

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**  
(CONDUCTED THROUGH E-COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND**

**Ms MADHUMITA ROY, JUDICIAL MEMBER**

अपील सं./ITA No.219/Rjt/2016

निर्धारण वर्ष/Asstt. Year: 2011-2012

M/s Avadh-NIPL (JV), Plot No.57, Avadh House, Rajnagar Chowk, Pandit Dindayal Marg, Rajkot.  <b>PAN: AAQFA7091P</b>	Vs.	The Pr. Commissioner of Income-tax -1, Rajkot.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri M.J. Ranpura, A.R
Assessee by :	Shri Om Prakash Singh, CIT, D.R

सुनवाई की तारीख/Date of Hearing : 04/08/2021

घोषणा की तारीख /Date of Pronouncement: 31/08/2021

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Principle Commissioner of Income Tax, Rajkot-1, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The Assessee has raised the following grounds of appeal:

1. *The ground of appeal mentioned hereunder are without prejudice to one another.*

2. *The order u/s 263 of the Income-tax Act,1961 [hereinafter referred to as the "Act"] passed by the learned Principal Commissioner of IncomeTax-1, Rajkot (hereinafter referred to as the "Pr. CIT") is without jurisdiction and bad in law as also on facts and deserves to be quashed and may kindly be quashed.*
3. *The Ld.Pr.CIT erred on facts as also in law in holding that the appellant firm is contractor and not developers and merely executing the civil construction work as a sub-contractor on behalf of Government of Gujarat is not entitled to claim deduction u/s.80IA(4) of the Act and thereby setting aside the assessment order passed u/s. 143(3) of the Act dated 16.09.2013. The order passed by the Id. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed.*
4. *The Id. Pr CIT further erred on facts in not properly considering the facts on record and appellant's submission that all the details were furnished during assessment proceedings and were verified by the AO and the order under consideration was passed after due inquiry, verification of facts on record and due application of mind. Thus, the order passed u/s 263 of the Act is totally unjustified on facts as also in law and may kindly be quashed.*
5. *Your Honor's appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. The only issue raised by the assessee is that the learned Principal CIT erred in holding that the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of revenue on account of the deduction granted by the AO under section 80IA(4) of the Act.

4. The facts in brief are that the assessee in the present case is a joint-venture/partnership firm of M/s. Avadh Infrastructure Pvt. Ltd. (AIPL) and M/s Narnarayan Infrastructure Pvt. Ltd. (NIPL) which came into existence vide agreement dated 7<sup>th</sup> March 2009. The joint-venture /partnership firm was formed for applying the E-tender invited by the Government of Gujarat Road & Building Department vide notice dated 12<sup>th</sup> February 2009 for the construction of bridge. M/s AIPL was the lead partner and the tender was accordingly applied. Finally the tender was accepted and project was awarded vide letter dated 12<sup>th</sup> June 2009 in the name of M/s AIPL being the lead partner.

4.1 Subsequent to the allotment of the project, both AIPL and NIPL in order to give more legal validity to joint venture and for the purpose of accounting, both of

them formed a partnership firm dated 4<sup>th</sup> November 2009 but the same was effective from 12<sup>th</sup> June 2009.

4.2 During the year the assessee earned a profit of ₹ 60,91,542/- from the said project which was claimed as deduction u/s section 80IA(4) by it being a developer of Infrastructure facility in the return of income filed for the year under consideration. The claim of the assessee was accepted by the AO in assessment framed under section 143(3) of the Act vide order dated 16<sup>th</sup> September 2013.

4.3 However, the learned principal CIT under section 263 of the Act was not satisfied with the order of the AO who allowed the deduction to the assessee under section 80IA(4) of the Act on the following reasoning:

- i. There was no agreement between the assessee and the Government of Gujarat.
- ii. The project was conceived and developed by the Government of Gujarat. The assessee only executed the project of the government by doing the construction activity which is not eligible for deduction under section 80IA(4) of the Act.

4.4 In view of the above, the learned principal CIT was of the view that the order passed by the AO is erroneous insofar prejudicial to the interest of revenue and thus issued a show cause notice under section 263 of the Act dated 04<sup>th</sup> February 2016.

4.5 The assessee in response to such notice vide letter dated 23<sup>rd</sup> February 2016 and 2<sup>nd</sup> March 2016 submitted that the contract for the construction of the bridge has been allotted to it in an e-tender after qualifying the technical and financial criteria laid down therein. The assessee for this purpose entered into the agreement dated 12<sup>th</sup> June 2009 with the Government. Furthermore, it had carried out all the activities of the project which was allotted as package and not for the execution of a particular work only. The activities involved in the development project include many segments such as levelling of earth, clearing and grubbing of road land, grass,

trees, earth work for embankment with selected soil breaking clods etc. It has issued all the RA bills which were duly approved by the engineers appointed by the government and which were further handed over to the Government. Accordingly, the assessee contended that it has fulfilled all the conditions as specified under section 80IA(4) of the Act and therefore it is eligible for deduction as specified under said section.

4.6 It was also contended by the assessee that the AO has allowed the claim of the assessee under section 80IA(4) of the Act after raising specific queries vide letter dated 14<sup>th</sup> June 2013 and 5<sup>th</sup> August 2013. All the queries raised by the AO were duly answered by the assessee during the assessment proceedings. Thus the AO after considering the explanation of the assessee concluded that the assessee has carried out the development of the infrastructure facilities. Hence, the AO has taken one of the possible view after applying his mind and therefore his finding cannot be termed as erroneous insofar prejudicial to the interest of revenue.

4.7 However, the learned Principal CIT disagreed with the contention of the assessee by holding that there was no agreement between the assessee and the Government of Gujarat. As such the project was awarded to AIPL. Subsequently, AIPL has entered into an agreement with NIPL to create the partnership firm for execution of the work. Therefore, the assessee being a partnership firm has only executed the work in the capacity of works contractor which was actually allotted to AIPL. Accordingly the learned PCIT concluded that the assessee is not eligible for deduction under section 80IA(4) of the Act being acting in the capacity of works contractor. Thus the learned PCIT set aside the finding of the AO and directed to make fresh assessment after giving a reasonable opportunity of being heard to the assessee as per the provisions of law.

5. Being aggrieved by the order of the learned Principal CIT, the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 157 and contended that the AO has allowed the deduction under section 80-IA(4) of the Act after carrying out the necessary verification during the assessment proceedings. Thus, the AO has taken one of the possible view by allowing the claim of the assessee under section 80-IA(4) of the Act. Likewise, the issue whether the assessee is acting as a developer or works contractor is a debatable issue. Therefore, the order of the AO cannot be revised under section 263 of the Act.

6.1 The learned AR further submitted that the name of the assessee was included in the agreement by way of the clarification issued by the Government of Gujarat. Such clarificatory letter evidences that the assessee was part of the agreement with the Government of Gujarat.

6.2 In view of the above, the learned AR submitted that the contract was awarded to the joint-venture and therefore the assessee is eligible for deduction under section 80 IA(4) of the Act. For this proposition, the learned AR relied on the order of Rajkot Tribunal in the case of ITO Vs. Patel Highway Management Pvt. Ltd in ITA No. 135/RJT/2016 for A.Y 2011-12 dated 02/08/2017.

7. On the contrary the learned DR submitted that there is no discussion in the order of the AO about the deduction claimed by the assessee under section 80-IA (4) of the Act. Moreover, the contract was awarded in the name of AIPL and thereafter the joint-venture agreement was made. Furthermore, the issue whether joint-venture is eligible for deduction under section 80-IA(4) of the Act has not been examined by the AO during the assessment proceedings. Therefore no view has been taken up by the AO in the assessment proceedings. The learned DR vehemently supported the order of the learned principal CIT.

7.1 The learned AR in his rejoinder contended that it is not necessary for the AO to discuss the issue in the assessment order with respect to the deduction claimed by the assessee under section 80-IA(4) of the Act once he ( the AO) was satisfied

after necessary verification. In this connection, the learned AR relied on the judgment of Bombay High Court in the case of CIT Vs Reliance Communication Limited reported in 69 taxmann.com 103.

8. We have heard the rival contentions of both the parties and gone through the necessary records available before us. From the preceding discussion, we note that the learned Principal CIT has held the order of the AO as erroneous insofar as it is prejudicial to the interest of revenue on the ground that the assessee is acting as a works contractor and not the developer. The view of the learned PCIT was based on the fact that there was no agreement between the assessee and the Government of Gujarat which is one of the prerequisites for claiming the deduction under section 80IA(4) of the Act.

8.1 Admittedly, the project was awarded by the Government of Gujarat office of Executive Engineer, Valsad (Road and Building Department) in the name of M/s AIPL vide letter dated 12<sup>th</sup> June 2009. The copy of the said letter is placed on pages 69 to 70 of the paper book and translated copy at pages 28 to 29 in the synopsis of argument. However, we note that there was change in the contract subsequently. There was the clarification issued by the above mentioned office vide letter dated 27<sup>th</sup> August 2009 that the contract awarded in the name of M/s AIPL shall be considered in the name of the assessee. The copy of the said clarification letter is placed on pages 71 to 72 of the paper book and translated copy at pages 32 to 33 in the synopsis of argument which reads as under:

*With reference to above mentioned subject the tender for above work has been jointly submitted by your company along with "NARNARAYAN INFRASTRUCTURE PRIVATE LIMITED-GANDHINAGAR" in the name of Joint Venture.*

*In view of the above, following correction in Paragraph No.1 of the letter referred in (1) above, to be read as under, which shall form part of agreement.*

- 1. Referred work will be considered as approved in the name of "AVADH-NIPL (JV)" instead of M/s. AVADH INFRASTRUCTURE PRIVATE LIMITED. In relation to this all the previous correspondence will be considered as done in the name of "AVADH-NIPL (JC)"*

8.2 In view of the above, there remains no ambiguity that there was the agreement between the assessee and the Government of Gujarat, Road & Building department. It is also pertinent to note that this fact was brought to the notice to the learned principal CIT during the proceedings by the assessee. The relevant contention of the assessee before the learned principal CIT reads as under:

*It is pertinent to note that initially the letter of contract was issued in the name of Lead Partner of joint venture i.e Avadh Infrastructure Pvt. Ltd. Subsequently, the concerned Govt. Department vide their letter dated 27<sup>th</sup> August 2009, clarified that the contract shall be considered as issued in the name of "Avadh NIPL(JV)" only and reference to Avadh Infrastructure Pvt. Ltd. Should be considered as meant for Avadh NIPL(JV) only.*

8.3 However, we note that the learned Principal CIT in his order has not assailed the contention raised by the assessee before him. Thus, in the given facts and circumstances, there is no violation by the assessee of the provisions specified under section 80IA(4) of the Act to the extent as discussed above.

8.4 Moving further, we find that there was no charge of the learned Principal CIT suggesting that the activities performed by the assessee were in the nature of works contract except the allegation that there was no agreement between the assessee and the Government of Gujarat, Road & Building Department. As such, in the absence of agreement between the assessee and the Government of Gujarat, Road & Building Department, the Principal CIT assumed that the assessee was acting as the works contractor. However, the finding of the learned Principal CIT is not correct in the light of the above discussion.

8.5 Without prejudice to the above, we also note that the issue whether the assessee is acting as a works contractor or a developer as provided under explanation to section 80IA(4) of the Act is the debatable issue. Thus, once the AO has taken a view that the assessee is eligible for deduction 80IA(4) of the Act, the view taken by the AO is one of the possible view. Thus on this reason as well the order of the AO cannot be termed as erroneous insofar prejudicial to the interest of revenue.



8.9 In the backdrop of the above stated discussion, we hold that the order passed by the learned Principal CIT is not sustainable and liable to be quashed. Thus we hold accordingly. Hence the ground of appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is **allowed**.

**Order pronounced in the Court on 31/08/2021 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**(True Copy)**

Ahmedabad; Dated 31/08/2021  
*Manish*