

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री मंजुनाथा. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **905/Chny/2018**
निर्धारण वर्ष / Assessment Year: 2011-12

M/s. Bharat Engineering
Construction Co. Pvt. Ltd.,
No. 1A, Jhaver Plaza, 6th Floor,
Nungambakkam High Road,
Chennai – 600 034.

[PAN: AACCB-8705-G]

(अपीलार्थी/Appellant)

v. The Assistant Commissioner of
Income Tax,
Corporate Circle -1(2),
No. 121, Nungambakkam High
Road, Nungambakkam,
Chennai – 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 04.01.2024

घोषणा की तारीख/Date of Pronouncement

: 07.02.2024

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Chennai, dated 28.03.2014 and pertains to assessment year 2011-12.

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

"1. The order of the CIT(A) is contrary to law, facts, evidence on record and opposed to fair procedure.

2. Disallowance of claim for deduction u/s 80IA of the Act - The learned CIT(A) fundamentally failed to appreciate the decision of the ITAT in the earlier year is not applicable to the facts of the case since the appellant is a developer of infrastructure with investment in the project coupled with the fact that risk and reward owned by him fully. The appellant is entitled to relief granted under section 80 (IA) of the income tax since the appellant eminently qualifies for relief in terms of plain language of section 80 (IA) and also binding decisions of the ITAT, CBDT Circular and High Court decisions cited before him.

3. The learned AO had erred in disallowing the claim of deduction u/s.80-IA without verifying the documents of the Appellant who has entered into agreement with the Government Authorities for claim of exemption for infrastructure facilities before disallowing the same. The claim deduction u/s.80-IA was to an extent of Rs.4,30,38,966/-.

4. The appellant further submits that in an identical case, the Commissioner of Incometax (Appeals) has allowed the claim for deduction u/s.80-IA in another case following the decision of Patel Engineering Ltd. Vs. Deputy Commissioner of Income tax reported in 94 IT J (Mum) 646 and ACIT Vs. Bharat Udyog Limited reported in 123 IT J 689. The decision of the CIT(Appeal) was upheld by the Hon'ble ITAT, C-Bench, when the department filed an appeal against the order of the CIT(Appeals).

5. The Honourable ITAT in the case of ACIT Vs. Bharat Udyog Ltd. reported in 123 IT J 689 have held that the contractor should also be treated as a developer for the purpose of deduction u/s.80-IA. The following excerpts are relevant in this connection:

"a person who enters into a contract with another person will be a contractor no doubt; and the assessee having entered into an agreement with the Government Agencies for development of infrastructure projects is obviously a contractor but that does not derogate the assessee from being a developer as well. The term 'contractor' is not essentially contradictory to the term 'developer'. On the other hand, rather section 80-1A(4) itself provides that assessee should develop the infrastructure facility as per agreement with the Central Government, State Government or Local Authority. So entering into lawful agreement and thereby becoming a contractor should, in

no way be a bar to the one being a developer. Therefore merely because in the agreement for the development of infrastructure facility, assessee is referred to as contractor or because some basic specifications are laid down, it does not detract the assessee from the position of being a developer not will it debar the assessee from claiming section 80-IA(4)."

In view of the above clear pronouncements, the appellant submits that the appellant is eligible for deduction u/s.80-IA(4) as claimed by it.

6. The Appellant submits that the Hon'ble Members of the ITAT, C-Bench in their decision in the case of M/s. R.R.Constructions, Chennai in ITA No.2061/Mds/2010 have observed that "the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. Vs. CIT 196 ITR 188 has ordained that taxing statute granting incentives for promoting growth and development should be liberally construed". The Hon'ble Members of the ITAT, in the above case, after considering the various judgments have held that the assessee was entitled to deduction u/s.80-IA(4) of the Act and accordingly upheld the decision of the CIT(A) in allowing the appellant's claim u/s.80-IA.

7. The learned CIT(A) erred in distinguishing the ITAT decision in the case of R.R.Construction on flimsy grounds without considering the number of decisions relied on by the IT AT

8. The learned CIT(A) ought to have appreciated that the philosophy behind incentive relief u/s 80 IA is to promote and accelerate economic growth and the administrative authorities should not whittle down the plentitude or exemption granted by the Parliament.

9. The learned CIT(A) fundamentally failed to appreciate the various circulars issued by the CBDT in regard to widening the scope of relief

10. The learned CIT(A) ought to have appreciated that in taxation matters more emphasis must be placed upon the business aspect of the transaction rather than the purely legal and technical aspect (see 17 ITR 545, 28 ITR 928 followed in 51 ITR 849 SC)

11. The CIT(A) failed to appreciate that piece of development infrastructure work would also qualify for relief u/s 80IA as has

been held in the case of AGB industries reported 322 ITR 323 and the said decision had become final in the light of dismissal of SLP by the Supreme Court.

12. The learned CIT(A) fundamentally failed to appreciate that the factual aspect of work undertaken by the appellant, namely, pumping its own resources, employing its own technical personnel and its own design without the intervention of the principal and taking responsibility, risk and reward of the work and creation of infrastructure facility on account of execution of work on its own expertise.

13. As the facts of the case and the issue involved in this appeal are identical to those in the case referred to above, it is respectfully submitted that the Order of the Commissioner of Income-tax (Appeals)-1, be cancelled and the appellant granted the benefit of deduction u/s.80IA of the Act.

14. For the above reasons and such other reasons that may be adduced at the time of hearing, the appellant prays that the appellant be granted the benefit of deduction u/s.80-IA(4) and the issue of disallowance of section 80-IA passed in the order of the CIT(A) may be cancelled.

15. The appellant craves leave to file additional grounds.”

3. The brief facts of the case are that, the assessee company is engaged in the business of civil construction, filed its original return of income on 29.09.2011 and said return has been revised on 10.10.2011, disclosing total income of Rs. 74,70,298/-. The assessee has claimed deduction u/s. 80-IA(4) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), towards various projects executed for Government and semi-government undertakings. The assessee claims that it was a developer of infrastructure projects as defined u/s.

80-IA of the Act and thus, its claim of deduction u/s. 80-IA of the Act is in accordance with law. The Assessing Officer, disallowed deduction claimed u/s. 80-IA(4) of the Act on the basis of disallowance of deduction for assessment year 2009-10. The Assessing Officer has discussed the issue at length in light of provisions of section 80-IA(4) of the Act, Explanation of section 80-IA of the Act and the legislative intent as per Memorandum explaining the provisions in the Finance Bill, 2009 and came to the conclusion that, in cases of a simple civil contractor who executes works for various government and semi-government undertakings, deduction u/s. 80-IA(4) of the Act, cannot be allowed. On appeal, the Id. CIT(A) for the reasons stated in their appellant order dated 28.03.2014, sustained additions made by the Assessing Officer towards disallowance of deduction u/s. 80-IA(4) of the Act, by holding that the appellant was a works contractor and executes various infrastructure projects awarded to it by the State Government or other government undertakings. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, referring to provisions of section 80-IA(4) of the Act and explanation provided

therein, submitted that, the assessee is eligible for deduction u/s. 80-IA(4) of the Act, because the assessee has satisfied the conditions prescribed therein, including developing the infrastructure project by entering into agreement with state government or other authority and also executes developmental works by investing its own funds. Since, the appellant has satisfied all the conditions prescribed u/s. 80-IA(4) of the Act, the Assessing Officer cannot disallow deduction claimed by the assessee, merely for the reason that the assessee is executing various contract works for government or semi-government departments. The Ld. Counsel for the assessee, referring to various decisions including the decision of Hon'ble Madras High Court in the case of PCIT vs V.A. Tech Wabag Pvt Ltd [2020] 424 ITR 105 (Mad) submitted that, an identical issue has been considered by the Hon'ble High Court in light of provisions of section 80-IA(4) of the Act and held that, when assessee entered into contracts with local bodies or municipal bodies undertaking, contract works for developing the infrastructure facilities, it was directly entitled to the benefit of deduction u/s. 80-IA(4) of the Act. The Ld. Counsel for the assessee, further submitted that the Assessing Officer has simply disallowed the claim of deduction

u/s. 80-IA(4) of the Act, on the basis of findings recorded in the assessment year 2009-10, without examining various agreements entered into by the assessee with government and semi-government departments, to ascertain the nature of contracts for the purpose of section 80-IA(4) of the Act. Therefore, he submitted that the matter may be set aside to the file of the Assessing Officer to verify the claim in light of agreement entered into by the assessee with various departments and also to ascertain the entitlement for deduction u/s. 80-IA(4) of the Act.

5. The Id. DR, Shri. P. Sajit Kumar, JCIT, on the other hand supporting the order of the Assessing Officer and Id. CIT(A) submitted that, as per explanation to section 80-IA of the Act, inserted by Finance Act, 2009 with retrospective effect from 01.04.2000, the provisions of section 80-IA of the Act shall not apply to a person who executes works contract which is in the nature of works contract awarded by any person including the central or state government. In the present case, if you go by the nature of projects undertaken by the assessee and also the amount of contract values, it is abundantly clear that the appellant is a simple work contractor, who executes works for

various government and semi-government departments. Therefore, there is no error in the reasons given by the Assessing Officer to disallow deduction claimed u/s. 80-IA(4) of the Act and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 80-IA(4) of the Act provides deduction to an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility which fulfills certain conditions. As per the provisions of section 80-IA(4) of the Act, an enterprise should be owned by an Indian company and further it should entered into an agreement with the central or state government or a local authority. For the purpose of section 80-IA(4) of the Act, infrastructure facility has been defined which includes a road including toll road, a bridge or rail system, a highway projects, water supply projects and a port or airport etc. The explanation has been inserted by the Finance Act, 2009 with retrospective effect from 01.04.2000 and as per said explanation nothing contained in section 80-IA(4) of the Act, shall apply in relation

to a business referred to in sub-section (4), which is in the nature of works contract awarded by any person including central or state government and executed by the undertaking or enterprise referred in sub-section (1). In other words, deduction u/s. 80-IA(4) of the Act, shall not be allowed to an enterprise which carries a civil contract work for a developer of infrastructure facility. In the present case, the assessee has claimed deduction u/s. 80-IA(4) of the Act and claimed that it has satisfied all the conditions prescribed u/s. 80-IA(4) of the Act. The Assessing Officer disallowed deduction u/s. 80-IA(4) of the Act, on the ground that the assessee is not a developer of any infrastructure project, but a simple works contractor executing civil construction work for various government and semi-government departments. The appellant has filed a sample copies of agreement entered with various departments of Government of Tamilnadu. If you go by the nature of agreements entered into by the appellant with various departments of government, it seems that the appellant is a works contractor executes civil construction work for various government or semi-government departments. But, the arguments of the Ld. Counsel for the assessee is that, the Assessing Officer has simply disallowed claim of deduction u/s.

80-IA(4) of the Act, for the impugned assessment year based on the findings of the Assessing Officer for the assessment year 2009-10. According to the Ld. Counsel for the assessee, the nature of agreement entered into by the appellant in the assessment year 2009-10 and for the impugned assessment year may be different and further, on the basis of agreement entered by the appellant for the assessment year 2009-10, conclusion cannot be drawn against the assessee to hold that the assessee is a works contractor, but not a developer. We find merit in the arguments of the Ld. Counsel for the assessee, because in order to ascertain the nature of works executed by the assessee, the basic documents required to be examined is an agreement entered into with the principals. The terms and conditions and the nature of work specified in the agreement can only decide whether the assessee is a developer of an infrastructure project or a simple work contractor who executes civil construction work for a developer. Since, the Assessing Officer has not examined the agreement entered into by the appellant with various government and semi-government departments, in our considered view, the matter needs to go back to the file of the Assessing Officer for fresh examination. Thus, we set aside

the order of the Id. CIT(A) on this issue and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to re-examine the claim of deduction u/s. 80-IA(4) of the Act, in light of necessary evidences including agreement entered into by the appellant with various departments and ascertain the nature of works executed by the assessee, in order to consider for the purpose of section 80-IA(4) of the Act, and decide the issue in accordance with law.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 07th February, 2024 at Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/Judicial Member

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 07th February, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF