenue is dismissed.

21. In the result, ITA.No.1415/Hyd./2019 for the assessment year 2016-2017 is dismissed.

ITA.No.389/Hyd./2020 – A.Y. 2017-2018 :

22. The assessee has raised the following grounds in the instant appeal:

1. *“The order of the learned Commissioner of Income Tax (A) is against the law, weight of evidence and probabilities of case.*
2. *The learned Commissioner erred in confirming the order of the Assessing Officer wherein, deduction claimed u/s 801A is disallowed to the extent of Rs.3,95,39,247/-.*
3. *The learned Commissioner ought to have appreciated that the entire work allotted to AOP (Joint Venture) was executed by the assessee, therefore, the assessee is eligible for making claim u/s 801A and therefore, erred*

*in confirming the order of the Assessing Officer wherein, an amount of Rs.3,95,39,247/ was disallowed as not eligible u/s 801A of the IT Act.*

- 4. The learned Commissioner ought to have appreciated that the assessee being an enterprise carried on the business of development of infrastructure facility as envisaged in the provisions of section 801A(4), therefore, eligible for claim of deduction, therefore, erred in disallowing an amount of Rs.3,95,39,247/-.*
- 5. The learned Commissioner erred in not allowing the claim deduction u/sec.80G to an extent of Rs.8,19,000/- as the Assessing officer allowed only Rs.91,000/- as against the claim of Rs.9,10,000/-.*
- 6. The appellant craves leave to add to, amend or modify the above grounds of appeal 6 either before or at the time of hearing of the appeal, if it is considered necessary.”*

23. Briefly stated facts of the case are that, the assessee is engaged in the business of infrastructure development. The assessee company filed its return of income for the impugned assessment year 2017-18 on 23.08.2018 declaring total income of Rs.1,52,13,203/-, under normal provisions of the Act, apart from Rs.30,22,18,526/-, as book profit u/sec.115JB of the Act. However, since the tax calculated u/sec.115JB of the Act, is more than the tax as per the normal provisions of the Act, the assessee disclosed its taxable income/total income in

terms of provisions of sec.115JB of the Act, and claimed refund of Rs.3,26,41,410/-. The case of the assessee company was selected for scrutiny under CASS. Accordingly, the Assessing Officer issued the statutory notices u/s. 143(2) and 142(1) of the Act, and called for information. In response to the said notices, the assessee company has filed its submissions. The Assessing Officer noted that the assessee company has claimed deduction u/sec.80IA of the Act to the tune of Rs.28,09,17,916/-. Therefore, the Assessing Officer asked the assessee company to furnish project-wise details of 80IA profit. In response, the assessee company filed its project details. The Assessing Officer noted that the assessee company had carried-out 04 projects, out of which, 02 projects were awarded to JV/Consortiums in which the assessee company had share in MJ-03(SRK-KCL JF)-Kadapa project at 74% and Gadikal (DOTT-SRK JV) project at 26% which are noted by the Assessing Officer in his assessment order at page-2 of the order. The Assessing Officer after examining the submissions of the assessee, allowed the 80IA deduction

only to the extent of assessee-company's proportionate share with respect to the works executed through JV/Consortium and disallowed excess claim of Rs.3,95,39,247/- in respect of the above two projects.

24. On being aggrieved by the order of the Assessing Officer, the assessee company carried the matter in appeal before the learned CIT(A).

25. Before the learned CIT(A), it was the submission of the assessee that the assessee company has executed 04 projects viz., (1) MJ--03(SRK-KCL-JV)-Kadapa, (2) Marripadu (3) Nandipalli and (4) Gadekal (DOTT-SRK JV). Out of the above 04 projects, the assessee has executed 02 projects through JV/Consortium i.e., MJ--03(SRK-KCL-JV)-Kadapa, [Having 74% share] and Gadekal (DOTT-SRK JV) [Having 51% share]. He submitted that, although, the assessee has executed two projects as a constituent of the JVs, however, the entire project work was executed by the assessee-company itself by taking the other constituent's share on back-to-back sub-contract. He submitted that

though as per the agreements, the work has to be executed by the constituents in their agreed proportion, however, because of taking the other constituent's share on back-to-back sub-contract by the assessee-company in both the JVs, the entire project work was executed by the assessee itself, and, therefore, the profits derived from such projects to the extent of 100% is eligible for deduction u/sec.801A of the Act, in the hands of the assessee. However, the learned CIT(A) confirmed the order of the Assessing Officer to the extent of proportionate share of the assessee-company in respect of the above mentioned 02 projects executed through JV/Consortium.

26. Aggrieved by the order of the learned CIT(A), the assessee-company, carried the matter in appeal before the Tribunal.

27. Shri Mohd. Afzal, Learned Counsel for the Assessee, submitted that the assessee-company had executed 04 infrastructure projects, out of which, the assessee-company had executed 02 projects viz., MJ-03

(SRK-KCL-JV)-Kadapa, and Gadikal (DOTT-SRK JV) through JV/Consortium. In respect of these 02 projects, though, the JV/Consortium has to execute the work in respect of the above 02 projects to the extent of their proportionate share, however, the assessee-company had executed the remaining share of JV/Consortium project work also on back-to-back agreement with the JV/Consortium. Thus, the assessee-company had executed 100% project work in respect of these 02 projects also and, therefore, the assessee-company is eligible for sec.80IA deduction @ 100%. However, the learned CIT(A) without considering the submissions of the assessee has confirmed the order of the Assessing Officer, which is not in accordance with law. He, accordingly, submitted that the order of the learned CIT(A) be set aside.

28. Dr. Sachin Kumar, Sr. AR for the Revenue, strongly relied on the orders of the authorities below. He submitted that the Assessing Officer had allowed sec.80IA deduction to the assessee-company in respect of 02 projects to the extent of proportionate work executed by it through

JV/Consortium and had not disallowed the total deduction claimed by the assessee company u/sec.80IA of the Act. Therefore, the learned CIT(A), confirmed the order of the Assessing Officer in absence of any contrary material brought to his notice during the course of First Appellate Proceedings. He, accordingly, submitted that there is no infirmity in the order of the learned CIT(A) and, therefore, the order of the learned CIT(A) be confirmed in the interest of justice.

29. We have heard both the parties, perused the material on record and the orders of the authorities below. It is an undisputed fact between the parties that the assessee company is engaged in providing infrastructure facility by entering into various agreements with Central or State Government or any Local Authority for development of infrastructure projects. In response to the notices issued by the Assessing Officer, the assessee-company had furnished all the relevant agreements and work orders in respect of 04 projects for claiming deduction u/sec.80IA(4) of the Act. Since the assessee-company had furnished all the relevant

agreements/documents in order to prove satisfaction of various conditions provided u/sec.80IA(4) of the Act in respect of infrastructure projects, where the assessee has directly or through JV/Consortium awarded by the work done by various Central or State Government or any Local Authority/Body, the Assessing Officer has allowed deduction claimed u/sec.80IA(4) of the Act in respect of 02 projects i.e., Marripadu and Nandipalli. However, in respect of remaining 02 projects viz., MJ--03(SRK-KCL-JV)-Kadapa, and Gadekal (DOTT-SRK JV), the Assessing Officer had allowed proportionate share of the assessee-company towards the project works executed by it. The learned CIT(A) also confirmed the order of the Assessing Officer by rejecting the submissions of the assessee that on back-to-back, the assessee company had entered into agreement with JV / Consortium and completed the project works in respect of JV/Consortium share also. We observe that, although, the assessee had entered into agreement through JV/ Consortium for execution of 02 project works, however, on back-to-back contract, the assessee-company has executed

the project work in the above two projects. Thus, the assessee-company had executed 100% project-work in respect of the above 02 projects. Since the back-to-back agreement entered into by the assessee company with JV/Consortium with respect to their proportionate share of project works in the above 02 projects are not verified either by the Assessing Officer or by the learned CIT(A), we deem it appropriate to remit the issue back to the file of Assessing Officer to the limited extent of examining the issue of back-to-back agreements with the JV/Consortium for execution of proportionate share of JV/Consortium project works by the assessee-company in respect of 02 projects viz., MJ--03(SRK-KCL-JV)-Kadapa, and Gadikal (DOTT-SRK JV) and if the assessee-company furnishes relevant agreements with respect to completion of the project works to be done by the JV/Consortium by the assessee-company, then, the Assessing Officer is directed to allow the deduction claimed by the assessee-company u/sec.80IA of the Act. Needless to say, the Assessing Officer should provide adequate opportunity of being heard to the assessee. Accordingly, the

grounds raised by the assessee are allowed for statistical purposes.

30. In the result, ITA.No.389/Hyd./2020 of the assessee is allowed for statistical purposes.

31. To sum-up, ITA.No.359/Hyd./2022 of the assessee is dismissed and ITA.No.389/Hyd./2020 of the assessee is allowed for statistical purposes. ITA.No.1415/Hyd./2019 of the Revenue is dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 24.04.2025

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Hyderabad, Dated 24<sup>th</sup> April, 2025

VBP

Copy to

1.	SRK Constructions And Projects Private Limited, Hyderabad – 500 082 C/o. Mohd Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad – 500 004.
2.	The DCIT, Circle-3(1), Signature Towers, Kondapur, Kothaguda, Opp. Botanical Gardens, Hyderabad-500084.
3.	The Pr. CIT, Hyderabad.
4.	The DR ITAT "B" Bench, Hyderabad.
5.	Guard File.

//By Order//

//True Copy//