

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, KOLKATA

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No. 2118/Kol/2025
(Assessment Year 2017-18)**

&

**I.T.A. No. 2119/Kol/2025
(Assessment Year 2020-21)**

DCIT, CC-2(2), Kolkata,

Office of the DCIT, CC-2(2), Kolkata,

Aayakar Bhawan, Poorva, 4th Floor,

110, Shantipally, E.M. Bypass,

Kolkata - 700107

..... **Appellant**

vs.

M/s Spml Infra Limited,

F-27/2, Phase-II,

Okhla Industrial Area,

New Delhi – 110020, Delhi,

New Delhi – 110020

[PAN: AADCS2469K]

..... **Respondent**

Appearances by:

Assessee represented by : Sanjay Bhaumik, Adv.

Department represented by : V. Vidhyadhar, CIT (DR)

Date of concluding the hearing : 13.01.2026

Date of pronouncing the order : 20.01.2026

ORDER

Per Rajesh Kumar, AM

This is a batch of two appeals filed by the Revenue arise from orders dated 11.04.2025 and 26.05.2025 passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals)-Kolkata-26 [hereafter “the Ld. CIT(A)]. Since these appeals are relating to same assessee and are involving common issues, therefore,

these are being disposed of by this consolidated order for the sake of brevity and convenience. We would first take up the appeal ITA No. 2118/Kol/2025.

ITA No. 2118/Kol/2025

2. At the outset, the Ld. Counsel for the assessee stated that the issue is squarely covered by the decision of the co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 440/Kol/2025, AY 2016-17, vide order dated 11.09.2025, wherein identical issue of deduction u/s 80IA of the Act has been decided by the Bench by holding that since the Hon'ble High Court is seized with the matter in the case of the assessee for preceding assessment year and the AO may follow the Hon'ble High Court orders when the same is delivered. The Ld. AR therefore, prayed that the matter decided on the similar lines.

3. After hearing the rival contention and perusing the material available on record. We find that identical issue has been decided by the coordinate Bench in ITA No. 440/Kol/2025 AY 2016-17, dated 11.09.2025 which are as under:

"8. We have considered the rival submissions. Since the issue relating to the claim of the deduction u/s 80-1A of the Act is sub judice before the Hon'ble jurisdictional High Court and as on date, the orders of the Hon'ble Tribunal have not been stayed, therefore, following the precedence in the earlier years as relied upon by the Ld. CIT(A), we do not find any infirmity in the order of the Ld. CIT(A) in allowing the claim of deduction u/s 80-IA of the Act to the assessee and the Revenue's appeal is dismissed at present. However, we may add that since the issue is sub judice before the Hon'ble High Court, the Ld. AO shall follow the Hon'ble High Court's order as and when the same is rendered and move an appropriate application, if required, for modification of this order on the basis of the outcome of the appeal pending before the Hon'ble High Court.

9. In result, the appeal filed by the Revenue is dismissed."

4. We note that identical issue has been decided by the coordinate bench dismissing the appeal of the revenue with the direction that the AO shall follow the Hon'ble High Court order as and when it comes. However

respectfully not agreeing with the coordinate bench on this issue of dismissing the appeal of the revenue, we are not inclined to dismiss the appeal of the revenue. We, without dealing with the merits of the case, are restoring the issue to the file of the AO to keep the issue alive to be decided in accordance with the decision of the Hon'ble High Court as and when the same is delivered. We also direct the assessee to move an application before the AO after the decision of the Hon'ble Jurisdictional High Court comes in the matter which is, at present, sub-judice. Consequently the appeal of the revenue is allowed for statistical purposes.

ITA No. 2119/Kol/2025

5. Since the facts and issues involved in the appeal are identical, except variances in figures or calculations, Therefore, our decision given above in ITA No. 2118/Kol/2025 would, mutatis mutandis, apply to ITA No.2119/Kol/2025 as well. Consequently, the appeal of the revenue is allowed for statistical purpose.

6. In result, appeals of the Revenue are allowed for statistical purposes

Order pronounced on 20.01.2026

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 20.01.2026
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

