

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai**

**Before Shri R.C Sharma, Accountant Member
and Shri Ravish Sood, Judicial Member**

ITA No. 5354/Mum/2012
(Assessment Year: 2008-09)

BT Global Communications
India Private Limited,
Raheja Titanium, II,
502, 5th Floor, Western
Express Highway,
Mumbai-400 063

Vs.

JCIT(OSD),
Range 8(1),
Mumbai

PAN – AABCI7029R

Appellant

Respondent

Appellant by: Shri Percy Pardiwala &
Ms. Jasmin Amalsadvala.

Respondent by: Shri Milind V. Patil, D.R

Date of Hearing: 07.09.2018

Date of Pronouncement: 12.09.2018

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee for A.Y 2008-09 is directed against the order passed by the CIT(A)-16, Mumbai, dated 18.06.2012, which in turn arises from the assessment order passed by the A.O under 143(3) of the Income tax Act, 1961 (for short 'Act') dated 28.12.2011. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

“1. Based on the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income-tax (Appeals) -16, Mumbai [Hon'ble CIT(A)] has erred in holding that the appellant had exercised its option to claim a deduction under section 80-IA of the Act when it submitted Chartered Accountants certificate (in Form 10CCB) for Assessment Year 2006-07.

2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in holding that there is no merit in the argument of he appellant that the initial year was wrongly mentioned in the Chartered

Accountants certificate (in Form 10CCB) for Assessment Year 2006-07 and that the same appears to be a change of mind, which is not permissible.

3. *Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) ought to have held that under the terms of sub-section (2) of section 80-IA of the Act, an assessee engaged in the business inter alia of providing telecommunication services is entitled to claim a deduction for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking begins to provide telecommunication services and having regard to the fact that deduction under section 80-IA of the Act could be claimed only if there is positive gross total income, the deduction was claimed and allowed only from Assessment Year 2007-08.*

4 *All of the above grounds of appeal are independent and without prejudice and notwithstanding each other.*

The appellant craves leave to add, alter, amend, vary, omit or substitute any or all the above grounds of appeal, at any time before or at the time of hearing of the appeal.”

2. Briefly stated, the assessee company which is engaged in the business of providing telecommunication services and related support services in India and abroad had e-filed its return of income for A.Y 2008-09 on 30.09.2008, declaring total income of Rs. 75,94,258/- after claiming deduction under Sec. 80-IA of Rs. 61,85,61,820/- and a book profit under Sec. 115JB at Rs. 49,13,89,369/-. The return of income was revised by the assessee on 10.02.2010, declaring total income of Rs. 75,94,258/- after claiming deduction under Sec. 80-IA of Rs. 61,85,61,820/- and a book profit under Sec. 115JB at Rs. 49,13,89,369/-. The return of income was initially processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed deduction under Sec. 80-IA of Rs. 61,85,61,820/-. It was noticed by the A.O that the assessee in respect of its claim of deduction under Sec. 80-IA had filed audit report in Form No. 10CCB whereby in 'Column No. 9' of the report A.Y 2007-08 was mentioned as the initial assessment year from when deduction was being claimed. However, on a perusal of the assessment records of the assessee for the A.Y 2006-07, it was noticed by the A.O that in Clause No. 9 of its audit report in Form No. 10CCB against Column "initial assessment year from when

deduction is being claimed”, “Assessment Year 2006-07” was written. On the basis of his aforesaid observations, the A.O held a strong conviction that the assessee had adopted A.Y 2006-07 as the “initial year” for claim of deduction under Sec. 80-IA(2) of the Act. The A.O was not persuaded to subscribe to the contentions advanced by the assessee viz. (i). that as its gross total income was Nil, therefore, it had not claimed any deduction under Sec. 80-IA in A.Y 2006-07; (ii). that the option to claim deduction under Sec. 80-IA was exercised only from A.Y 2007-08; (iii). that the initial year of claim of deduction mentioned in auditors certificate in Form No. 10CCB for A.Y 2006-07 was on account of an inadvertent error on the part of the Chartered Accountant; (iv). that at Point no. 30 of the auditors certificate in Form No. 10CCB for A.Y 2006-07 it was noted that no deduction was claimed under Sec. 80-IA(4)(ii) as the gross total income of the assessee was Nil; and (v). that the same Chartered Accountant had in his audit report in Form No. 10CCB for A.Y 2007-08 certified that the initial assessment year for claim of deduction was A.Y 2007-08, thus declined to accept the same. The A.O while disapproving the contention of the assessee that as it had not claimed deduction under Sec. 80-IA(4)(ii) for A.Y 2006-07, therefore, it had opted to claim such deduction in A.Y 2007-08 i.e the year when deduction was first claimed, observed that as per Sec. 80-IA(2) what is relevant is the exercise of option for claim of deduction under Sec. 80-IA(4)(ii) and actual deduction whether claimed or not was not relevant at all. Further, the A.O observed that a perusal of the audit report in Form No. 10CCB of the assessee for A.Y 2006-07 clearly revealed that the assessee had made its claim of deduction under Sec. 80-IA(4)(ii). The A.O deliberating on the obvious reasons for making of claim by the assessee in A.Y 2006-07 observed that the same was prompted by an apprehension of certain disallowances which the assessee was anticipating if its case for the said year would have been selected for scrutiny assessment. It was observed by the A.O that as no disallowances were made in A.Y 2006-07 and the case of the assessee was not selected for scrutiny assessment for A.Y 2007-08, thus the assessee intentionally changed the initial assessment year to “A.Y 2007-08” from “A.Y 2006-07”. The A.O fortified his aforesaid view by taking

support of the fact that as the audit report in “Form No. 10CCB” was filed by the assessee only on 14.10.2010, therefore, the assessee had sufficient time for manipulating its records. The A.O further observed that in the “Written opinion” taken by the assessee from a consultant viz. Mr. Bharat Agarwal, C.A (an associate of the auditor of the assessee company Ms. Ritika Garg, C.A who had signed ‘Form No. 10CCB’ for A.Y 2006-07), dated 04.09.2006 (forming part of the record of A.Y 2006-07 and A.Y 2007-08) the assessee was advised that it was eligible to treat A.Y 2006-07 as the first year for claim of deduction under Sec. 80-IA. It was further stated that as the queriest company (i.e the assessee) had opted for A.Y 2006-07 as the first year of claim, hence the period of ten consecutive assessment years would be A.Y 2006-07 to A.Y 2015-16. In the backdrop of his aforesaid observations the A.O concluded that the assessee alongwith its authorized representatives viz. M/s S.R Batliboi & Associates, CAs and tax auditors who had certified Form No. 10CCB for A.Y 2006-07 and A.Y 2007-08 had actively participated in providing misleading information to the department. Thus, the A.O taking A.Y 2006-07 as the “initial year” which as per him was adopted by the assessee as the initial assessment year for claim of deduction under Sec. 80-IA(2), therein held that 100% deduction would be available to the assessee from A.Y 2006-07 to A.Y 2010-11 and 30% from A.Y 2011-12 to A.Y 2015-16, subject to satisfaction of all other conditions. On the basis of his aforesaid deliberations the A.O assessed the income of the assessee at Rs. 75,94,260/- under the normal provisions and book profit under Sec. 115JB at Rs. 49,13,89,369/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) after deliberating on the issue under consideration did not find favour with the contentions of the assessee and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorised representative (for short ‘A.R’) for the assessee Sh. Percy Pardiwala, Senior counsel taking us through the facts of the case submitted that the assessee company which was

engaged in the business of providing telecommunication services had started providing services from the F.Y 2003-04. It was submitted by the Id. A.R that till the period relevant to A.Y 2005-06 the assessee was assessed at a loss. In the A.Y 2006-07 the gross total income of the assessee after claiming set off of the brought forward losses was reduced to Nil. In the backdrop of the aforesaid facts it was submitted by the Id. A.R that the assessee had for the first time in its return of income for A.Y 2007-08 claimed 100% deduction under Sec. 80-IA of the Act. The Id. A.R further submitted that during the year under consideration viz. A.Y 2008-09 the assessee had claimed 100% deduction under Sec. 80-IA which was allowed by the A.O in the assessment framed by him under Sec. 143(3) of the Act. It was averred by the Id. A.R that though the A.O while framing the assessment for A.Y 2008-09 had allowed 100% deduction under Sec. 80-IA as claimed by the assessee, but had dislodged its claim of having opted A.Y 2007-08 as the initial assessment year for deduction under Sec. 80-IA(2), and observed that A.Y 2006-07 was to be taken as the initial assessment year. The Id. A.R taking us through sub-section (2A) of Sec. 80-IA submitted that as per the mandate of law, in the case of an undertaking providing telecommunication services, the deduction under Sec. 80-IA shall be one hundred percent of the profits and gains of the eligible business for the first five assessment years commencing at any time during the period as specified in sub-section (2) of Sec. 80-IA and thereafter, thirty percent of such profits and gains for further five assessment years. In the backdrop of the aforesaid settled position of law, it was submitted by the Id. A.R that as the assessee which had started providing telecommunication services from the F.Y 2003-04 had opted A.Y 2007-08 as the initial assessment year for claim of deduction under Sec. 80-IA(2), hence as per the scheme of the Act, it was entitled for claim of 100% deduction under Sec. 80-IA upto A.Y 2011-12 and thereafter @30% from A.Y 2012-13 to A.Y 2016-17. The Id. A.R taking us to the controversy involved in the present case drew our attention to the audit report in Form No. 10CCB r.w Rule 18BBB of the assessee for A.Y 2006-07 at Page 125 of the assesses 'Paper book' (for short 'APB'). The Id. A.R taking us through 'Column 9' of the audit report, submitted that as

against the “Initial assessment year from when deduction is being claimed” the “A.Y 2006-07” was mentioned, hence the A.O while framing the assessment for the year under consideration viz. A.Y 2008-09 had observed that the assessee had opted A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA(2) of the Act. The ld. A.R submitted that the mentioning of the A.Y 2006-07 in ‘Column 9’ of the audit report was on account of an inadvertent clerical mistake of the Chartered accountant. It was the contention of the ld. A.R that it was an admitted fact that the assessee had not claimed any deduction under Sec. 80-IA in A.Y 2006-07. In order to fortify his said contention the ld. A.R drew our attention to the ‘Computation of income’ of the assessee for the A.Y 2006-07 (Page 173 of ‘APB’), which revealed that no deduction under Sec. 80-IA was claimed by the assessee in the said year. Rather, it was the contention of the ld. A.R that as the gross total income of the assessee for the A.Y 2006-07 was reduced to Nil after setting off the unabsorbed depreciation and the brought forward losses of the preceding years, thus there was no occasion for the assessee to have claimed any deduction under Sec. 80-IA of the Act. The ld. A.R drew our attention to the ‘Computation of income’ of the assessee for A.Y 2007-08 (Page 135 of ‘APB’), perusal of which revealed that the assessee had during the said year claimed a deduction of Rs. 24,51,38,793/- under Sec. 80IA(4)(ii) of the Act. The ld. A.R further took us through the audit report in Form 10CCB r.w Rule 18BBB for the A.Y 2007-08 (Page 115 of ‘APB’), and drawing our attention to ‘Column No. 9’ of the said report submitted that the initial assessment year from which deduction is being claimed was correctly mentioned as “A.Y 2007-08”. The ld. A.R controverting the observations of the CIT(A) submitted that the assessee had never opted to claim deduction under Sec. 80-IA from A.Y 2006-07. The ld. A.R in order to buttress his aforesaid contention that no option was exercised to claim deduction under Sec. 80-IA in A.Y 2006-07, drew our attention to ‘Column No. 30’ of the audit report in Form No. 10CCB r.w Rule 18BBB for A.Y 2006-07 (Page 133 of ‘APB’). The ld. A.R submitted that against ‘Column No. 30’ it was clearly mentioned that though the profit derived as mentioned in point no. 29 was eligible for claim of deduction 80IA(4)(ii), however since the gross

total income was Nil, hence no such deduction was being claimed during the year. The ld. A.R in order to support his claim that where because of losses the assessee had not claimed any deduction under Sec. 80-IA and had for the first time claimed the same in the year in which it came in profit, then it would be incorrect to relate the first year of the deduction to an earlier year in which due to losses no such deduction was claimed, relied on the order of the ITAT, Jaipur Bench (Third Member) in the case of ACIT, Circle-6, Jaipur Vs. Rajasthan State Road Development & Construction Corpn. Ltd. (2017) 82 taxmann.com 410 (Jaipur-Trib)(TM).

6. Per contra, the ld. Departmental representative (for short 'D.R') submitted that as the assessee had clearly in Column 9 of its audit report in Form 10CCB claimed that A.Y 2006-07 was the initial assessment year for claim of deduction under Sec. 80-IA, hence no infirmity did emerge from the orders of the lower authorities who had rightly taken A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA. It was submitted by the ld. D.R that if A.Y 2006-07 was not the initial assessment year for claim of deduction under Sec. 80-IA, then what was the need for the assessee to have furnished the audit report in Form 10CCB r.w Rule 18BBB. In order to support his aforesaid contention it was submitted by the ld. D.R that in the preceding years no audit report in Form No. 10CCB was ever filed by the assessee, which thus proved that it was filed during the A.Y 2006-07 for adopting the same as the initial assessment year for claim of deduction under Sec. 80-IA. The ld. D.R further referring to the observations of the A.O as regards the advise sought by the assessee from Sh. Bharat Agarwal, C.A, submitted that the said fact in itself fortified that the assessee had opted for A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA. It was further submitted by the ld. D.R that in case there was a mistake on the part of the Chartered Accountant in wrongly mentioning A.Y 2006-07 in her audit report in Form 10CCB as the initial assessment year for claim of deduction under Sec. 80-IA, then in the backdrop of the fact that the same Chartered Accountant had signed the audit report in the succeeding year also then why a revised audit report in

Form 10CCB for A.Y 2006-07 was not filed. It was averred by the ld. D.R that as the appeal of the assessee was devoid of any force and did not merit acceptance, hence the same may be dismissed.

7. We have heard the authorised representatives of both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought for adjudicating as to whether the lower authorities are right in law and facts of the case in concluding that A.Y 2006-07 is to be taken as the initial assessment year for claim of deduction under Sec. 80-IA(4)(ii) by the assessee. It is the claim of the assessee that A.Y 2007-08 is the initial assessment year for claim of deduction under Sec. 80-IA(4)(ii). Before proceeding further, it would be pertinent to point out that the claim of deduction under Sec. 80-IA(4)(ii) raised by the assessee in its return of income for the year under consideration has been accepted by the revenue and it is only the finding arrived at by lower authorities that the initial assessment year for claim of deduction under the said statutory provision is to be reckoned from A.Y 2006-07, which has been assailed before us by the assessee.

8. We have deliberated at length on the issue under consideration and find that the adjudication of the issue involved would require construing of Sec. 80-IA(2) in the backdrop of the facts of the case, which as it was then available on the statute read as under:

“(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 the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernisation of the existing transmission or distribution lines or lays and begins to operate a cross-country natural gas distribution network.”

On a perusal of the aforesaid statutory provision, it emerges that the same contemplates that at the option of the assessee the deduction specified in

sub-section (1) of Sec. 80-IA may be claimed for any ten consecutive years out of fifteen years beginning from the year in which the undertaking or the enterprise had started providing telecommunication services. We find that an eligible assessee has the option for claiming deduction under Sec. 80-IA(1) for a period of ten consecutive years falling within a period of fifteen years beginning from the year in which the undertaking or the enterprise had started providing telecommunication services. However, as can be inescapably gathered from the term ‘consecutive’ used in sub-section (2) of Sec. 80-IA, once the assessee has exercised such option and claimed deduction under Sec. 80-IA(1) then his entitlement to claim deduction would stand restricted to the ten consecutive years beginning from the year in which it was first claimed.

9. We shall now in the backdrop of the aforesaid mandate of law contemplated in Sec. 80-IA proceed with the issue under consideration. The lower authorities had observed that as the assessee had in its audit report in Form No. 10CCB for A.Y 2006-07 at ‘Column No. 9’ stated that A.Y 2006-07 was the initial assessment year from when deduction is being claimed, hence for the said reason had concluded that the assessee had adopted A.Y 2006-07 as the “initial year” for claim of deduction under Sec. 80-IA(2) of the Act. We find that the contention advanced by the assessee before the lower authorities that as it had not claimed deduction under Sec. 80-IA(4)(ii) for A.Y 2006-07, and had opted to claim deduction under Sec. 80-IA(4)(ii) for A.Y 2007-08 i.e the year when deduction was first claimed, did not find favour with them. On a perusal of the records it emerges that the lower authorities had rejected the aforesaid claim of the assessee by holding a conviction that for Sec. 80-IA(2) what is relevant is the exercise of option for claim of deduction under Sec. 80-IA(4)(ii), and actual deduction whether claimed or not was not relevant at all. We are unable to persuade ourselves to subscribe either to the aforesaid view or the reasoning accorded by the lower authorities. We are of the considered view that the lower authorities were so much swayed by the aspect of the mention of A.Y 2006-07 as the initial assessment year in the audit report in Form No. 10CCB of the

assessee for A.Y 2006-07, that they lost sight of the mandate of sub-section (2) of Sec. 80-IA. We find that sub-section (2) of Sec. 80-IA in unequivocal terms refers to the exercise of option by the assessee in context of claim of deduction under Sec. 80-IA(1) of the Act. Admittedly, once the assessee had claimed the deduction under Sec. 80-IA(1) in any assessment year (falling within the stipulated fifteen years), thereafter its entitlement for claim of such deduction is restricted to the ten consecutive years beginning from the year in which it was first claimed. We are of the considered view that as it remains as a matter of fact that the assessee had not claimed any deduction under Sec. 80-IA in A.Y 2006-07, therefore, it would be incorrect to conclude that the assessee had exercised its option for claiming deduction under Sec. 80-IA(1) in A.Y 2006-07. We are of a strong conviction that the view taken by the lower authorities that for Sec. 80-IA(2) what is relevant is the exercise of option for claim of deduction under Sec. 80-IA(4)(ii) and actual deduction whether claimed or not is not relevant at all, is not only misconceived but rather beyond comprehension. We are of the considered view that the interpretation accorded by the lower authorities to Sec. 80-IA(2) clearly militates against the plain literal meaning of the said statutory provision. Rather, the lower authorities while construing the scope of sub-sec. (2) of Sec. 80-IA had focussed only on the term “.....at the option of the assessee, be claimed by him for any ten consecutive assessment years...” ,and had lost sight of the fact that the term “claimed” was used in context of the deduction specified in sub-section (1) of Sec. 80-IA. We thus, being of the considered view that as the assessee had not claimed any deduction under sub-section (1) of Sec. 80-IA in A.Y 2006-07, hence it would be beyond comprehension to conclude that it had exercised its option and had adopted A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA(2) of the Act. In this regard it may further be relevant to point out that the Hon’ble High Court of Bombay in the case of *Synco Industries Ltd. Vs Assessing Officer & Ors.* (2002) 254 ITR 0608 (Bom) has held that as the aggregate amount of deduction under Chapter VI-A shall not exceed the gross total income of the assessee, therefore, if the gross total income is nil, then deduction cannot be claimed because it would mean that the aggregate

amount of deduction would exceed the gross total income of the assessee. Further, it was observed by the Hon'ble High Court that Sec. 80B(5) defined 'gross total income' to mean total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A. In the backdrop of the aforesaid position of law, now when in the case before us the gross total income of the assessee for A.Y 2006-07 after setting off the brought forward losses of the preceding years was reduced to Nil, hence on the said count itself the assessee could not have claimed any deduction under Sec. 80-IA(1) in the said year viz. A.Y 2006-07. Thus, in the backdrop of our aforesaid observations our view that the assessee had not claimed any deduction under Sec. 80-IA(1) in A.Y 2006-07 is further supplemented by the fact that as in the said year the gross total income of the assessee was Nil, therefore, no such deduction even otherwise as per the settled position of law could have been claimed by the assessee. Still further, we find that our aforesaid view is also fortified by a similar view arrived at by the 'Third Member' bench of ITAT, Jaipur in the case of Assistant Commissioner of Income-tax, Circle-6, Jaipur Vs. Rajasthan State Road Development & Construction Corp. Ltd. (2017) 82 taxmann.com 410 (Jaipur-Trib)(TM), as had been relied upon by the ld. A.R before us. We find that in the aforesaid case the assessee which had commenced the operations of its project viz. 'Chall Neem Ka Thana Project' on 01.05.2005, had due to losses suffered in its project during A.Y 2006-07 and A.Y 2007-08 not claimed any deduction under Sec. 80-IA and had chosen A.Y 2008-09 in which it came into profit as the initial year for claim of such deduction. It was observed by the Tribunal that no infirmity did arise from choosing of A.Y 2008-09 by the assessee as the initial year for claim of deduction under Sec. 80-IA, as there was no question for choosing A.Y 2006-07 and A.Y 2007-08 in which the assessee had suffered losses as the initial years.

10. Alternatively, without prejudice to our aforesaid observations that as the assessee had not claimed any deduction under sub-section (1) of Sec. 80-IA in A.Y 2006-07, hence it cannot be held that the assessee had

exercised its option to claim the said year viz. A.Y 2006.07 as the initial assessment year for claim of deduction under Sec. 80-IA(1), we shall now advert to the contentions raised by the ld. D.R in order to buttress his contentions raised before us. It was vehemently submitted by the ld. D.R that as the Chartered accountant of the assessee had in her audit report in Form 10CCB for A.Y 2006-07 had at 'Column 9' stated that A.Y 2006-07 was the initial assessment year for claim of deduction under Sec. 80-IA, hence it could safely be concluded that the assessee had admittedly adopted A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA. We are afraid that not only as observed by us hereinabove, the view taken by the lower authorities is divorced of the settled position of law, but rather we find that such a view would also fail on technical grounds. We find that the lower authorities while arriving at self-suiting inferences by restricting their focus to 'Column 9' of the audit report in Form 10CCB for A.Y 2006-07, had however lost sight of the 'Column 30' of the very same report, despite the fact that the assessee had specifically drawn their attention to the same. On a perusal of 'Column No. 30' of Form 10CCB for A.Y 2006-07, it emerges that the auditor had specifically remarked as under:

"30.	<i>Deduction under section 80-IA/80-IB/80-IC (strike out whichever is not applicable)</i>	<i>The profit derived as mentioned in point no. 29 above is eligible for deduction u/s 80IA(4)(ii) however since the GTI is Nil the same is not claimed during the year."</i>
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Thus, the auditor at 'Column No. 30' of the Form 10CCB for A.Y 2006-07 had clearly stated that though the assessee was eligible for deduction under Sec. 80IA(4)(ii), however since its gross total income was Nil, hence no such deduction was being claimed in the said year. We are of the considered view that the auditor had in clear words stated that though the assessee was eligible for claim of deduction under Sec. 80IA(4)(ii), the same was however not being claimed as the gross total income of the assessee for the said year viz. A.Y 2006-07 was Nil. We would not hesitate to observe that the lower

authorities had drawn self suiting inferences without appreciating the audit report in *toto*, despite the fact that the said remarks of the auditor were specifically brought to their notice. We thus, are of the considered view that the aforesaid technical ground that had formed the basis for the lower authorities to conclude that the assessee had adopted A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA fails.

11. We further find that the assessee had since inception stated that the mentioning of A.Y 2006-07 as the initial assessment year for claim of deduction under Sec. 80-IA was on account of an inadvertent mistake on the part of the Chartered Accountant. However, the lower authorities without assigning any reason, much the less a cogent reason had rejected the said contention of the assessee. We find that as the same Chartered Accountant viz. Ms. Ritika Garg had stated in the audit report in Form No. 10CCB for A.Y 2007-08 at Column No. 9 that A.Y 2007-08 was the initial assessment year from when deduction under Sec. 80-IA was being claimed, therefore, the same duly substantiated the fact that in the audit report in Form No. 10CCB for A.Y 2006-07 the initial assessment year from when the deduction under Sec. 80-IA was being claimed was inadvertently mentioned.

12. We shall now advert to the contention of the ld. D.R that now when as claimed by the assessee that it had not opted A.Y 2006-07 as the initial year for claim of deduction under Sec. 80-IA, then what was the need for furnishing of audit report in Form 10CCB r.w Rule 18BBB. We would not hesitate to state that the said contention of the ld. D.R though at the first blush appeared to be very convincing, but after giving a thoughtful consideration we are unable to find ourselves as being in agreement with the same. We though are not oblivious of the fact that Sec. 80-IA(7) contemplates that for claim of deduction under Sec. 80-IA(1) it is obligatory on the part of the assessee to get his accounts audited by an accountant defined in the *Explanation* below sub-section (2) of Sec. 288, and furnish alongwith its return of income, the report in the prescribed form viz. Form No. 10CCB r.w Rule 18BBB. We are of the considered view that though the assessee had filed the audit report in Form 10CCB, but then the issue boils

down to the fact that as to whether the assessee had claimed any deduction under Sec. 80-IA in A.Y 2006-07. The answer to the same as had been deliberated by us at length hereinabove is that neither any deduction under Sec. 80-IA was ever claimed by the assessee in A.Y 2006-07, nor in the backdrop of the fact that as its gross total income was Nil any such deduction could have been claimed by it as per the settled position of law. We thus are of the considered view that as the assessee had in A.Y 2006-07 neither opted to claim deduction under Sec. 80-IA, nor was allowed any such deduction by the A.O, thus it would be incorrect to draw adverse inferences in the hands of the assessee for the reason that it had filed the audit report in Form 10CCB. Still further, the qualifications/remarks by the auditor in Column No. 30 of the audit report in Form 10CCB for A.Y 2006-07 that though the assessee was eligible for claim of deduction under Sec. 80-IA(4)(ii), however as its gross total income was Nil, hence it had not claimed any deduction under the said statutory provision also cannot be lost sight of. We thus are of the considered view that the contention of the Id. D.R as regards the filing of the audit report in Form 10CCB by the assessee for A.Y 2006-07, in the absence of any claim of deduction by the assessee having been raised under Sec. 80-IA at any stage, thus would not assist the case of the revenue.

13. We shall now advert to the written opinion which was taken by the assessee from a consultant viz. Sh. Bharat Agarwal , C.A, dated 04.09.2006, which had been pressed into service by the A.O for drawing adverse inferences in the hands of the assessee. On a perusal of the written opinion it emerges that on a query raised by the assessee the aforesaid person by referring to the relevant provisions of Sec. 80-IA, had opined that as the assessee had started providing telecommunication services from F.Y 2003-04, hence its eligibility to claim deduction under Sec. 80-IA(4) which is to be reckoned for a period of ten consecutive years falling within the block of fifteen years from the commencement of services would fall between F.Y 2003-04 to 2017-18. It is in the backdrop of the said fact that it was advised that now when the assessee had opted for F.Y 200506 as its first year of

claim of deduction, hence the period of ten consecutive assessment years would be A.Y 2006-07 to A.Y 2015-16. Further, the brackets/rates of tax deduction to which the assessee would be entitled viz. 100% for first five years i.e A.Y 2006-07 to A.Y 2010-11 and 30% for the remaining five years .e A.Y 2011-12 to A.Y 2015-16 were also mentioned. We find that the A.O by observing that the said opinion of Sh. Bharat Agarwal (associate of Ms. Ritika Garg, C.A) which formed part of the record for A.Y 2006-07, revealed that the assessee had adopted A.Y 2006-07 as the initial year for claim of deduction under Sec. 80-IA(4). We are unable to subscribe to the aforesaid view of the A.O. We are of the considered view that though the assessee had enquired about his eligibility for claim of deduction under Sec. 80-IA(4) in A.Y 2006-07, which thereafter was affirmed by the advisor viz. Mr. Bharat Agarwal, however the same would have no bearing on the material fact as to in which year the assessee had exercised its option and claimed deduction under Sec. 80-IA. We are of the considered view that the fact as to when the assessee had for the first time exercised its option and claimed deduction under Sec. 80-IA, as observed by us at length hereinabove, would be the only decisive factor for identifying the “initial assessment year” opted by the assessee for claim of deduction under Sec. 80-IA. We thus not being impressed with the adverse inferences drawn by the lower authorities by referring to the opinion of Mr. Bharat Agarwal, thus vacate the adverse inferences drawn by the lower authorities on the said count in the hands of the assessee.

14. Before parting, we may herein observe that as concluded by us hereinabove after necessary deliberations that no infirmity emerges arises from the claim of the assessee that it had opted A.Y 2007-08 as the initial assessment year for claim of deduction under Sec. 80-IA(4)(ii) and the same had wrongly been taken by the lower authorities as A.Y 2006-07, thus the observations of the A.O that the assessee alongwith its authorized representatives, CAs and tax auditors had intentionally provided misleading information to the department would not survive and are thus vacated. The

Grounds of appeal No. 1 to 3 are allowed in terms of our aforesaid observations.

15. In the backdrop of our aforesaid observations we herein conclude that as the assessee had opted A.Y 2007-08 as the initial assessment year for claim of deduction under Sec. 80IA(2), therefore, it would be entitled for 100% deduction from A.Y 2007-08 to A.Y 2011-12 and thereafter 30% from A.Y 2012-13 to A.Y 2016-17, subject to satisfaction of all other conditions.

16. The appeal of the assessee is allowed.

Order pronounced in the open court on 12th September, 2018.

Sd/-

(R.C SHARMA)
Accountant Member

Sd/-

(RAVISH SOOD)
Judicial Member

Mumbai, Dated: 12th September, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -9 & CIT(A)-10, Mumbai*
4. *The CIT , Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

