

**आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ**

**Income-tax Appellate Tribunal "C" Bench Mumbai**

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य

**Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member**

**आयकर अपील सं./I.T.A./7155/Mum/2008, निर्धारण वर्ष /Assessment Year: 2005-06**

M/s. Patel KNR, JV Patel Estate Road, Jogeshwari(W) Mumbai-400 072. <b>PAN:AAAAP 1494 N</b>	Vs.	ACIT, Circle-24(1) Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
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**आयकर अपील सं./I.T.A./7156/Mum/2008, निर्धारण वर्ष /Assessment Year: 2005-06**

M/s. KNR Patel, JV Patel Estate Road, Jogeshwari(W) Mumbai-400 072. <b>PAN:AAAAP 1639 A</b>	Vs.	ACIT, Circle-24(1) Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by: Shri Vijay Kumar Soni-DR**

**Assessee by: Shri Mayur Kishnadwala-AR**

**सुनवाई की तारीख / Date of Hearing: 28.06.2016**

**घोषणा की तारीख / Date of Pronouncement: 28.06.2016**

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 12.11.2008 of CIT(A)-XXIV, Mumbai the assessee has filed the present appeals. Both the appeals are being decided by a single common order as combined issues are involved. Assessee –AOP.s are engaged in executing civil contracts and construction of roads, highways etc.

**ITA No.7155/Mum/2008-(AY 2005-06) :**

2.The effective Ground of appeal is about disallowance of claim made by the assessee u/s.80IA(4) of the Act in respect of income derived from activity of development of eligible infrastructural facilities. In this case original order was completed on 31.12.2007, u/s. 143(3) of the Act by the AO. He held that the assessee was not entitled to claim deduction u/s.80IA(4) of the Act.

3. Aggrieved by the order of the AO, assessee preferred an appeal before the First Appellate Authority (FAA), who confirmed the order of the AO. The assessee, agitated the issue before the Tribunal who remanded back the matter to the file of the AO with certain directions. In the meanwhile, the assessee joined as an intervener on the issue of section 80IA(4) of the Act, in the Third Member case of B.T. Patil & Sons (Belgaum) Construction Pvt. Ltd. (ITA No.1048 & 1049/Pune/2003) that on 26.10.2009 the Third Member decided the issue against B.T. Patil & Sons (Belgaum) Construction Pvt. Ltd. As per the provisions of section 255(4) of the Act the case of BT Patil was referred back to the Division Bench of the Tribunal to give effect in conformity with the opinion of the Third Member. The regular Bench following the judgment of Hon'ble Bombay High Court delivered in the case of ABG Heavy Industries Ltd. (332 ITR323), granted deduction to the assessee u/s. 80IA(4) of the Act. Considering the above facts, the Tribunal held that the law interpreted by the 3<sup>rd</sup> Member was no longer a good law. The Tribunal decided the issue in case of B.T Patil as under :

*“Thus, while giving effect to the opinion of Third Member u/s. 255(4) of the Act, we take view in conformity with order of Jurisdictional High Court in case of ABG Heavy Industries Ltd. (supra), the Assessing Officer is directed to allow deduction u/s. 80IA(4) of the Act to the assessee with regard to the projects in question for both the years. The matter is disposed off accordingly.”*

Assessee brought the above facts before the Hon'ble Bombay High Court therefore, the matter was remanded back to the Tribunal.

4. During the course of hearing before us the Authorised Representative brought to our notice that in case of Patel KNR, JV the Tribunal had decided identical issue in favour of the assessee (ITA No.5230/Mum/2012, AY 2008-09, dated 26.09.2014) .He relied upon the said order. Departmental Representative (DR) left the issue to the discretion of the Bench .

5. We have heard the rival submission and perused the material and find that it is a remand matter wherein the Hon'ble High Court has directed the Tribunal to decide the issue considering the available material. We find that in the case of Patel KNR, JV (supra), the Tribunal has deliberated upon the issue after recording the basic facts as under :

*“3. Briefly stated relevant facts of the case are that the assessee is a Joint Venture(JV) between Patel Engineering Ltd. and KNR Constructions Ltd. and is engaged in business of Construction of Road, Highways and other infrastructure projects. Assessee filed the return of income declaring the total income of Rs. Nil after "claiming deduction u/s. 80IA ( 4) on one project namely AS-18 " of Rs.9,95,41,994/- which was restricted to gross total income of Rs.*

3,02,81,419/- Assessment was completed under 143(3) of the Act determining the total income at Rs.3,02,81,419/-. In the assessment, AO disallowed the assessee's claim of deduction u/s 80IA(4) by holding that NHAI supplies funds, technical knowhow, technical parameters and even the work of the assessee is under the supervision of NHAI, hence, the assessee is only 'works contractor' for the purpose of only execution of the works. AO also held that the assessee is only as 'works contractor' and not as 'the developer and as such, the assessee could not substantiate its claim therefore, the claim of the assessee was not accepted. In support of his decision, AO relied on the decision of the Larger Bench of the ITAT in the case of M/s. B.T. Patil & Sons Belgaum Construction Pvt Ltd reported in 126TTJ (Mum) TM wherein the assessee was one of the "intervener" and it was held that, executing a mere works contract is not entitled to deduction u/s 80IA(4). Further, AO restricted the TDS credit to Rs. 5,41,78,411/-, which is proportionate to the contract receipts offered by the assessee in the year under consideration. AO invoked the provisions of section 199 of the Act in this regard. Aggrieved with the decision of the AO, assessee filed an appeal before the first appellate authority.

4. During the proceedings before the first appellate authority, assessee made elaborate submissions by mentioning that both the denial of deduction u/s.80IA(4) of the Act and restriction of TDs credit is not proper. Before the CIT(A), assessee relied on various decisions i.e., the judgment of the Jurisdictional High Court in the case of ABG Heavy Industries Ltd. W reported in 322 ITR 323 (BOM); order of the ITAT, Hyderabad "Bench in the case of GVPR Engineers Ltd vs. ACIT [21 Taxmann.com 246] (Mum); Laxmi Civil Engg. P. Ltd vs. Addl. CIT (ITA No.766/PN/09, 254/PN/08, 431/PN/07). It was demonstrated before the CIT(A) that the Larger Bench decision in the case of B.T. Patil & Sons Belgaum Constructions (P) Ltd (supra), is not good law in view of the subsequent developments on that order. CIT (A) considered the same and passed a speaking order along with the appeal of the assessee on both the issues. While giving the decision, CIT (A) discussed the relevant provisions of section 80IA(4) and the definition of "Infrastructure" and mentioned that the provisions are progressively liberalized to hold that even the developer is eligible for deduction under these provisions. He also discussed the meaning of 'contractor' and 'developer' and elaborated the scope of contract. Para 2.15 of the CIT(A)'s order is relevant in this regard. There was a discussion in his order on the various clauses of the contract to conclude that the assessee has all the responsibility in, executing the contract works. Further, the CIT(A) analyzed the way the AO rejected the applicability of the binding judgment of the Hon'ble High Court in the case of ABG Heavy Industries Ltd (supra).' Further, he also analyzed the applicability of the decision of various Benches of the Tribunal. In para 2.30 of the impugned order, the CIT(A) held that the Larger Bench decision in the case of B.T. Patil & Sons Belgaum, Construction Pvt. Ltd. (supra), is no longer a good law considering the binding judgment of the Hon'ble High Court in the case of ABG, Heavy Industries Ltd. (supra) and other decisions of the Tribunal. Further, he analyzed: another judgment of the ITAT, Hyderabad Bench in the case of M/s. KMC Constructions Ltd vs. CIT, 21 Taxmann.com 138 (Hyderabad), dated 16.3.2012 which belongs to the subsequent period to the cited Larger Bench decision in the case of B.T. Patil & Sons Belgaum Construction Pvt Ltd (supra). In fact the CIT(A) extracted the para 46 to 44 of the said order of the Tribunal in the case of M/s. KMC Constructions Ltd (supra) and directed the AO to allow the deduction claimed u/s. 80IA(4) of the Act. para 2.31 of the impugned order is irrelevant in this regard. The ratio of the said decision is that the assessee, who is engaged in this kind, of contract work involving the NHAI projects is not merely a works contractor and he is a developer who is eligible for deduction u/s 80IA(4) of the Act. It is the finding of the CIT (A) that the contracts executed by the M/s. KMC Constructions Ltd, (supra) involving NHAI and the scope of the works are similar to that of the works, executed by the assessee for NHAI. CIT(A) analyzed the scope of the contract work before giving relief to the assessee."

The Tribunal decided the issue as under :-

"7. We have heard both the parties on the issue of allowability of deduction u/s. 80IA(4) of the Act to the assessee who executed the contract granted by the NHAI. It is the finding of the

*Hyderabad Bench of the Tribunal in the case of M/s KMC Constructions Ltd (supra) that the contractor, who undertakes for road Widening of the National Highways from 2 lines to 4 lines, is eligible for deduction u/s 80IA(4) of the Act. The assessee of this kind are deemed fulfilling the conditions specified in the said sub-section (4) of Section 80IA of the Act. It is also demonstrated before us that the Larger Bench decision in the case of B.T, Patil & Sons Belgaum Construction Pvt Ltd (supra) is no longer a valid law as the said judgment was reversed after hearing the case in compliance with the directions of the Hon'ble Bombay High Court. Therefore, we are of the opinion that the decision of the CIT(A) on this issue is fair and reasonable and it does not call for any interference. Accordingly, ground no.1 is allowed in favour of the assessee. ”*

Respectfully following the above order for 2008-09 we decide the effective Ground of appeal in favour of the assessee.

**ITA 7156/Mum/2008 (2005-06):**

7.The facts of the case are identical to the facts of the earlier matter except the amount involved is different. Following our order at para no. 5, we decide the effective Ground of appeal in favour of the assessee .

As a result appeals filed by both the assessee's stand allowed.

फलतः दोनों निर्धारितियों द्वारा दाखिल की गई अपीलें मंजूर की जाती .

Order pronounced in the open court on 28<sup>th</sup> June, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 28 जून, 2016 को की गई ।

**Sd/-**

**Sd/-**

(पवन सिंह /Pawan Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28 .06.2016.

Jv.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “G ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.