आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)
श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 149/Chd/2020
निर्धारण वर्ष / Assessment Year : 2015-16

The DCIT, C-1(1) Sector-17E, Chandigarh	बनाम	Unipro Techno Infrastructure Private Limited SCO 36, Sector-7C Chandigarh
स्थायी लेखा सं./PAN NO: AABCU1732D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
Shri A.K. Sood, C.A
राजस्व की ओर से/ Revenue by : Shri Sandip Dahiya, CIT

सुनवाई की तारीख/Date of Hearing : 22/12/2020
उदघोषणा की तारीख/Date of Pronouncement : 23/12/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Revenue against the order dt. 19/11/2019 of Ld. CIT(A)-1, Chandigarh.

2. Following grounds have been raised in this appeal:

1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in partly allowing the appeal of the assessee without appreciating the facts of the case.

2. The Ld. CIT(A) is not justified in not upholding disallowance of Rs. 81,348/- under section 14A of the Income Tax Act on the ground that disallowance cannot be made where there is no exempt income without appreciating fact that there is no such restriction stipulated either in section 14A of the Income Tax Act or Rule 8D of the Income Tax Rule.

3. The Ld. CIT(A) is not justified in not upholding disallowance of Rs. 81,348/- under section 14A of the Income Tax Act on the ground that disallowance cannot be made where there is no exempt income without appreciating the fact that applicability of section 14A or Rule 8D does not depend on earning of income as held by Supreme Court in the case of CIT vs. Rajender Prasad Moody (1978), 115 ITR 519.

4. The Ld. CIT(A) has erred in following the decisions of Hon'ble High Courts whose facts were distinguishable from the taxpayers, ignoring the principal of apportionment regardless of exempt income laid down by Hon'ble Supreme Court decision in CIT vs. Walfort Share and stock Brokers P Ltd: 326 ITR 1 (SC) and upheld by the Hon'ble Supreme Court in 91 Taxmann.com 154(SC).

5. The Ld. CIT(A) has erred in ignoring the legislative intent expressed in CBDT's Circular No. 5/2014 dated 11.02.2014, which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the F.Y. or not as confirmed by Apex Court in Maxopp Investment Ltd. Vs. CIT, 91 Taxman.com 154(SC).

6. The Ld. CIT(A) has erred in holding that disallowance u/s 14A cannot be made where there is no exempt income, when Supreme court has upheld the principles of apportionment and department is in SLP on the same issue in the cases of Moderate Leasing and Capital Services Pvt. Ltd. in ITA No. 102 of 2018, A.Y. 2009-10 and Matrix Cellular Services (P) Ltd. in ITA no. 484 of 2017, Nilgiri Infrastructure Development Ltd. in ITA No. 135 of 2016 and Instant Holding Ltd. ITA No. 20168 of 2011 and SLP has also been admitted against the decision of Hon'ble Jurisdiction High Court in the case M/s VardhmanChemtech Private Limited in ITA No. 322/2016.

7. The Ld. CIT(A) has erred in deleting the addition of Rs. 81,348/- made u/s 14A determined by the AO under rule 8D r.w.s.l4A to apportion interest expenditure incurred to invest in shares and equity instrument in view of the fact that no separate accounts are maintained by the assessee in relation to investments whose income is exempt from tax, and assessee has large borrowed funds, ignoring Apex Court decision in 91 Taxman.com 154(SC).

8. The Ld. CIT(A) has erred in law and fact in following the decision of Hon'ble High Court In Lakhani Marketing decided following decisions in the case of Hero Cycles Ltd., 323 ITR 204 and CIT vs. Winsome Textile Industries Ltd., 319 ITR 204 whose facts are distinguishable from the taxpayers, ignoring the principal of apportionment laid down by Hon'ble Supreme Court decision in CIT vs. Walfort Share and stock Brokers P Ltd. 326 ITR 1(SC), which has been confirmed in 91 Taxman.com !54(SC) and thus litigation relying on Winsome Textiles industries Ltd(Supra) stands superceded.

9. The order of the Ld. CIT(A) is perverse in nature and against law as it grossly overlooked the scheme of the Income TaxAct,1961 and material available on record.

10. The Ld. CIT(A) has erred in by making observation that issue at hand has been decided by him on identical factsln Appeal no. 10657/16-17 dated 24.01.2019 for A.Y. 2011-12 wherein it was held assessment made in compliance to the said revision order cannot be sustained as the order of PCIT made u/s 263 of the Income Tax Act, 1961 has been set aside by the Hon'ble ITAT. Howeyer, in the present case, no order u/s 263 of the Income Tax act, 1961 has been passed and the assessment has been framed u/s 143(3) of the Act.

11. The Ld. CIT(A) has erred in not deciding the issue at hand on merits rather than only relying upon the order for A.Y. 2011-12 wherein facts are different from the present case.

12. The Ld. CIT(A) has erred in by allowing deduction u/s 80IA as the case of the assessee with identical facts for A.Y. 2014-15 wherein assessment framed u/s 143(3) of the Act and

the addition made on account of disallowance of deduction u/s 80IA of the Act has been confirmed by the Ld. CIT(A)-4, Ludhiana vide appeal order dated 01.09.2018 in appeal no. 75/ROT(10658)CHD/IT/CIT(A)-4/LDH/2016-17.

13. The Ld. CIT(A) has erred in by allowing deduction u/s 801A of the Act whereas as per the contract letters and bid documents pertaining to each ***project*** *undertaken by the assessee during the year under consideration it is apparent that the assessee company was bound by the exact specification, design & directions given by the Government concerned. Thus the nature of work carried out by the assessee was actually in the nature of work contract.*

14. The appellant craves to leave to add or amend any grounds of appeal before the appeal is heard or disposed off.

15.It is prayed that the order of the Ld. CIT(A) be cancelled and that of the assessing officers may be restored.

3. During the course of hearing the Ld. Counsel for the Assessee at the very outset stated that the main issue relating to deduction under section 80IA raised in this appeal is squarely covered in favour of the assessee vide order dt. 13/10/2020 of this Bench of the Tribunal in assessee's own case, copy of the said order was furnished which is placed on record. It was also stated that the issue relating to disallowance under section 14A of the Act is also covered by the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Oil Industry Development Board followed by the Ld. CIT(A).

4. In his rival submissions the Ld. CIT(A) although supported the order of the A.O. but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that a similar issue relating to the deduction under section 80IA of the Income Tax Act, 1961 (hereinafter referred to as 'Act') has already been decided by this Bench of the Tribunal in assessee's own case vide order dt. 13/10/2020 in ITA No. 1582/Chd/2018 for the A.Y. 2014-15 in assessee's own case wherein by following the earlier order dt. 29/01/2020 in ITA No. 749/Chd/2018 for the A.Y. 2013-14 in assessee's own case, the relevant findings have been given at page no. 3 to 21 of the order dt. 13/10/2020 which read as under :

"13. Before proceeding further it is pertinent to mention here that as per provisions of section 80IA(4), deduction has been allowed to an assessee who has entered into an

agreement either with the Central or a State Government or a Local Body or any statutory body for -

(i) Developing or

(ii) Operating and maintaining or

(iii) Developing, Operating and maintaining a new Infrastructure facility.

The assessee, admittedly, had entered into nine agreements up to the year under consideration for developing / providing Lift Irrigation schemes/ Lift Water Supply Scheme with various State Authorities such as Irrigation and Public Health Deptt, of Himachal Pradesh Govt. and that of Govt. of Uttrakhand. The contracts were composite contracts requiring the assessee not only to develop facility but also to operate and maintain the facilities for specific number of years i.e. firstly, the development of project which would take 1 to 3 years and then to operate and maintain projects for one to five years. So far as the 'Thural Project' is concerned, the question as to whether the project developed by the assessee was an Infrastructure development project / contract awarded by the Government, came into consideration before this Tribunal in the appeal of the assessee for assessment year 2011-12 and the Tribunal after considering the facts and circumstances of the case held that the 'Thural Project' was developed by the assessee as per the composite contract awarded by the Government and would be eligible for deduction u/s 80IA(4) of the Income-tax Act. Then in the next year relevant to AY 2012-13, the assessee was awarded three more contracts of similar nature. The Ld. PCIT citing similar reasons as were given in her order for AY 2011-12, exercised her jurisdiction u/s 263 of the Act and held that the Assessing Officer had not properly examined the issue as to whether the contracts entered into by the assessee in respect of the three new projects were Infrastructure Development contracts allowable for deduction u/s 80IA or the same were simple works contracts specifically excluded from the applicability under the provisions of section 80IA as per explanation to sub section (13)of section 80IA of the Act. The Tribunal discussed the matter in detail and vide order dated 6.2.2017 in ITA No.361/Chd/2016 for assessment year 2011-12 & also vide subsequent order dated 1.12.2017 (ITA No. 867/Chd/2017) for assessment year 2012-13 and held that the Ld. PCIT had failed to differentiate the nature of the other three projects from the 'Thural Project'. After detailed discussion, the appeals of the assessee were allowed and the order of the Ld. PCIT u/s 263 of the Act was quashed. From the above facts, it comes out that the nature of the contracts and development activities of the assessee have been examined by the Tribunal and after extensive discussion, it has been held that the contract of the development of the said project was an infrastructure development contract and, hence, eligible for deduction u/s 80IA(4)of the Act. In the year under consideration, as per the Ld. PCIT, the assessee has been awarded five new contracts, however, the PCIT has not pointed out or discussed as to how the nature of theese five new development projects undertaken during the year was different from the nature / facts of the 'Thural Project' as carried out by the assessee in the assessment year 2011-12 when it was in its development stage. She had not discussed as to why findings of this Tribunal for assessment year 2011-12, which was in relation to the nature of the 'Thural Project' when it was in development stage, would not be applicable to the new projects undertaken. However, she has taken an entirely inappropriate and illogical plea that this year 'Thural Project' is entered into the fourth year and, thus, the activity carried out by the assessee for the year under consideration in respect of the 'Thural Project' is only operation and maintenance, therefore, the facts of the 'Thural Project' for the year under consideration are different from other projects. It is pertinent to mention here that the nature of the 'Thural Project' and the activity carried out by the assessee for the assessment year under consideration, when the 'Thural Project' is reached in its fourth year was not under consideration or adjudication by the Tribunal in respect of the appeal of the assessee for assessment year 2011-12 and even in the appeal for assessment year 2012-13, since, the 'Thural Project' in those years was in its developmental stage, hence, the Tribunal considering the nature of the contract held that it was an Infrastructure development project. Since the Ld. PCIT has

not brought any differentiating or distinguishing fact about the development activity carried in the 'Thural Project' as compared to the other eight projects undertaken by the assessee, hence, under the circumstances, the findings arrived at by the Tribunal in respect of 'Thural Project' are squarely applicable to the other projects also. It is also pertinent to mention here that the nature of the other three projects which were started in the year 2012-13 has also came for consideration in the appeal of the assessee against the order passed u/s 263 of the PCIT and it has been specifically held that the Ld. PCIT had failed to point out any difference between the 'Thural Project' and the other three projects carried out by the assessee in the said year.

However, again vide impugned order, the Ld. PCIT though, fully aware of the earlier findings of the Tribunal, yet, proceeded to pass the impugned order u/s 263 of the Act without brining any distinguishing fasts regarding the nature of the new contract when compared to the earlier four contracts carried out by the assessee. Moreover, the Ld. PCIT has held that the assessee is eligible for deduction in respect of the 'Thural Project' for the year under consideration being the fourth year of the project and that the assessee has to only operate and maintain the said infrastructure facility namely 'Thural Project. By saying so, the Ld. PCIT herself has impliedly admitted that the 'Thural Project' is an Infrastructure Development Project and as per the provisions of section 80IA(4) of the Act, the deduction has been allowed for developing or Operating and maintaining or for Developing, Operating and maintaining a new project facility.

14. So far as the observation made by the Ld. PCIT that the Development activity carried out by the assessee, whether, would fall in the definition of the 'works contract,' the said issue has been thoroughly discussed by the Tribunal in order dated 6.2.2017 in ITA No.361/Chd/2016 for assessment year 2011-12 & dated 1.12.2017, ITA No. 867/Chd/2017)for assessment year 2012-13, the relevant findings of the Tribunal given in order dated 6.2.2017 for assessment year 2011-12 (supra) in this respect, are reproduced as under:-

"8. We have heard the rival contentions, perused the order of the learned Pr. CIT and the documents placed before us.

9. On perusal of the order of the learned Pr.CIT we find that the first reason for invoking revisionary powers under section 263 was that the Assessing Officer had not examined the claim of the assessee of deduction under section 80IA of the Act vis-a-vis the applicability of the Explanation to sub-section(13) of section 80IA of the Act. The learned Pr. CIT has held that as per the aforesaid explanation to the section work contracts are not eligible for deduction under section 80IA(4) and apparently the project undertaken by the assessee is covered under the definition of "works contract". Moreover the Assessing Officer has not examined this aspect during the course of assessment and no verifications were made by the Assessing Officer, therefore, as per the learned Pr. CIT, the assessee has been wrongly allowed deduction of its profits under section 80IA(4) of the Act causing prejudice to the revenue. Before us Ld. counsel for the assessee made arguments challenging the jurisdiction of the Pr.CIT to invoke revisionary powers on this aspect as also on the merits of the claim of deduction under section 80IA(4). Challenging the assumption of jurisdiction of the learned Pr. CIT, the Ld. counsel of the assessee stated that this issue had been examined during assessment proceedings and the Assessing Officer, after due application of mind, had allowed the assessee's claim of deduction under section 80IA(4). The Ld. counsel for the assessee stated that review of the order was only on account of change of opinion and could not be exercised under section 263 of the Act. In support of its contention that the issue had been examined by the AO during assessment proceedings the Ld. counsel for the assessee drew our attention to the following:

a) The return of income for the impugned year accompanied by Audit Report under section 80 IA in form No. 10 CCB on the basis of which deduction under section 80 IA was claimed by the assessee placed at paper book page No. 1 to 26

b) The questionnaire received from the Assessing Officer and the relevant queries raised at serial No. 5,6,7 and 11 of the same relating to the claim of the assessee under section 80 IA placed at paper book page No. 29 to 35. The relevant queries raised in the questionnaire are as follows:

"5. As per information filed by you, it has seen that you had undertaken contract for providing lift water supply scheme from Executive Engineer, IPH and claimed this income as exempt u/s 80IA and got sub-contract from NKG Infra in which income is taxable. Please provide the complete details in this regard alongwith copy of contract with them. Please also provide details how you are eligible for exemption u/s 801A when you are conducting activities under contract.

6. You have also claim exemption amounting to Rs.52,35,708/- u/s 10(2A) and Rs.12, 11, 810/- u/s 80IA. Please provide the complete details in this regard alongwith documentary evidence.

7. As per audit report col. No. 26, the auditor has shown deduction under chapter VI-A at 'Nil' on the other hand in the computation you have claimed under chapter VI-A at Rs. 12,11,810/-. Please explain this.

11. Please state the date on which the company came into existence. As per Form No. 10CCB annexed with audit report at Para 8 the auditor has mentioned commencement of operation/activity as 13.04.2010. And at para 9 the initial assessment year from when deduction u/s 80 -1A is for the A.Y. 2011-12. On the other hand, under the detail of fixed assert as on 31.03.2011, you have shown WDV of the fixed asset as on 01.04.2010 at Rs.1,81,58,128/-. Please furnish details of how WDV comes to exist on 01.04.2010 when your date of commencement of operation started on 13.04.2010 and show cause why depreciation claimed by you should not be disallowed as it seems that you are furnishing inaccurate particulars. Please also furnish whether you have claimed such exemption u/s 80-IA in the previous year also or not?

12. Further at para 12 of Form No.10CCB, you have shown sales tax registration No. in which it has ascertained that you were got registered with sales tax on 09.07.2009. Please state whether you have got sale tax No. before the company came into existence."

c) The reply filed by the assessee in response to the query raised dated 13.08.13 placed at paper book page No. 36 to 40. The relevant reply of the assessee in the same pointed out to us by the Ld. counsel for the assessee is as follows:

"5. The assessee company was awarded contract by Himachal Pardesh Government, Irrigation and Public Health Department, Division Thural as under;

"providing Rehabilitation and Source Level Agumentation of various schemes in Changer area in Tenhil Jaisinghpur, Palampw, Khwidian and Dera in District Kangra (HP) Sub Head:- Construction of Civil Work i.e. Percolation Well, Pump House, Dtaff Quarters, Laboratory Building, Inspection Hut Storage Tanks, Compound Walls, retaining/breast -walls, Wire Crate Works, roads, street truss bridge, providing, lowering, laying and jointing of pipe lines including supply and fixing of required valves and specials, construction of anchor blocks/thrust blocks and supporting pillars etc for rising main, gravity main and supply of lab equipments, inspection vehicle and maintenance van etc. supply and installation of pumping machinery including accessories and electromechanical equipments required for stepping down of 11KVA power supply and post completion operation and maintenance of the whole scheme for 60 months including automation."

The composite project awarded to the assessee in providing lift water supply scheme from Executive Engineer, Irrigation & Public Health, Division Thural, Distt. Kangra (HP) on account of providing rehabilitation and source level augmentation of various schemes in changer

area in Tehsil Jaisinghpur, Palampur, Khundian and Dehra in Distt Kangra HP Complete construction of the project including operation &Maintenance of the whole scheme is covered under section 80IA. The copy of contract with Executive Engineer HP IPH Divn. Thural for Lift water supply scheme is enclosed herewith.

A copy of agreement as sub contractor of NKG Infrastructure Ltd is also enclosed herewith."

d) Reply dated 29.08.2013 for the purpose of claim of deduction under section 80IA placed at paper book page 41 number. The relevant portion of the reply is as follows:

"Please refer to the Assessment proceedings in the case of Unipro Techno Infrastructure Private Limited, SCO 36, Sector 7, Chandigarh for the A/Y 2011-12 PAN AACFU1025F. The information/documents asked for is as under;

2. The partnership firm of Unipro Techno Infrastructure was converted into private limited company with effect from 13.04.2010 with all its assets and liabilities with the same sales tax registration number. The deduction u/s 8Q1A was first claimed in the A/Y 2010-11. The-year under reference is the second year for claiming deduction u/s 801A.

e) The order passed by the Assessing Officer dealing with the issue of 80IA at paras 3 to 4.2 of the order as follows placed at paper book page Nos. 44 to 52 :

"3. The case of the assessee selected under CASS with the reasons that "AO to examine the reasons & genuineness for high claim of refund out of TDS". When confronted, the assessee vide its reply dated 13.08.2013, has submitted that in the year 2011-12 a refund of Rs.10,47,850/- was claimed as a part of the income of the company amounting to Rs. 12,11,810/- was exempt u/s 80IA and TDS was deducted on the total receipt of the company, the excess amount of TDS deducted was claimed as refund.

4. The assessee-Commissioner came into existence w.e.f. 13.04.2010 after conversion from partnership firm, namely M/s Unipro Techno Infrastructure to M/s Unipro Techno Infrastructure Private Ltd. with all its assets and liabilities with Sale Tax Registration number and also carried forwarded the same WDV of the firm as on the last date of 13.04.2013.

4.1 The assessee company is a partner in the firm Kaveri Infrastructure Private Ltd. JV Unipro Techno Infrastructure in which it is holding 95% share. Copy of the partnership deed is placed on record. The asessee has earned a profit of Rs.52,35,708/- as partner on account of 95% share of profit from the firm and claimed exempt u/s 10(2A) of the IT Act, 1961. Farther, the assessee company was awarded contract by Himachal Pardesh Government, Irrigation and Public Health Department, Division Thural. The composite project awarded to the assessee in providing lift water supply scheme from Executive Engineer, Irrigation & Public Health, Division Thural, Distt. Kangra (HP) on account of providing rehabilitation and source level augmentation of various schemes in changer area in Tehsil Jaisinghpur, Palampur, Khundian and Dehra in Distt. Kangra HP complete construction of the project of the project including operation & Maintenance of the whole scheme.

4.2 The activity undertaken by the company for IPH Thural qualifies exemption u/s 80!A of the IT. Act 1961, and the income is 100% exempt for 10 years. It may he mentioned here that this the 2nd year for claiming exemption u/s (i.e. Ist year in the hand of Unipro Techno infrastructure for the F.Y. 09-10 and 2nd year in the hand of Unipro Techno Infrastructure Private Limited w.e.f. 13.04.2010, i.e. for the F.Y. 2010-11) since the company has awarded the same project by the same Govt. This year, the assessee has claimed an amount of Rs.12,11,810/- as deduction u/s 80IA. The assessee vide its reply, which is placed on record, has himself admitted that the year under reference is the second year for claiming deduction u/s 801A.

10. Relying upon the above documents Ld. counsel for the assessee stated that relevant queries relating to eligibility of the claim of assessee of deduction under section 80IA was raised by the Assessing Officer during assessment proceedings, due reply was filed by the assessee after considering which and after applying his mind to which the assessing officer passed a detailed reply allowing deduction under section 80IA to the assessee. Thereafter Ld. counsel for the assessee drew our attention to the fact that the view taken by the Assessing Officer in allowing the claim of the assessee under section 80IA was correct since it was adequately proved before him that the contract awarded to the assessee was a composite contract awarded on build, operate and transfer basis for the execution of which the machinery installed including its components, engineers and labour employed, designing, execution, financing in the form of capital investment, enterprise risk, performance guarantee etc was the responsibility of the assessee. The Ld. counsel for the assessee pointed out that the contract in any case could not be said to be a "works contract" for the purpose of Explanation to sub-section (13) to section 80IA(4) and the Assessing Officer on the basis of documents produced before it had rightly arrived at the conclusion that the assessee was eligible to claim deduction under section 80IA of the Act. In support of its contention that the view taken by the Ld. counsel for the assessee was a correct and plausible view Ld. counsel for the assessee drew our attention to the fact that on an application filed by the assessee to the CIT (TDS) for issuing a certificate for deduction of tax at lower rate on account of the deduction claimed by the assessee under section 80IA of the Act, the assessee was awarded a certificate for assessment years 2010-11 to 2013-14 placed at PB-126 to 134 after considering all the necessary and relevant documents proving that the assessee was eligible to claim deduction under the same. Ld. counsel for the assessee pointed out the fact that the assessee had been awarded a certificate for deduction of tax at lower rate on account of its eligibility to claim deduction under section 80IA of the Act proved that the view taken by the Assessing Officer on the basis of documents before it was correct. Ld. counsel for the assessee further drew our attention to the fact that a similar contract in the case of M/s Kaveri Infrastructure Private Limited/Unipro Techno Infrastructure was held as infrastructural contract for the assessment year 2008-09 to A.Y 2011-12 by another Assessing Officer. Ld.Counsel for the assessee drew our attention to the relevant order sheet entry in the case of M/s Kaveri Infrastructure Private Limited, JV Unipro Techno Infrastructure placed at PB-70 and 71, which reads as under :

04.08.2015 The reply to the notices issued under Section 133(6) of the Act by respondent no. 2 to the Irrigation Department, H.P. Government was received on 03.08.2015 from the Executive Engineer (I&PH) Division, H.P. Government, by the said respondent no. 2, in pursuance of which the case of the petitioner was fixed for 04.08.2015. The Assessing Officer i.e. respondent no: 2, passed the following order in favour of the petitioner which rendered the very initiation of reassessment proceedings for the assessment year in question including ' the subsequent year as illegal and totally without jurisdiction:-

"Present: Sh. A.K. Sood, CA. The ld. Counsel again submits that proceedings u/s 148 need to be dropped as there was no non disclosure by the assessee. He has again been told that the case is being proceeded with on merit as the matter is one of interpretation of the Statute. The clarification received from the Executive Engineer, I&PH,

Division Barsar, Distt. Hamirpur vide letter dt. 1/8/2016 in response to query u/s 133(6) is on record. Perusal of the same shows that the assessee was awarded the complete project contract on BOT basis and no other agency was involved in the same. The ld. Counsel has also cited CBDT Circular No. 10/2005 dt. 16.12.2005 which though specific to ports interprets Section 80IA as being applicable to projects/ structures built under BOT basis. Perusal of clarification received from i H.P. Govt. Deptt. and the language of the contract agreement shows that the activity of the assessee is not in the nature of works contract for the purposes of 80IA. It appears that the assessee has implemented an Infrastructure Project for the Govt. on a turnkey basis and has also been engaged in its operation and mgt. Such arrangement is typical to Infrastructure Development Project of the Govt. and

cannot be seen as mere works contract. Case adjourned to 17.08.2015. Insp. to place copy of file notings on all files of connected relevant assessment years in the case."

11. The Ld. counsel of the assessee also drew our attention to the fact that in the preceding year i.e. assessment year 2010-11 as also in the succeeding year i.e A.Y 2012-13 & 2013-14, the assessee had been allowed its claim of deduction under section 80IA in the order passed under section 143 (3) of the Act. The Ld. counsel for the assessee, therefore, stated that the claim of the assessee for deduction under section 80IA having been duly examined in the course of regular assessment proceedings and the Assessing Officer having allowed the claim which was consistent with the view taken by the CIT (TDS) while granting certificate of lower deduction of tax, the Assessing Officer in the preceding and succeeding years, as also with the view taken by the Assessing Officer in the case of another assessee undertaking identical work, it cannot be said that any error had crept in the order of the Assessing Officer causing prejudice to the revenue and therefore the action of the learned Pr. CIT in assuming jurisdiction under section 263 for reviewing the order of the Assessing Officer on this count was bad in law and needed to be quashed.

12. Ld.DR, on the other hand, we find, relied upon the order of the learned Pr. CIT and stated that the aspect of application of Explanation to sub-section (13) of section 80IA, to the contract awarded to the assessee was not examined by the Assessing Officer which being crucial to the claim of deduction under section 80IA, an error had crept into the order of the Assessing Officer and since apparently the project undertaken by the assessee was covered under the definition of "works contract" the assessee had been wrongly granted deduction under section 80IA causing loss to the revenue and thus the action of the learned Pr. CIT was justified on this account.

13. We have heard the contentions of both the parties and perused the order of the learned Pr. CIT as also the documents placed and referred to before us.

14. The only reason for exercising revisionary powers under section 263 in the present case is that the Assessing Officer had not examined the claim of the assessee to deduction under section 80IA(4) vis-a-vis Explanation 13 to the said section which excludes profits earned from works contracts from deduction under section 80IA(4) of the Act.

15. On this account we are unable to agree with the learned Pr. CIT. It is amply clear from the pleadings and documents placed before us by the Ld.Counsel for the assessee that the said issue was raised during assessment proceedings, due inquiries were made and after proper application of mind the Assessing Officer allowed the claim of the assessee.

16. We find that the assessee had filed return of income claiming deduction under section 80IA amounting to Rs.12,11,810/-. Certificate in Form No.10CCB, certifying the assessee's claim of deduction under section 80IA of the same amount was also filed giving all details of he undertaking claiming the said deduction. Further, during the assessment proceedings, the assessee was specifically asked to provide complete details of the contract undertaken for providing lift water site scheme from Executive Engineer, IPH, the income from which was claimed exempt under section 80IA of the Act. The assessee was also specifically asked to prove his eligibility for such claim when the activities were being undertaken under contract. Thus specific and pointed queries vis-a-vis eligibility of claim of deduction u/s 80IA were raised and the assessee was specifically asked to justify its claim in the light of undertaking the work under contract meaning thereby that it was a "works contract".

17. In reply to the same, the assessee furnished complete detail of the work undertaken stating that it had undertaken contract for providing lift water supply scheme from the Executive Engineer, Irrigation & Public Health Division, Thural, Distt. Kangra on account of providing rehabilitation and Source Level Agumentation of various schemes in

different Tehsils of District Kangra. The assessee, we find, had also stated that the complete construction of the project alongwith operation and maintenance of the whole scheme was to be undertaken by it. Complete detail of the construction work to be undertaken was also given and it was reiterated that the post-completion operation and maintenance of the whole scheme for 16 months including automation was the responsibility of the assessee under the scheme. The assessee had clarified that it was a composite project awarded to it and thus was covered under section 80IA of the Act. Thus, the assessee had clarified that it was not merely works contract awarded to it but a project awarded to it was on a turnkey basis which included post-completion operation and maintenance of the same also for a specified period. Copy of the contract was also placed before the Assessing Officer. The assessee had also clarified that the impugned deduction under section 80IA was first claimed by it in assessment year 2010-11 and the year under reference was the second year for claiming the said deduction.

18. It is amply clear from the above that necessary enquiries regarding the assessee's claim for deduction under section 80IA of the Act vis-à-vis the lift water site scheme contract received from the Executive Engineer, IPH, District Kangra were made during the assessment proceedings by the Assessing Officer. Further all necessary explanations regarding the claim of deduction alongwith evidences were placed by the assessee to prove its claim of deduction under section 80IA of the Act. Therefore, for all purposes, it can be said that the claim of the assessee had been duly verified during the assessment proceedings.Clearly the contention of the learned Pr. CIT that no enquiries were made is incorrect.

19. We may add that it cannot also be a case of inadequate enquiry. All explanations and evidences were placed before the Assessing Officer to explain the nature of the contract and demonstrate that it was not merely a "Works Contract". We fail to understand what further inquiry was required to be made in the case to settle the issue of the nature of contract or for that matter how the present inquiry was not adequate to arrive at the correct conclusion. Moreover we find that even the learned Pr. CIT has not spelt out the same in his order. Even before us the Ld. DR has failed to show how the inquiry made was inadequate and what further investigation was required in the matter or why on the basis of explanation and evidences filed by the assessee the correct nature of the contract could not be deduced. In such circumstances, we hold, it cannot be said that there was any error in the order of the Assessing Officer so as to cause prejudice to the Revenue.

20. Moreover, we find that after going through the replies filed by the assessee the Assessing Officer discussed the same in his assessment order and recorded his satisfaction regarding the assessee's claim for such deduction stating that the activity undertaken by the assessee clarifies for deduction under section 80IA of the Act. The Assessing Officer further added that this was the second year of claim of deduction since the assessee company had been awarded the same project by the same Government. Thus, we find that the Assessing Officer after having applied his mind to the explanations and evidences filed by the assessee arrived at a logical and reasonable conclusion that the assessee was eligible to claim deduction under section 80IA of the Act as its activity qualified for the said claim. We find that the view taken by the Assessing Officer is a plausible view since as demonstrated before us, the assessee had been granted a certificate of lower deduction of tax for assessment years 2010-11 to 2013-14 after considering the eligibility of the claim of the assessee to deduction under section 80IA of the Act. The assessee has also demonstrated before us that in the preceding and succeeding assessment years, identical claim on account of very same project had been allowed to it by the Assessing Officer and also that for identical project another Assessing Officer had granted deduction under section 80IA of the Act to a sister concern of the assessee M/s Kaveri Infrastructures Pvt. Ltd. in collateral proceedings before the DCIT, for the assessment years 2008-09 to 2011-12, that too after exercising powers under section 133(6) and receiving clarification from the Executive Engineer, IPH, on perusal of which the

Assessing Officer found that the contract was on Built Operate Transfer (BOT) basis and not in the nature of works contract and that the project was on turnkey basis in which the assessee was involved in operation and management also. The AO in that case also noted that such arrangements were typical for infrastructure development projects of the Government and cannot be seen as mere works contract. All these facts have not been rebutted by the Ld. DR before us. Therefore, without any doubt it can be said the view taken by the Assessing Officer with regard to the claim of the assessee under section 80IA of the Act was a plausible view.

21. Interestingly, we find ,that all the explanations and evidences which were filed before the AO by the assessee to support its claim of deduction u/s 80IA was also filed before the learned Pr. CIT and despite so there is not a whisper in the entire order as to how the view of the AO that it was an infrastructure project and not works contract, is incorrect. The learned Pr. CIT has not referred to a single document, clause or otherwise of the agreement to lend credence to his view.The entire thrust of the learned Pr. CIT in exercising revisionary powers is that adequate enquiry vis-à-vis claim of deduction under section 80IA of the Act was not carried out, which as we have stated above, the Ld. counsel for the assessee has demonstrated is incorrect. Adequate enquiries were carried out, adequate replies were filed by the assessee and the Assessing Officer after having applied his mind to the explanations and evidences filed by the assessee had arrived at a plausible conclusion that the assessee was unable to deduction under section 80IA of the Act. We are, therefore, in complete agreement with the Ld. counsel of the assessee that the issue was examined and verified during assessment proceedings and the Assessing Officer had arrived at a plausible conclusion that on the basis of the verification carried out by it that the assessee was eligible to claim deduction under section 80IA of the Act and therefore there was no error in the order of the Assessing Officer so as to cause prejudice to the Revenue. The action of the learned Pr. CIT in exercising his revisionary powers on this ground is set aside.

22. Besides the above argument Ld. Counsel for the assessee also argued before us that the issue of eligibility of claim of deduction under section 80IA of the Act having been examined in the 1st year of claim of the assessee i.e. AY 2010-11, the same could not have been disturbed in the succeeding years. In support of its contention the Ld. Counsel relied upon the decision of the Punjab and Haryana High Court in the case of CIT versus Micro Instrument Company in ITA. No. 958/2008 dated 2.9.2016 more specifically at para 12 of its order had stated as follows:

"12. However, while undertaking this exercise, the Assessing Officer is not entitled to reopen an issue that had been decided in respect of a previous assessment year. In other words, an Assessing Officer is not entitled to question the validity of the grant of a deduction under Section 80-IB in a previous assessment year on any ground. The Assessing Officer would not be entitled to say that a particular condition was not fulfilled in an earlier assessment year if the assessee had been granted the deduction in that year. The Assessing Officer, therefore, cannot deny a deduction in the assessment year in question before him on the ground that the assessee had failed to fulfill a condition precedent to the grant of a deduction in another assessment year. That would amount to an Assessing Officer reopening an assessment in respect of another assessment year without following the provisions of the Act."

23. Ld.DR, on the other, hand relying upon para 11 of the order stated that certain issues could have been disturbed in the succeeding years also. Ld.DR stated that merely because the assessee had been allowed claim in the 1st year did not mean that the same for all purposes could not be disturbed in the succeeding years at all.

24. We have gone through the order of the jurisdictional High Court relied upon by both the parties and find merit in the contention of the Ld. counsel for the assessee. There is no dispute about the fact that in the preceding assessment year i.e. AY

2010-11, which was the 1st year of claim of deduction under section 80IA, the assessee was allowed the same under section 143 (3) of the Act. This means that for all purposes the claim of the assessee having been examined in the light of the parameters of eligibility laid down under section 80IA, it could not be said that in the succeeding year those very same parameters had changed on the same set of facts. The Assessing Officer, after considering all the documents placed before it, had in the preceding year concluded that the assessee was carrying out an infrastructure related project which was not in the nature of works contract as defined under section 80IA, read with Explanation-13 and thus the assessee was eligible to claim deduction under section 80IA of the Act. In the impugned case, which is the succeeding year, on the very same set of facts the findings of the preceding year on the fact that the assessee was carrying out eligible infrastructure project and not works contract, cannot now be disturbed, which is exactly what has been stated by the High Court in the order passed in the case of Micro Instrument Company (supra). Following the same also we hold that the learned Pr. CIT could not have exercised his revisionary powers since the claim of the assessee had been decided in the preceding year itself and without disturbing the same it could not have been dislodged in the impugned year.

25. In view of the above we set aside the order of the learned Pr. CIT on this count."

15. Further, the aforesaid issue was again considered by the Tribunal for assessment year 2012-13 also. The Tribunal vide order dated 1.12.2017 has again decided the issue in favour of the assessee. The relevant findings of the Tribunal are reproduced as under:-

"4.18 Accordingly we find that infact there is nothing on record except the suspicion of the Department that the assessing officer has not carried out adequate enquiries. We have gone through the record and seen that the issues have been enquired into replies have been placed on record nothing has been brought by the Department to show that the view taken by the assessing officer was incorrect on facts. The requisite agreements alongwith site plan Schedule etc. attached thereto were all available before the AO and before the Pr. CIT alongwith photographs etc. No effort to distinguish the Contract entered into with Himachal Pradesh Govt. in respect of Thural Project with the subsequent contracts entered into by the assessee with Himachal Pradesh Government in respect of Dehra Project or with the Uttrakhand Govt. in respect of Pauri and Rudraprayag Projects have been referred to in his order by the Pr. CIT or in his arguments by the ld. CIT-DR. Mere argument that the three Projects were different without any supporting fact cannot be given a judicial approval. Suspicion may be said to be sufficient for the purposes of issuance of Show Cause Notice but thereafter, the suspicion has to be backed by hard facts.

4.19 On giving our consideration to the issues remaining at hand, we find that ultimately on the issue on which the order was passed setting aside the order admittedly was not the subject matter of the two show cause notices issued by the Pr. CIT Chandigarh and thus notwithstanding the settled legal position thereon even otherwise we find that in the facts of the present case on a reading of the assessment order itself it is demonstrated that the Assessing Officer has enquired into the said issue also. It is seen that the AO while passing the order proceeded to look into the claim of depreciation for the exempted and non-exempt units and thus the suspicion of the Pr. CIT, Chandigarh that the facts for considering the bifurcation of expenses between the exempted income and non-exempt income have not been looked into is without any justification and in the peculiar facts of the present case based entirely on suspicions.

4.20 Accordingly in view of the detailed reasons given herein above, we find that there was no basis for the principal CIT-A to conclude that it is a case of inadequate enquiries. We find from the record that the assessing officer has inquired into the issues the assessee has demonstrated the correctness of the claim having been allowed the revenue having

failed to point out as to what is the error in the specific contracts considered by the Pr. CIT, Chandigarh namely the contract entered into with the Himachal Pradesh government in regard to the Dehra Project and the two specific contracts entered into with the Uttrakhand Government of Pauri and Rudraprayag Project. Accordingly we have no hesitation in quashing the order passed by the Pr.CIT, Chandigarh on all these counts and allow the appeal of the assessee.

5. At this stage, it would not be out of context to quote from the decision of the Gauhati High Court in the case of Bongaigaon Refinery and Petrochemical 287 ITR 120 (Gau) where the Court at page 131 para 17 and 18 held as under:

"17. Entertainment of a view different from the one adopted by the Assessing Officer, if plausible would not clothe the Commissioner with the power to interfere therewith under the said provision of the Act. Differently put, an error within the jurisdiction of the Assessing Officer on an evaluation of the materials available would not be exposed to interference in exercise of suomotu revisional powers under section 263 of the Act. The provision though permits the Commissioner to initiate an enquiry as he may deem necessary does not authorise a roving probe into the facts with the disposition to pick out errors to sustain the eventual interference. This assumes great significance in the context of the statutory frame work of the Act outlining the jurisdictional contours of different authorities to adjudicate the issues as legislatively stipulated. The Commissioner in exercise of his revisional powers cannot arrogate to himself a status to surrogate the other authorities and supplant their roles under the Act.

18. The jurisdiction exercisable under section 263 of the Act being supervisory in nature, permitting suo motu review of any assessment already made, the statutorily enjoined sanctions circumscribing the same have to be rigorously construed. The legislative intendment of conditioning the plenitude of the power conferred is manifest in the two preconditions lodged in the section. To sustain the delicate balance between this supervisory and other remedial jurisdictions, as designed by the lawmakers, a constricted connotation and purport of the enabling prerequisites for the exercise of the revisional powers is an imperative necessity.

5.1 Thus, no doubt the power to set aside has been vested with the Pr. CIT. However, the power has to be exercised judiciously and fairly. The Revisionary order cannot be silent in the face of the challenge of the assessee that the Contracts are identical composite Infrastructure Development Contracts on BOT basis i.e. were trunkey projects where after initially setting up, the assessee was tasked with making it functional post completion operation and maintenance of the same for a specific period. The Contracts were available with the Pr. CIT and the stated claim of the assessee if it was found to have been incorrect, should have been demonstrated in the order itself. Even in the course of the arguments, ld. CIT-DR could not bring any fact to our notice in support of the order passed. The power vested by the Statute comes with onerous responsibilities which cannot be allowed to be shirked. The assessee in the facts of the present case is able to demonstrate that full facts were available on record on which enquiries have been made and the assessment order itself shows that the calculations carried out even though for the purposes of depreciation by the AO qua the exempted units and non-exempt units demonstrate that facts have been seen. In the face of these facts and arguments, the Pr. CIT should have referred to some error in the order passed after considering the new three contracts and the earlier continuing contract of Thural Project which is not so in the facts of the present case. Nor has the ld. CIT-DR pointed out to any such error. Accordingly, the arguments of the Ld. CIT-DR that no prejudice is caused to the assessee if the matter is restored to the assessing officer as the assessee would still be at liberty to reargue the entire case cannot be countenanced. Unless and until the Revenue demonstrates that the order has been passed without due and adequate enquiry or an error which is prejudicial to the interests of the Revenue is pointed out only then the order passed can be upheld. Merely because the assessee would have an opportunity available before the Assessing Officer once again cannot be said to be a justifiable reason for setting aside an

assessment order. If the said argument is accepted, then each and every assessment order can be set aside as opportunity to the assessee is any way granted by the Rule of Law.

5.2 Before parting, we may also refer to the decision of the Allahabad High Court in the case of CIT Vs Goyal Private Family Specific Trust (1988) 171 ITR 698, 701-702 (All). A perusal of the said decision would show that the Court has held in unambiguous terms that merely because the orders of the Assessing Officer are brief and cryptic, the said fact by itself cannot be a ground for branding the assessment orders as erroneous and prejudicial to the interests of the Revenue. The Court was careful to observe that writing a detailed order no doubt may be a legal requirement, but the order not fulfilling this requirement, cannot be said to be erroneous and prejudicial to the interests of the Revenue. The Court in unambiguous terms has fastened the responsibility for exercising the Revisionary Power on the Commissioner to necessarily point out as to what error was committed by the Assessing Officer in having reached the conclusion which was sought to be set aside. The said effort was found to be missing in the facts of the said case as in the facts of the present case also. In the facts of the present case, the Pr. CIT having failed to point out any error, let alone an error which is prejudicial to the interests of the Revenue as the necessary exercise for addressing the error has not been done in the order nor has the ld. CIT-DR been able to demonstrate that there were clauses and conditions in the Contracts entered into with Executive Engineer, IPH Dehra (HP), Executive Engineer, Uttrakhand Peyjal Nigal, Construction Division, Rudraprayag and Executive Engineer, Uttrakhand Peyjal Nigam, Construction Division, Pauri vis-à-vis the contract entered into with Executive Engineer, IPH Thural (HP) on the basis of which they could not be said to be Composite Infrastructure Development Contracts on a BOT basis with added responsibilities towards its maintenance for specific period. The order passed, accordingly for the detailed reasons given herein above is held to be arbitrary and the order is quashed. Accordingly, the grounds raised are allowed.

6. In the result, appeal of the assessee is allowed.

16. The Ld. PCIT vide impugned order has tried to distinguish between the 'works contract' and a 'Development contract' by holding that since the development of the projects in question was to be carried out by the assessee as per the specifications / designs approved by the Government, hence, it would fall within the definition of 'works contract' and not 'Infrastructure Development contract'.

17. We have gone through the discussion made by the Ld. PCIT on this issue and also considered the arguments of the Ld. DR on this point.

The observation of the Ld. PCIT that only if the project is to be developed by the assessee as per the specifications and designs approved by the Government that would fall in a definition of simple works contract and not a 'Infrastructure Development Contract' as provided u/s 80IA(4) of the Act, in our view, would disentitle each and every assessee who would carry out infrastructure development project in a contracts with a Union Government or State Government or Local Authority. Such / stated projects are to be carried out as per the term of the Government. However, what distinguishes and work contract from Infrastructure Development Contract' as per section 11A of the Act is that whether the contract has been granted for a specific work or it is a development of a facility as a whole and whether day to day control on the project and its manner of development is of the Government authorities or of the contractor. The Coordinate Lucknow Bench of the Tribunal in the case of 'M/s Vijay Infrastructure Limited, Lucknow vs ACIT', ITA No. 254/LKO/2015 & Others, order dated 30.10.2015 observed that if the assessee's duty is to develop infrastructure whether it involves construction of a particular item as agreed to in the agreement or not and that the agreement is not for a specific work, it is for development of facility as a whole, the material required is to be brought in by the assessee by sticking to the quality and quantity irrespective of the cost of such

material. The assessee utilizes its funds, its expertise, its employees and takes the responsibility of developing the infrastructure facility, the losses suffered in the process of such development would be that of the assessee. The assessee hands over the developed infrastructure facility to the Government on completion of the development and if the assessee has to undertake maintenance of said infrastructure for a particular period and during the said period, if any damages are occurred, it shall be the responsibility of the assessee , then such a contract would fall within the purview and scope of Infrastructure Development contract.

Even on the identical issue in relation to the development of the irrigation project, the ITAT Koltka Bench of the Tribunal in the case of 'DCIT Kolkata vs M/s Simplex Projects Ltd, Kolkata' ITA No. 169/Kol/2016 order dated 8.11.2017 has observed that irrigation project is as infrastructure facility within the scope of section 80IA(4) of the Act. The Tribunal further relied upon the decision in the own case of the aforesaid assessee i.e. Simplex – Subhash JV and M/s Somdatt Builders JV vide ITA No. 1684/Kol/2011 and 1685/Kol/2011 dated 8.6.2013, wherein, it has been observed that if the project is a turnkey project involving the activity of development of infrastructure facility, it will be an activity as provided u/s 80IA(4) of the Act. The Tribunal considered that a perusal of the turnkey contract agreement entered into by the assessee with the irrigation department clearly showed that the construction of all the structure of whole of the canal system was to be as per the approved design, drawings of the Department etc. Survey is to be done as per the investigation and drawing criteria of the Irrigation Department. The assessee has to procure the material independently and those materials are to be conformed to the specifications provided. The assessee has also to make arrangement for storage of the materials. The Tribunal held that such work carried out by the assessee would fall in the exclusion provided to the meaning of the 'work' given in the explanation to section 194C of the Act and it would also be out of the scope of 'explanation to sub section (13) of section 80IA'. TheKoltaka Bench of the Tribunal in the case of 'Adhunik Infrasture (P) Ltd vs JCIT' has also held that deduction u/s 80IA(4) cannot be denied to an assessee merely because the assessee has been paid by the Government for development work.

18. After considering the observations and objections made by the Ld. PCIT and in the light of the proposition laid down in the case laws, as discussed above, , we find that neither the Ld. PCIT could even point out how the fact and nature of the projects carried out during the year under consideration were different from the projects earlier taken by the assessee which have already been held to be eligible for deduction u/s 80IA(4) of the Act being Infrastructure Facility Development Project, nor the Ld. PCIT could point out from the clauses of the agreement that they would not fall within the definition of infrastructure development project as provided u/s 80IA(4) of the Act. In our view, the Ld. PCIT has exercised her jurisdiction u/s 263 of the Act totaling bye- passing and in contradiction of the findings given by the Tribunal in the own cases of the assessee for earlier assessment years i.e. 2011-12 and 2012-13 vide orders dated 6.2.2017 & 1.12.2017(supra). Further, it is found that all the material was put before the Assessing Officer including the copies of the contracts. The Assessing Officer has duly taken note of the nature of contract entered into by the assessee and held that the same were infrastructure facilities development contracts and eligible for deduction u/s 80IA of the Act. Hence, it cannot be said that the order passed by the Assessing Officer was erroneous or prejudicial to the interest of Revenue on this issue."

5. The Ld. DR has not pointed out any distinguishing fact for the assessment year under consideration.

6. Moreover, the deduction u/s 80IA of the Act for the relevant projects i.e. "Thural" and "Dehra" has already been allowed in the earlier years and this year being a subsequent year, the findings arrived for the same project in earlier years will mutatis-mutandis apply to thesubsequent assessment year also with the condition that the total number of years for claiming deduction will be subject to the other conditions relating to

the time period of claiming deduction and percentage of the deduction as provided u/s 80IA of the Act.

In view of the above discussion, the appeal of the assessee stands allowed.

6. The another issue relating to the disallowance of Rs. 81,348/- under section 14A of the Act. It is noticed that the Ld. CIT(A) decided this issue by following the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Lakhani Marketing Inc. (272 CTR 265) wherein it has been held that when there is no exempt income, no disallowance under section 14A of the Act can be made. Ld. CIT(A) also followed the judgment of the Hon'ble Supreme Court in the case of Principal CIT Vs. Oil Industry Development Board [2019] reported at 103 taxmann.com 326 . We therefore in the absence of any contrary decision brought on record, do not see any valid ground to interfere with the view taken by the Ld. CIT(A).

7. Accordingly, we do not see any merit in this appeal of the Department.

8. In the result, appeal of the Department is dismissed.

(Order pronounced on 23/12/2020)

Sd/-	**Sd/-**
आर.एल. नेगी	**एन.के.सैनी,**
(R.L. NEGI)	**(N.K. SAINI)**
न्यायिक सदस्य/ Judicial Member	**उपाध्यक्ष / VICE PRESIDENT**

AG
Date: 23/12/2020

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File