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

श्री रविश सूद, न्यायिक सदस्य एवं
श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA-TP No.1856/Hyd/2019**
(निर्धारण वर्ष/Assessment Year:2015-16)

M/s. Hyderabad Infratech Private Limited, Hyderabad. PAN:AACCH6263K	**Vs.**	Dy. Commissioner of Income Tax, Circle-2(2), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri T. Suryanarayana & Ms. Mahima Goud, Advocates	
राजस्व द्वारा/Revenue by:	Ms. M. Narmada, CIT-DR	
सुनवाई की तारीख/Date of hearing:	16/04/2025	
घोषणा की तारीख/Pronouncement:	23/05/2025	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by M/s. Hyderabad Infratech Private Limited ("the assessee"), feeling aggrieved with the final assessment order of Learned Assessing Officer ("Ld. AO") passed u/s.143(3) r.w.s. 92CA r.w.s. 144C of the Income Tax Act, 1961 ('the Act'), as per the direction of Learned Dispute Resolution Panel-1, Bangalore ("Ld. DRP") on 28.10.2019 for A.Y. 2015-16.

2. The assessee has raised the following grounds of appeal :

I. Transfer Pricing

The grounds mentioned hereinafter are without prejudice to one another.

1. The learned Assessing Officer ('learned AO'), learned Transfer Pricing Officer ('learned TPO') and the Honourable Dispute Resolution Panel ('Hon'ble DRP') grossly erred in determining an adjustment of INR 15,28,39,699 with respect to the international transactions rendered by the taxpayer under section 92CA of the Income-tax Act, 1961 ("Act").

2. The learned AO/ learned TPO/ Hon'ble DRP erred in rejecting the Transfer Pricing ("TP") documentation maintained by the Appellant by invoking provisions of sub-section (3) of 92C of the Act.

3. The learned AO/ learned TPO/ Hon'ble DRP erred in disregarding the independent benchmarking analysis undertaken by the Appellant identifying the comparable transactions involving Fully & Compulsory Convertible Debentures ("FCCD") to demonstrate the arm's length nature of interest payment on FCCD.

4. The learned AO/Learned TPO/ Hon'ble DRP erred in considering the FCCDs issued by the Assessee to its Associated Enterprises in Indian Rupee as a foreign currency transaction.

5. The learned AO/ learned TPO/ Hon'ble DRP erred in considering the London Inter-bank Offered Rate ("LIBOR") + 200 basis points as the arm's length interest rate for the INR denominated FCCDs.

6. The Learned AO/Learned TPO/ Hon'ble DRP erred in not considering the decision of the Hon'ble ITAT in the Assessee own case for the same transaction for the AY 2013-14

II. Corporate Tax

The grounds mentioned hereinafter are without prejudice to one another.

7. The Learned AO / Hon'ble DRP has erred in law and on facts in assessing the income earned by the Appellant from the business of developing, operating and maintaining Information Technology / Information Technology Enabled Services ("IT/ ITeS") Parks in Special Economic Zones ("SEZ") under the head "Income from House Property" as against "Profits and gains from business and profession" and determining an income of INR 14,62,26,118/- under the head "Income from House Property" .

8. The Learned AO / Hon'ble DRP has erred on facts by not appreciating that the business as SEZ Developers/Co-developers including to develop, operate and maintain SEZ parks is one of the main business objects of the Appellant as per its Memorandum of Association and exploiting the same commercially by leasing out space in such SEZ parks to various companies and deriving income therefrom should be assessed as business income of the Appellant.

9. The Learned AO / Hon'ble DRP has erred on facts by stating that the Appellant is a mere lease holder and not appreciating that the operations and maintenance of the property including provision of various infrastructural facilities along with the leasing out of space are inextricably linked to each other which constitutes a business activity and such activity can ipso facto give rise only to "business income" under the Act.

10. The Learned AO / Hon'ble DRP has erred in law and on facts by disregarding the reliance placed by the Appellant on Circular No 16/2017 dated April 25, 2017 issued by the Central Board of Direct Taxes ("CBDT") wherein it has been clarified that income from developing, operating and maintaining an SEZ is to be charged under the head "Profits and Gains of Business".

11. The Learned AO / Hon'ble DRP has erred in law and on facts in disregarding that the operations of the Appellant are in accordance with the scheme framed and notified under the Special Economic Zones Act, 2005 and hence the income derived from such business activity of the Appellant is eligible for deduction under Section 80-IAB of the Act.

III. Other miscellaneous grounds

12. Without prejudice to the above, the Learned AO has erred in law and on facts by raising a demand of INR 4,68,46,950/- without considering an adjustment of tax refund of INR 1,10,17,650/- for AY 2018-19.

13. The Learned AO has erred in law and on facts in levying interest under Section 234B of the Act amounting to INR 1,66,23,111/-.

The appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.

3. The brief facts of the case are that, the assessee is a company, filed its Return of Income ("ROI") for A.Y. 2015-16 declaring total loss of Rs.2,56,00,872/- on 30.11.2015. In view of the international transactions involved during the year under consideration, for determination of Arm's Length Price ("ALP"), the case was referred to Learned Transfer Pricing Officer ("TPO"). The Ld. TPO vide his order dated 30.10.2018 proposed upward

adjustment of Rs.1528,39,699/- u/s. 92CA(3) of the Act. Accordingly, the Ld. AO passed the draft assessment order on 26.12.2018.

4. Aggrieved with the draft assessment order passed by the Ld. AO, the assessee preferred objection before the Ld. DRP. In pursuance to the directions of Ld. DRP dated 30.09.2019, the Ld. AO finalized the assessment on 28.10.2019 at total income of Rs.14,62,26,118/-.

5. Aggrieved with the final assessment order of Ld. AO, the assessee is in appeal before us.

6. Ground nos.1 to 6 of the assessee pertains to the bench marking of interest paid by the assessee to its Associated Enterprises ("AEs") on Fully Compulsory Convertible Debentures ("FCCDs"). The assessee bench marked the transaction by applying the domestic Prime Lending Rate ("PLR"), whereas the Learned Transfer Pricing Officer ("Ld. TPO") applied LIBOR for determining the Arm's Length Price ("ALP"). In this regard, the Ld. AR submitted that, the issue under consideration was referred to Special Bench of this Tribunal and the Special Bench vide its order dated 29.01.2025, has adjudicated the issue at para no.23 of its order, which is to the following effect :

> *" 23. In view of this matter and considering the facts of the present cases, and also by considering ratios of various High Courts, we are of the considered view, that once the CCDs issued by the appellant are denominated in Indian currency, the interest*

payment on the said CCDs is to be benchmarked with reference to the rate of interest applicable to the loans extended in currency concerned. Since the CCDs issued by the appellant are in the nature of rupee denominated loan, in our considered view, FCCD/CCD cannot be construed on par with the foreign currency loan for the purpose of benchmarking. Further, LIBOR plus 200 basis points being the interest rate prevalent in the international market and applicable to foreign curreny loans cannot be applied to benchmark interest on the appellants CCDs. Further, the said interest has to be benchmarked against the interest rates prevailing in the domestic market and similar debt instrument, such as the domestic prime lending rate (PLR). Therefore, we are of the considered view that as regards TP adjustment made in respect of interest paid / payable on CCD/NCD/other debentures, which are denominated in Indian currency, the benchmark is to be by applying PLR against LIBOR. Accordingly, we answer the question referred to for the Special Bench as under :

Whether as regards TP adjustment made in respect of interest paid / payable on FCCDs / NCDs / other debentures, which are denominated in Indian currency the benchmarking is to be made by applying PLR as against LIBOR?"	*(i) Yes, in favour of the assessees. (ii) Interest paid / payable on FCCDs / NCDs / other debentures, which are denominated in Indian currency to be bench marked by applying PLR rates."*

6.1 On perusal of above, we found that, the Special Bench of this Tribunal (supra) has decided the issue in favour of the assessee by holding that the interest on FCCDs is to be benchmarked by applying PLR rates. Therefore, respectfully following the decision of Special Bench of this Tribunal (supra), we hold that, the bench marking of the payment of interest on FCCDs by the

assessee to its AEs on the basis of PLR rates is justified. We, therefore, direct the Ld. AO/TPO to recompute the ALP on account of payment of interest on FCCDs by applying the PLR rates.

6.2 In the result, the ground nos.1 to 6 of the assessee are allowed.

7. Ground nos.7 to 10 of the assessee are related to treatment of income earned by the assessee from letting out of commercial property. The assessee had offered such income under the head 'profit and gains of the business or profession', whereas, the Ld. AO assessed the same under the head 'income from house property'.

7.1 In this regard, the Ld. AR submitted that, the assessee was incorporated with the main object of carrying on the business of development, operation and maintenance of commercial infrastructure, including construction, acquisition, leasing and management of property, as also reflected in the Memorandum of Association. He further submitted that, during the year under consideration, the assessee was engaged in the business of operating and maintaining IT park, where the assessee provided multiple facilities and services such as water, electricity, security, lift maintenance and other infrastructure support services to the occupants. The Ld. AR also submitted that, the assessee entered into a lease agreement with Phoenix Infocity Private

Limited ("Phoenix") (placed at page no.1175 to page no.1240 of paper book) and has taken two buildings i.e. Tower-H01A and Tower-H08 (leasehold property) on lease. The assessee has also sublet such leasehold property to various tenants by entering into two separate agreements with each tenant i.e. one for subletting of the leasehold property and another for provision of various services. The Ld. AR also submitted that, the activity carried out by the assessee was not purely sub-letting leasehold property, but consist of sub letting of leasehold property along with various amenities / services. Therefore, the income earned on such activities carried out by the assessee would fall under 'income from profits and gains of business or profession' and not under 'income from house property'. In support of their submission, the Ld. AR relied on the decision of Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. Vs. CIT 56 taxmann.com 456, wherein it was held that, where letting out of the property is the main object of the company and the same is carried out in a systematic manner, income arising therefrom is to be assessed as business income. Accordingly, the Ld. AR submitted that the sub letting of leasehold property along with various services are the main object of the assessee and therefore, the income earned by the assessee will fall under the head of 'income from profits and gains of business or profession'.

7.2 Per contra, the Learned Department Representative ("Ld. DR") supported the order of revenue authorities and submitted that the assessee merely took the property on lease and sublet to the tenants. Hence the activity of assessee does not constitute business. Accordingly, she submitted that there is no infirmity in the order passed by the Ld. AO by treating the income of the assessee under the head 'income from house property.'

7.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through the object of the company as per its memorandum of association, which is not disputed by the revenue, are to the following effect :

> ***"To invest, upgrade, develop, maintain internal and external infrastructure including but not limited to infrastructure like power generators, fit outs, common area maintenance, water treatment plant, water supply lines, sewage lines, storm water drains and water channels of appropriate capacity and to undertake operation, maintenance and management of Special Economic Zones and IT Parks***
>
> ***To carry on the business as Builders, Developers, Contractors, SEZ developer/Co-developer and to develop the properties belonging to the company or acquired by it, or to take property on lease, or license or mortgage etc. and to manage the properties so constructed, repair, renovate, re-condition the properties belonging to the Company, to maintain the properties so constructed***

To Purchase, acquire, take on lease or in exchange or in any other lawful manner any area, land, buildings, structures and turn the same into account, develop the same and dispose off or maintain the same and to build Hi-tech parks, Software development zones, Software Technology Parks (STP), Ports, Special Economic Zones (SEZ) and to deal with the same in any manner whatsoever and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others. To construct, erect, build, let out, repair, re-model, demolish, develop, improve, grades, curve, pave, macadamize, cement and maintain buildings, structures, Hi-tech parks, houses, apartments, hospitals."

7.4 We have also gone through the lease deed entered into by the assessee with its tenant i.e. M/s. Simplify Workforce Technologies Pvt. Ltd. placed at page nos.1241 to 1261 of the paper book and the service agreement with the same tenant placed at page nos.1262 to 1273 of the paper book. On perusal of both the agreements, we found that, although the assessee has entered into two separate agreements with the same tenant i.e. one for sub letting of leasehold property and another is for provision of various services, it cannot be held that, the assessee is merely engaged in sub letting of leasehold property. In fact the assessee is engaged in providing various services alongwith sub letting of leasehold property. Hence, the activity carried out by the assessee is not a case of pure rental income, but an organized and systematic business venture. We have also gone through the decision of Chennai Properties and

Investments Ltd. Vs. CIT (supra), wherein at para no.4 to para no.11 of the order, the Hon'ble Supreme Court has held as under :

> *"4. We have heard the learned counsel for the parties on the aforesaid issue. Before we narrate the legal principle that needs to be applied to give the answer to the aforesaid question, we would like to recapitulate some seminal features of the present case.*
>
> *5. The Memorandum of Association of the appellant-company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasise is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the assessing officer himself in his order.*
>
> *6. It transpires that the return of a total income of Rs.244030 was filed for the assessment year in question that is assessment year 1983-1984 and the entire income was through letting out of the aforesaid two properties namely, "Chennai House" and "Firhavin Estate". Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.*
>
> *7. With this background, we first refer to the judgment of this Court in East India Housing and Land Development Trust Ltd.'s case which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was: whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The court was therefore, of the opinion that*

the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.

8. Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd., we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal' [44 ITR 362 (SC)]. That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: -

> *"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."*

9. After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the

aforesaid judgment in Karanpura Development Co. Ltd.'s case squarely applies to the facts of the present case.

10. No doubt in Sultan Brothers (P) Ltd.'s case, Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: -

> *"We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."*

11. We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."

7.5 On perusal of above, we found that, the Hon'ble Supreme Court in that case has held that, where the main object of the company is letting out, then the income earned on such letting out activity shall be assessed as business income. In the present case, the facts of the assessee are similar to the ratio laid down by the Hon'ble Supreme Court in the said decision. Accordingly, we hold that the rental income and the allied income earned by the assessee from provision of various services are taxable under the head 'profits and gains of

business or profession'. Accordingly, the Ld. AO is directed to recompute the income accordingly.

7.6 In the result, the ground nos.7 to 10 of the assessee are allowed.

8. Ground no.11 of the assessee relates to the denial of deduction u/s.80IAB of the Act by Ld. AO.

8.1 In this regard, the Ld. AR invited our attention to the certificates granted by Department of Commerce (SEZ Segment), Ministry of Commerce and Industry, Government of India placed at page no.210 of the paper book and submitted that as per the said certificates, the assessee has been notified as co-developer under the SEZ Act. The Ld. AR further submitted that, as per section 2(g) of the SEZ Act, a co-developer is included within the definition of developer. Hence, the Ld. AR contended that the benefit available to a developer u/s.80IAB of the Act should also be extended to the co-developer. The Ld. AR further invited our attention to CBDT Circular no.16/2017 dated 25.04.2017 placed at page no.172 of the paper book and submitted that, in the said circular, which is in the context of section 80IA of the Act, the CBDT has clarified that, the entity engaged in development, development and operation or maintenance and operation of infrastructure facility are eligible for deduction u/s.80IA of the Act. It was also submitted by Ld. AR that, since the

provision of section 80IAB of the Act are parametria to section 80IA of the Act, the said clarification of CBDT should equally apply to section 80IAB of the Act also. The Ld. AR further invited our attention to page no.1272 of the paper book and submitted that, along with sub letting of leased property, the assessee is also providing various infrastructure and maintenance services to its tenants. Hence the activity of the assessee is covered under "maintenance and operation of infrastructure facility" and accordingly, the assessee is eligible for deduction u/s.80IAB of the Act. However, the Ld. AO denied the deduction u/s.80IAB of the Act on the ground that the assessee has not been undertaking any development activity of its own. The Ld. AO also contended that, the assessee had merely taken over an already developed property from Phoenix and subsequently sublet the same to various tenants. The Ld. AR also submitted that, the observation of the Ld. AO that the assessee is engaged in only subletting of the property is not true. Hence, the Ld. AR finally prayed before the bench that the deduction u/s.80IAB of the Act may be allowed to the assessee.

8.2 Per contra, the Ld. DR submitted that section 80IAB of the Act does not extend eligibility to enterprises engaged solely in operation and maintenance, unlike section 80IA(4) of the Act. Further, it was contended that the CBDT Circular no.16/2017 dated 25.04.2017 shall apply only to section 80IA of the

Act and cannot be extended to section 80IAB of the Act, which had a distinct and narrower scope. The Ld. DR further submitted that, to be considered as a developer, only having certificate of developer is not enough. There must be performance of some activity which is in the nature of development. Without performance of any activity in the nature of development, the assessee cannot be treated as a developer. The Ld. DR invited our attention to the certificate granted to the assessee placed at page no.210 of the paper book, wherein at para no.1(b), it has been clearly stated that the details of facilities proposed to be provided by the assessee was "for development and investment in the required interior, infrastructure along with the operation and maintenance of Towers of H01A & H08 forming part of the SEZ". Therefore, it is clear that the assessee was given the certificate for development of interiors / infrastructure facilities along with the operation and maintenance. The Ld. DR further invited our attention to para no.3(iii) of the certificate and submitted that, for development of interior / infrastructure facilities, the assessee had to obtain the required approval from various statutory authorities. However, the assessee failed to show such approvals, which means that the assessee has not taken any such approvals from any authority and accordingly no development activity has been undertaken by the assessee. The Ld. DR further invited our attention to para nos. 1177, 1203, 1205 and 1207 forming part of the lease

deed of the assessee with Phoenix and submitted that, at the time of entering into the lease agreement by the assessee with Phoenix, the entire development work had already been completed and some tenants had already occupied the premises. This also reflects that all the development work had already been done by Phoenix and no development work has been executed by the assessee. The Ld. DR also invited our attention to para no.2.5.11 of page no.28 of order of Ld. DRP, wherein the Ld. DRP has given its finding that the assessee has not incurred any expenditure towards development work. Further, the Ld. DR submitted that, it is not evident from the financial statement of the assessee that any capital expenditure on account of development work has been done by the assessee. The Ld. DR also submitted that, even if some services are provided by the assessee to its tenant, then the same would fall under the category of operation and maintenance, which is not eligible for deduction u/s. 80IAB of the Act. Finaly, the Ld. DR contended that the assessee is not eligible for deduction u/s. 80IAB of the Act.

8.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through page no.1177, 1203, 1205 and 1207 of the paper book forming part of lease agreement between Phoenix and the assessee and found that the entire building / infrastructure facilities had already been developed by Phoenix. The

assessee has merely taken two buildings out of the developed property on lease. Further, we have gone through the agreement entered into by the assessee with one of its tenants i.e. Simplify Workforce Technology Pvt. Ltd. It has been submitted by the Ld. AR that identical agreements have been executed with other tenant also. The assessee has entered into two separate agreements with its tenant i.e. one for subletting of the leasehold property (page nos.1241 to 1261 of the paper book) and another is for providing various services to the tenant (page nos.1262 to 1273 of the paper book). On perusal of agreement of subletting, we found that the assessee has obtained leasehold property on lease from Phoenix and sublet the same to its tenants. On perusal of service agreement we found that, the assessee has extended certain services to its tenants mentioned at page no.1272 of the paper book which is to the following effect :

"ANNEXURE (SERVICES)

1. *Maintenance of Mechanical & Electrical Servicesfor the building and common areas only.*
2. *Maintenance of lifts.*
3. *Security for the building and property for common area only.*
4. *Sanitary in common areas only.*
5. *Plumbing in common areas.*
6. *Façade cleaning.*
7. *House keeping for common area.*

8. *Electricity and lighting for common areas.*
9. *Landscape maintenance, as applicable.*
10. *Pest Control in common areas only.*
11. *Toilet upkeep – common area toilets only.*
12. *Parking (Four/Two wheeler) Management."*

8.4 On perusal of both the agreements entered into by the assessee with its tenants, we found that the income of the assessee is in two folds i.e. (a) rental income from subletting of the leasehold property and (b) service income from maintenance and operational support to tenants. We also found that, the assessee has taken the already developed property from Phoenix and sublet the same to the tenants. The assessee has not undertaken any work in the nature of development. Accordingly, we are of the considered opinion that the assessee has not performed any activity in the nature of development, but has provided certain services which are in the nature of operation and maintenance. At this juncture, it is relevant to refer to section 80IAB which is to the following effect :

> ***" Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone.***
>
> ***80-IAB.*** *(1) Where the gross total income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone, notified on or after the 1st day of April, 2005 under the Special Economic Zones Act, 2005, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive assessment years:*

> ***Provided*** *that the provisions of this section shall not apply to an assessee, being a developer, where the development of Special Economic Zone begins on or after the 1st day of April, 2017.*
>
> *(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government :*
>
> ***Provided*** *that where in computing the total income of any undertaking, being a Developer for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (13) of section 80-IA, the undertaking being the Developer shall be entitled to deduction referred to in this section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in sub-section (1) or sub-section (2), as the case may be :*
>
> ***Provided further*** *that in a case where an undertaking, being a Developer who develops a Special Economic Zone on or after the 1st day of April, 2005 and transfers the operation and maintenance of such Special Economic Zone to another Developer (hereafter in this section referred to as the transferee Developer), the deduction under sub-section (1) shall be allowed to such transferee Developer for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee Developer.*
>
> *(3) The provisions of sub-section (5) and sub-sections (7) to (12) of section 80-IA shall apply to the Special Economic Zones for the purpose of allowing deductions under sub-section (1).*
>
> *Explanation.—For the purposes of this section, "Developer" and "Special Economic Zone" shall have the same meanings respectively as assigned to them in clauses (g) and (za) of section 2 of the Special Economic Zones Act, 2005."*

8.5 On perusal of provision of section 80IAB of the Act, it is abundantly clear that, if the assessee is a developer, then he is eligible for deduction u/s. 80IAB of the Act. In the present case, we found that no development activity has been undertaken by the assessee so as to be called as developer within the meaning of section 80IAB of the Act, hence, the assessee cannot be treated as a developer for the purpose of section 80IAB of the Act. As the assessee is not a developer, no deduction u/s.80IAB will be available to the assessee as a developer. Further, on perusal of second proviso to section 80IAB(2), we

found that, as far as the operation and maintenance is concerned, the deduction u/s.80IAB is available where the original developer transferred the operation and maintenance to another developer. Therefore, as far as deduction on account of operation and maintenance is concerned, the transferee must also be a developer. As the assessee is not covered under a developer, then the assessee is not eligible for any deduction u/s. 80IAB of the Act as far as any income on account of operation and maintenance is concerned.

8.6 As far as the reliance of the assessee on the CBDT circular no.16/2017 dated 25.04.2017 is concerned, we have gone through the said circular. On perusal of same, we are of the considered view that it shall apply only to section 80IA of the Act and cannot be extended to section 80IAB of the Act, which had a distinct and narrower scope. Further, perusal of second proviso to section 80IAB(2) also made it abundantly clear that, as far as the operation and maintenance is concerned, the deduction u/s.80IAB is available where the original developer transferred the operation and maintenance to another developer. Hence in any case the assessee must be a developer. Hence the CBDT circular no.16/2017 dated 25.04.2017 cannot be extended to section 80IAB of the Act.

8.7 In view of the above facts, we hold that the assessee is neither a developer within the meaning of section 80IAB of the Act nor does not fall within the scope of second provision to section 80IAB(2) of the Act. Therefore, the assessee is not eligible for any deduction u/s. 80IAB of the Act. Accordingly, the ground no.11 of the assessee is dismissed.

9. Under ground no.12, the Ld. AR submitted that the Ld. AO has not given any credit on account of tax refund of Rs.1,10,17,650/- related to A.Y. 2018-19 while calculating the demand for the year under consideration. As the refund is not related to the year under consideration, we do not propose to adjudicate on this ground. Accordingly, the ground no.12 of the assessee is dismissed.

10. Ground no.13 of the assessee is related to the levy of interest u/s. 234B of the Act, which is consequential in nature and to be worked out as per law on the final tax liability. In our considered opinion, the same is not required to adjudicate at this stage. Accordingly, ground no.13 of the assessee is dismissed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 23rd May, 2025.

Sd/-	**Sd/-**
(**RAVISH SOOD**)	(**MADHUSUDAN SAWDIA**)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad.
Dated: 23.05.2025.
** Reddy gp*

Copy of the Order forwarded to :

1.	M/s. Hyderabad Infratech Private Limited, Admin Building, Mariner, The V, Plot No.17, Software Units Layout, Madhapur, Hyderabad-500 081
2.	DCIT, Circle-2(2), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,