आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री विजय पाल राव, उपाध्यक्ष एवं

श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.1137/Hyd/2025**
(निर्धारण वर्ष/Assessment Year:2016-17)

M/s. Navayuga Engineering Company Limited, Hyderabad. PAN: AAACN7396R	**Vs.**	Asst. Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Pawan Kumar Chakrapani, C.A. and Shri Santi Pawan Kumar, Advocate	
राजस्व द्वारा/Revenue by:	Dr.Narendra Kumar Naik, CIT-DR	
सुनवाई की तारीख/Date of hearing:	15/10/2025	
घोषणा की तारीख/Pronouncement:	15/10/2025	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

This appeal is filed by M/s. Navayuga Engineering Company Limited ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), dated 31.12.2024 for the A.Y. 2016-17.

2. At the outset, it is observed that there is a delay of 129 days in filing the present appeal. The assessee has filed a condonation petition along with a copy of affidavit explaining the reasons for the delay. The Learned Authorised Representative ("Ld. AR") submitted that the assessee was in appeal before the Ld. CIT(A) for Assessment Years 2017–18 and 2018–19, in addition to the year under consideration. The Ld. CIT(A) had passed orders in favour of the assessee for Assessment Years 2017–18 and 2018–19, against which the Revenue had preferred appeals before this Tribunal. When the assessee came to know about the filing of those appeals by the Revenue, it approached its counsel who had represented the assessee's cases before this Tribunal for Assessment Years 2013–14, 2014–15 and 2015–16. During such enquiry, it was revealed that the appeal for Assessment Year 2016–17 had been served through e-mail on 31.12.2024 and had been decided against the assessee. Immediately on coming to know of the said fact, the assessee filed the present appeal. It was therefore submitted that the delay occurred due to bona fide reasons and not due to any malafide

intention, and hence, the delay may be condoned in the interest of justice.

3. The Learned Departmental Representative ("Ld. DR") did not raise any serious objection to the request for condonation of delay.

4. We have considered the rival submissions and perused the material available on record. The explanation offered by the assessee appears to be bona fide and reasonable. The delay has arisen due to circumstances beyond the control of the assessee, as the assessee was under a bona fide belief that the appeals for all the relevant assessment years had been duly pursued. Further, we find that the Hon'ble Supreme Court, in the case of Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025, has held that a justice-oriented and liberal approach should be taken while dealing with the application filed by an appellant seeking condonation of the delay in filing of the appeal. Respectfully following the ratio laid down by the Hon'ble Supreme Court, we hold

that sufficient cause exists for condoning the delay. Accordingly, the delay of 129 days in filing the appeal is condoned, and the appeal is admitted for adjudication on merits.

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

1. The impugned order of the learned Authorities below in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies himself liable to be assessed on a total income of Rs. 168,59,14,797/-, as against the income returned an amount being Rs. Nil/-, under the facts and circumstances of the case.

3. Whether the learned Authorities below are justified in denying the claim of deduction under section 80IA[4] of the Act, of an amount being Rs. 168,59,14,797/-, made by the Appellant in the return of income filed in response to notice under section 153A of the Act, under the facts and circumstances of the case.

4. Whether the learned Authorities below are justified in concluding that the fresh claim made under section 80IA[4] of the Act, of an amount being Rs. 168,59,14,797/-, for the first time in the return of income filed in response to notice under section 153A of the Act, in the completed assessment cannot be entertained, under the facts and circumstances of the case.

5. Whether the learned Authorities below are justified in not appreciating the fact that the eligible projects involve design, development, operation and maintenance and the Appellant is eligible to claim deduction of an amount being Rs. 168,59,14,797/-, under section 80IA [4] of the Act, under the facts and circumstances of the case.

6. Whether the learned Authorities below are justified in denying the claim of deduction of an amount being Rs. 168,59,14,797/-, under section 80IA [4] of the Act, on the pretext that the work was awarded to the Joint Venture and the Appellant has not satisfied the conditions laid in section 80IA of the Act, for granting deduction, under the facts and circumstances of the case.

7. Whether the learned Authorities below are correct in not appreciating the fact that, the Appellant has executed the works and was responsible for designing, drawing, risk of project, execution of project, maintenance and defect liability etc., under the facts and circumstances of the case.

8. Whether the learned Authorities below have erred in not appreciating the fact that, the Appellant is involved in design, development, operation and maintenance, and is eligible for claim of deduction under section 80IA of the Act, of an amount being Rs. 168,59,14,797/-, under the facts and circumstances of the case.

9. The Appellant denies himself liable to be charged to interest under section 234B of the Income-Tax Act, 1961, under the facts and circumstances of the case.

10. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

11. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.

6. The brief facts of the case are that the assessee is a company engaged in the business of construction. It filed its original return of income for Assessment Year 2016–17 on 30.11.2016, declaring total income of Rs.164,25,75,040/-. The assessment was completed under section 143(3) of the Income Tax Act, 1961 ("the Act") on 27.03.2018, accepting the returned income. Subsequently, a search and seizure operation under section 132 of the Act was conducted in the case of the assessee on 25.10.2018. Pursuant thereto, a notice under section 153A of the Act was issued to the assessee on 23.08.2019, in response to which the assessee filed a return of income on 21.09.2019, declaring total income at Nil after claiming deduction under section 80-IA of the Act. The Ld. AO completed the assessment under section 153A of the Act on 07.05.2021, disallowing the deduction claimed by the assessee under section 80-IA of the Act and determined the total income of the assessee at Rs.168,59,14,797/-.

7. Aggrieved with the order of Ld. AO, the assessee filed an appeal before the Ld. CIT(A), who upheld the order of the Ld. AO and

dismissed the appeal. The assessee, being further aggrieved, has filed the present appeal before this Tribunal.

8. At the threshold of hearing, the Ld. AR fairly submitted that the facts of the present case are identical to those in the assessee's own case for Assessment Years 2013–14 to 2015–16, which had been decided by this Tribunal in ITA Nos.239 to 241/Hyd/2022, dated 11.12.2023, wherein the claim for deduction under section 80-IA was disallowed and the appeals of the assessee were dismissed. He further submitted that the assessee has already filed an appeal before the Hon'ble High Court against the aforesaid order of the Tribunal for Assessment Years 2013–14 to 2015–16, and the same is still pending adjudication before the Hon'ble High Court. In view of the above facts, the Ld. AR prayed before the Bench to take an appropriate view and consider the appeal in light of the facts already examined by the Tribunal in the assessee's own case for earlier years.

9. The Ld. DR supported the orders of the lower authorities and submitted that since the assessee's case for the earlier years had already been adjudicated by this Tribunal on identical facts, the same principle should be followed in the current assessment year as well.

10. We have heard the rival contentions and perused the material available on record. We have also gone through para nos. 15.2 to 16 of the order of this Tribunal in the assessee's own case for Assessment Years 2013–14 to 2015–16 (supra), which is to the following effect :

> *" 15.2 In the present case the return of income was filed on 30.11.2013 and the assessment order u/s 143(3) was passed on 29.1.2015. The search took place on 25.10.2018 and therefore, 153A notice was issued on 23.8.2019 and assessment order was passed u/s 143(3)/153A on 28.4.2021. Therefore, there was no reason to substitute a valid return of income filed by the assessee with the new return dated 21.8.2019.*
>
> *15.3 Further, the said case was not a case where the assessement proceeding has been concluded and no appeal has been preferred by the assessee. In view of the above, the above said judgment is not applicable to the facts of the present case.*
>
> *16. Now coming to the additional argument raised by the Revenue is concerned, the same is with respect to the fact that the assessee while filing the return of income u/s 153A has sought to claim the refund and has claimed deduction u/s 80IA(4) for the first time. In this regard, though the issue has been considered by us elaborately while passing the*

decision in the case of Dy.CIT vs. HES Infra (P) Ltd, however, the important aspect is that the assessee was required to file the audit report along with the agreement with the said govt.deptt. etc., in the requisite format and claim the deduction. Now after a lapse of considerable period (original return of income was filed on 30.11.2013 and search took place on 25.10.2018), and the assessee has filed the return of income on 21.9.2019 claiming the deduction u/s 80IA(4) for the first time. Admittedly, the period for revising the return of income or filing the revised return was already over and the order of the assessment u/s 143(3) passed on 29.1.2015 had attained finality. No appeal has been preferred against the original order passed by the Assessing Officer. Even time for filing the rectification application has also lapsed. In the return filed on 21.9.2019 the assessee for the first time has claimed the deduction and sought a refund. As held by us in the case of Dy. CIT vs. HES Infra (P) Ltd (Supra), the assessee is not permitted to make a fresh claim of deduction at the time of filing of the return of income in response to notice u/s 153A. Further, we are also of the view that the assessee cannot take advantage of the proceedings u/s 153A to its own benefit more particularly when the original return of income filed by the assessee and the assessment order passed on 29.01.2015 had been accepted. The assessee cannot be permitted to claim a deduction on the basis of activity, which formed the basis of filing return of income on 30.11.2013 and which were considered by the Assessing Officer while passing the order on 29.1.2015. Now the assessee, in our opinion, cannot claim deduction u/s 80IA and ask for a refund of taxes already paid, while revising its return in the garb of return of income filed in response to notice u/s 153A. The above said issue has been considered and decided by the Hon'ble Supreme Court in the case of Shelly Products (Supra) wherein it was held that the assessed income shall not be less than the returned income. In view of the above, we are of the opinion that the above said claim of the assessee is not required to be considered. In view of our above discussion, the appeal filed by the assessee is dismissed."

11. On perusal of above, we find that this Tribunal after detailed examination, held that the assessee was not entitled to deduction under section 80-IA of the Act as the claim was made for the first time in the return filed under section 153A of the Act and the assessment for the relevant years had already been completed under section 143(3) of the Act prior to the date of search. In the present case also, there is no dispute on the fact that the assessment for Assessment Year 2016–17 was a completed assessment as on the date of search, and the assessee had not claimed any deduction under section 80-IA of the Act in its original return of income filed under section 139(1) of the Act. The claim was made for the first time in the return filed in response to notice under section 153A of the Act. Since the facts and circumstances of the case are identical to those considered in the earlier order of this Tribunal in the assessee's own case, we respectfully follow the same and hold that the assessee is not eligible for deduction under section 80-IA of the Act. Accordingly, the appeal of the assessee is dismissed, following

the decision of this Tribunal in the assessee's own case for Assessment Years 2013–14 to 2015–16 (supra).

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 17th Oct., 2025.

Sd/-	**Sd/-**
(VIJAY PAL RAO)	**(MADHUSUDAN SAWDIA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Hyderabad.
Dated: 17.10.2025.

** Reddy gp*

Copy of the Order forwarded to :

1.	M/s. Navayuga Engineering Company Limited, Plot No.379, Road No.10, Jubilee Hills, Hyderabad-500 033
2.	The ACIT, Central Circle 1(1), Hyderabad.
3.	Pr.CIT (Central), Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,