

आयकरअपीलीयअधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्रीचंद्रपूजारी, लेखा सदस्य एवं श्री धुव्वुरुआर.एलरेड्डी, न्यायिकसदस्यकेसमक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER

आयकर अपील सं./**ITA Nos.620/Mds/2013 and ITA No.360/Md/2015**

निर्धारण वर्ष /Assessment Years: 2009-2010 and 2010-2011

The Assistant Commissioner of
Income Tax,
Business Circle –III,
Chennai.

Vs Shri.B. Dhanasekaran,
R-3, TNHB Shopping Complex,
Shastri Nagar, 1st Avenue,
Adyar, Chennai 600 020.

[PAN: ADXPD 7168E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. A.V.Sreekanth, IRS, JCIT.

प्रत्यर्थी की ओर से / Respondent by : Shri.N. Devanathan, Advocate

सुनवाई की तारीख/Date of hearing : 16.09.2015

घोषणा की तारीख /Date of Pronouncement : 06.11.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These two appeals by Revenue are directed against the different orders of the Commissioner of Income Tax (Appeals)-VIII & V, Chennai for the above assessment years.

2. The only issue in these two appeals is with regard to allowability of deduction u/s.80IA(4) of the Act. Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience.

3. The facts narrated in the case of ITA No.620/Mds/2013 for the assessment year 2009-10 is considered for adjudication.

4. The brief facts of the case are that the return of income for the assessment year 2009-10 was filed on a total income of ₹28,83,467/-. The case was selected through CASS for scrutiny. Notices u/s.143(2) and 142(1) were issued to the assessee. The Assessing Officer completed the assessment u/s.143(3) on 27.12.2011 after making the disallowance of section 80-IA which was claimed as exemption of ₹18,45,450/- to the returned income. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

5. The Commissioner of Income Tax (Appeals) observed that the assessee is not a works contractor and a developer as stipulated u/s.80IA(4) of the Act. The section 80-IA(4) applies to any enterprise, which carries on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any

infrastructure facilities, which fulfill all the above conditions. From the assessment year 2000-01, deduction is available if the assessee is carrying out the business of any one of the above mentioned three types of activities. When an assessee is only developing an infrastructure facility project and is not maintaining nor operating it, such an assessee will be paid for the cost incurred by it. If the infrastructural facility, after its development is transferred to the Government, the cost would be paid by the Government. Merely because the transferee had paid for the development of infrastructure facility carried out by the assessee, it cannot be said that the assessee did not develop the infrastructure facility. If the interpretation done by the Assessing Officer is accepted, no enterprise carrying on the business of only developing the infrastructure facility would be entitled to deduction u/s. 80 IA(4), which is not the intention of the Law. An enterprise who develops the infrastructure facility is not paid by the Government, the entire cost of development would be a loss in the hands of the developer as he is not operating the infrastructure facility. The legislature has provided that the income of the developer of the infrastructure project would be eligible for deduction, it presupposes that there can be a developer i.e. to a person who is carrying on the activity of only development infrastructure

facility. A developer would have income only if he is paid for the development of infrastructure facility, that he is having the right /authorization to operate the infrastructure facility and to collect toll there from, has no other sources of recoupment of his cost of development. After taking a contract from the Government, if the assessee develops infrastructure facilities, the assessee would be regarded as 'developer' and not as a 'works contractor'. The assessee firm has carried on entire construction/development of the infrastructure facilities and satisfy all the conditions of sections 80 IA(4)(i)(a) of the act. It is fact that the assessee has taken development of infrastructure facility agreement from the State Government/Local Authority. A contractor who develops the infrastructure facility becomes a developer to claim exemption u/s 80IA(4). The Bombay Bench of the Tribunal while deciding the case of *Patel Engineering Limited Vs. DCIT 94 ITD 411 (Mumbai)* held that a civil contractor, having executed a part of contracts of irrigation and water supply on "build and transfer" basis and handed over them over to contractee Governments was eligible for deduction u/s.80IA(4). Similarly, Tribunal Chennai Bench has taken a similar view in ITA No.554/Mds/ 2010 in the case of East Cost Constructions & Industries Limited vs. DCIT vide order dated 13.09.2011. The deduction u/s 80 IA

(4) is available to an enterprise which develops or operates and maintains, or develops maintains and operates that infrastructure facility after 01.04.1995. A 'developer' is a specific kind of works contractor to be eligible for deduction u/s.80IA (4) who fulfills all the conditions viz., if the assessee develops the infrastructure facility if it operates the infrastructure facility and if it maintains the infrastructure facility, the deduction is available to an enterprise who develops or operates and also maintains, or develops, maintains and operates that infrastructure facility. The handing over of the infrastructure facility/project by the developer to the Government or Authority takes place after recoupment of the developer's cost whether it be 'BT' or 'BOT' or 'BOOT', because in 'BOT' and 'BOOT' this recoupment is by way of collection of toll therefrom whereas in 'BT' it is by way of periodical payment by the Government/Authority. The land involved in infrastructure facility/ project always belongs to the Government/Local Authority etc., whether it be the case of 'BOT' or 'BOOT' and it IS handed over by the Government/Authority to the developer for development of infrastructure facility/project. The same has been the position in the instant case as well. So deduction u/s 80 IA(4) is available to the assessee who has undertaken work of a mere developer.

4.1 In this regard, the decision of *ACIT Vs. Bharat Udyag Limited* 118 ITD 336 and *Patel Engineering Ltd., Vs.DCIT 84 TTJ 646* are relevant. As per CBDT Circular No.4/2010(F.No.178/14/210 ITA-I) dated 18.05.2010, widening of existing roads constitutes creation of new infrastructure facility for the purpose of section 80 IA(4)(i). The assessee is not required to develop the entire road in order to qualify for deduction u/s 80IA as has been held by the Hon'ble Bombay High Court in the case of *CIT Vs. ABG Heavy Industries Limited 332 ITR 323*. The newly inserted Explanation 2 to Section 80 IA vide Finance Act 2007, not apply to a work contract entered into by the overnment and the Enterprise. It applies to a work contract entered into between the enterprise and other party 'the Sub Contractor'. The amendment aims at denying deduction to the sub contractor who executes a work contract with the enterprise as held by the ITAT Jaipur 'A' Bench in the case of *OM Metal Infraprojects Ltd. Vs. CIT-I, Jaipur ITA No.722 & 723/JP/2008 dated 31.12.2008*. The reliance by the Commissioner of Income Tax (Appeals) on the decision of ITAT, Chennai Bench in the case of *ACIT vs. Indwell Lianings Pvt. Ltd. 313 ITR (AT) 118*, has been enlarged its findings by the ITAT Mumbai 'F' Bench in its decision rendered in the case of *ACIT vs. Bharath Udyag Ltd.* by holding that such a deduction is only to be denied to a sub contractor and not to a

main contractor. Similar view has been taken by the Chennai Bench of the Tribunal in the case of *ACIT Vs. Smt.C.Rajini* in which the difference between works contractor and a developer has been examined in detail. The main thrust of the decision is that a developer need not be the owner of the land on which development is made. The incentive provisions allowed to the assessee, the construction should be liberally given as held by the *Supreme Court rendered in the case of Bajaj Tempo Ltd. Vs. CIT 196 ITR 198*. Thus, when the assessee makes investment and himself executes development work and carries out civil work, he is eligible for tax benefit u/s. 80-IA of the Act. Therefore, the assessee is entitled to deduction u/s. 80 IA(4) of the Act and the Commissioner of Income Tax (Appeals) directed the Assessing Officer to delete the addition made at ₹18,45,450/- disallowed u/s 80 IA(4). The Id. Authorised Representative for assessee submitted that the Assessing Officer while computing income of the assessee has wrongly disallowed the deduction u/s 80IA. The AO has proceeded to the compute the income from the total income admitted by the assessee before claiming the deduction u/s 80IA and again disallowed the deduction u/s 80IA and thus the addition has been made twice in the order resulting in excess disallowance to the extent of ₹18,45,450/-. The Commissioner of Income Tax (Appeals)

directed the Assessing Officer to verify the computation of income of the assessee and if the contention of Id. Authorised Representative for assessee found to be correct, the Assessing Officer may re-compute the taxable income and delete the excess addition made in the computation of income. Thus, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee. Against this, the Revenue is in appeal before us.

6. The main contention of the Departmental Representative is that the assessee is a contractor and not developer and the assessee does not develop any infrastructure facility by investing own funds. Rather it executed the work contracts awarded by the clients involved in construction of infrastructure related projects. Merely by executing the contracts relating to infrastructure projects assessee cannot be treated as "developer" of infrastructure.

6.1 Further according to the Id. Departmental Representative the provisions of 80IA(4) applies to any enterprise which is "owned by a company registered in India or by a consortium or a corporation or any other body established or constituted under any Central or State Act". In this case, the assessee is an individual having proprietary concern engaged in the business of civil contract work in the relevant financial

year and hence it is also hit by the above condition laid down in Sec.80IA (4)(i)(a) of the Act.

7. On the other hand, the Id. Authorised Representative for assessee submitted that the main issue involved in the appeals before this Tribunal is allowability of deduction under section 80IA(4)(i) of the Act. This issue is common for all the assessment years under appeal. He dealt with the introduction and changes made by the legislature to Section 80IA(4) of the Act till date. The said section is meant for allowing deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development. The assessee claimed deduction as it is engaged in development of infrastructure and as it satisfied all the conditions mentioned therein. The provisions of Section 80IA(4)(i) as introduced by the by the Finance Act, 1999 and as amended from time to time are applicable to the assessee.

7.1 He submitted that from a reading of the section, it is clear that the deduction is allowable to:

(a) any company incorporated;

(b) which entered into agreement with Government; or any government body; and undertakes development of infrastructure facility.

The purpose for which the said section was amended with effect from the assessment year 2000-01, can be traced to a brochure issued by the Government of India, Ministry of Roads, Transport and High Ways in August, 2001. He has taken support from the aforesaid brochure. In the said brochure, the Government of India extracted some of the decisions taken by it to bring in the development of infrastructure facility in the country. He pointed out that the Government provided the benefits to the Indian entrepreneurs by providing contract packages to the private enterprises. While providing benefits, the government specifically specified certain grants only to BOT Schemes. For the other schemes all the other benefits are made available. The classification provided in the brochure clearly indicates that the schemes of packages are meant for all the enterprises whether engaged in the development of infrastructure or under BOT. Hence, it clearly indicates that the Government of India with a view to develop the infrastructure facility provided various incentives to the Indian concerns for development of such infrastructure facility. With a view to provide the exemptions to the entrepreneurs carrying on such activity, the legislature introduced the amendment to Section 80IA(4) in the

Finance Bill 1999 to be effective for and from the assessment years 2000-01 and onwards to fulfil the objective of the Prime Minister. The provisions of Sec. 80IA(4) are made applicable to "any enterprise carrying on the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating or development, maintenance and operating any infrastructure facility.....". Because of the amendment, the enterprises which are engaged in any of the three activities became eligible for deduction compared to the earlier provision, which was made applicable only to such enterprises engaged in all the three activities cumulatively. The provisions of sub section (4A) which were earlier applicable to the entrepreneurs engaged in developing, maintaining and operating was deleted with effect from 01-04-2000, but is incorporated in section 80IA(4) of the Act. It is clear that the enterprises which were developing, operating and maintaining and developing, operating and maintaining were only eligible for such deduction up to the assessment year 1999-2000 by virtue of the provisions of Section 80IA(4A). With the introduction of the new Section 80IA(4) amending the sub section (4) of Section 80IA and deleting the sub section (4A), the legislature provided deduction for any enterprise carrying on the business either developing or operating and maintaining or development, operating

and maintaining instead allowing deduction only to the enterprises engaged in activity covering all the three activities together.

7.2 According to Id. Authorised Representative for assessee the provision extended to an enterprise carrying on any one of the three activities. It makes the matters more clear that the sub section (4) is amended again by the Finance Act, 2001 with effect from 01-04-2002. The legislature specifically added the conjunction 'OR' between the words (developing), (operating and maintaining) (developing, operating and maintaining). It makes it clear that the provision would apply to any enterprise carrying on the business of developing or carrying on the business of operating and maintaining or carrying on the business of development, operating and maintaining the infrastructure facility. Therefore, there is no requirement that all the three activities should have been carried on by a single enterprise so as to enable it to claim deduction under section 80IA(4) of the Act. This view is also supported by the decision of the Bombay High Court in the case of CIT v. ABG Heavy Industries Ltd. [2010] 322 ITR 323/189 taxman 54 . It mentioned clearly that the three conditions development, operation and maintenance were not intended to be cumulative in nature. Therefore, any assessee who has undertaken any one of the activity is eligible for deduction under section 80IA(4) of

the Act. The Mumbai Bench of the ITAT in the case of *Asstt. CIT v. Bharat Udyog Ltd. [2009] 118 ITD 336/[2008] 24 SOT 412(Mum.)* also held that after the amendment of Section 80IA(4) it is applicable to enterprises who are engaged in developing infrastructural facility. Earlier, the Mumbai Bench in the case of *Patel Engg. Ltd., v. Dy. CIT [2005] 94 ITD 411* also observed that the civil contractors who are developing the infrastructure facility is eligible for deduction under section 80IA(4) of the Act. It is mentioned that the statutory provisions as contained in 80IA(4) provides for development of infrastructure facility. Therefore, it is clear that to be eligible for deduction under section 80IA(4), an enterprise need not necessarily be engaged in all the three activities of developing, maintaining and operating the infrastructure. It is enough if it is carrying on the business of either developing or maintaining and operating or developing, maintaining and operating the infrastructure facility.

7.3. It was submitted by counsel for assessee that, as per the agreement, the possession of the site is handed over to the assessee by the Government. The assessee takes possession and access to the property and thereafter it shall be the responsibility of the assessee to develop the said area into more useful infrastructure facility. In the

process, every act required (whether mentioned in the agreement or not) in converting the area into more useful one shall be that of the assessee. The assessee has to undertake the responsibility of maintenance of the existing traffic and there should not be inconvenience to the regular traffic. The developed area after completion of the development of infrastructure is handed over to the Government. After handing over, the assessee shall maintain the infrastructure for a period of 48 months and any defects are to be rectified and it is clear that the assessee is converting the area entrusted to it into more useful and more profitable area and handing over the developed one to the Government. Therefore, the activity of the assessee is "to develop" an existing two lane road into four lane road thereby making the road more useful and profitable. The Id. Authorised Representative for assessee further submitted that as per the explanation introduced by the Finance Act, 2007, any assessee who entered into a contract with the enterprise mentioned in Sub-Section (4) would not be eligible for deduction. It clearly indicates that any sub-contractor who undertakes a part of the work from the undertaking which was allotted the work would not be eligible for such deduction. The said explanation has no application to the assessee. The assessee did not claim such deduction or any income pertaining to

a sub contract work undertaken from the enterprises referred to in Section 80IA(4). Therefore, the explanation introduced by the Finance Act, 2007 shall not affect the claim made by the assessee. The explanation introduced by the Finance Act, 2009 added that those enterprises undertaking simple works contracts by entering into agreements with the enterprises or with the government or government organizations. As per this explanation, any enterprises which enter into a mere works contract either with any other enterprise or Government or Government corporation shall not be eligible for the deduction. It is made clear that any enterprise, which entered into development of infrastructure, would be eligible for deduction and not those enterprises, which enter into contract for executing works contracts. The assessee herein entered into agreement for development of infrastructure facility and not for a mere works contract. It is submitted that this explanation has to be read in the context of the application of the main provisions of Section 80IA(4) of the Act. From a reading of Section 80IA(4)(i) of the Act, it is clear that the deduction is available for any company which enters into agreement with any government or government body. It is clear that the deduction is available not for any person but for those companies entering into agreement with the government or other Government

bodies/corporations. It is also made clear that the deduction is available for the corporate bodies entering into agreement with the government organizations. Therefore, the main provision makes it clear that the deduction is available to companies entering into agreement with government bodies or Government. Therefore, it is not correct to read the explanation to mean that the government body is eligible for deduction under section 80IA of the Act and the company entering into agreement with such government body is not eligible for deduction.

7.4 In so far as the meaning of the word "works contract" is concerned, the Id. AR placed reliance on the judgement of Bombay High Court in the case of *CIT v. Glenmark Pharmaceuticals Ltd., [2010] 324 ITR 199/ 191 Taxman 455(Bom.)* wherein held that in a works contract, the contractee would provide the material and all other requirements in the process of manufacture/production. The contractor merely carries on the work with the material supplied by the contractee and the knowledge supplied by the contractee. Further, in a works contract, the risk is undertaken by the contractee and in case of development contract, the contractor undertakes the risks involved. In the case of the assessee, it was allotted a premises and the possession

of the premises was handed over to the assessee. It was asked by the government to develop the said area into an infrastructure facility. All the activities necessary in the process of development and the losses suffered in the process, the material to be used including the expertise shall be of the assessee. The maintenance of the existing facility during the period of development also shall be of the assessee. Therefore, the assessee is a developer and not a works contractor. He relied on the Circular No. 4 of 2010 dated 18-05-2010, which is after introduction of the explanation by the Finance Act, 2009, for the proposition that widening of existing road is an infrastructure facility and any enterprise carrying on the activity of widening of an existing road would be eligible for deduction under section 80IA(4) of the Act.

7.5 The Id. Authorised Representative for assessee submitted that as per Circular No.4/2010, dated 18.5.2010 wherein the Central Board of Direct Taxes has clarified that widening of existing roads constitutes creation of new infrastructure facility for the purposes of section 80IA(4)(i) of the Act.

7.6 The Id. Authorised Representative for assessee also relied on the following decisions.

- (i) CTI vs. Radhe Developers, 341 ITR 403 (Guj)
- (ii) Patel Engineering Ltd. vs. DCIT, 84 TTJ 646 (Mum)
- (iii) ACIT vs. Bharat Udyog Ltd, 123 TTJ 689 (Mum)
- (iv) CIT vs ABG Heavy Industries Ltd, 322 ITR 323(Bom)
- (v) The order of the Tribunal in the case of Ramky Infrastructure Ltd vs. DCIT in ITA No.472/Hyd/09 dated 17.07.2013

8. We have considered the elaborate submissions made by both the parties and also perused the materials available on record. We have also gone through all the case laws cited by both the parties. We find that the provisions of Section 80IA(4) of the Act when introduced afresh by the Finance Act, 1999, the provisions under section 80IA(4A) of the Act were deleted from the Act. The deduction available for any enterprise earlier under section 80IA(4A) are also made available under Section 80IA(4) itself. Further, the very fact that the legislature mentioned the words (i) "developing" or (ii) "operating and maintaining" or (iii) "developing, operating and maintaining" clearly indicates that any enterprise which carried on any of these three activities would become eligible for deduction. Therefore, there is no ambiguity in the Income-Tax Act. We find that where an assessee incurs expenditure on its own for purchase of materials and towards labour charges and itself executes the development work i.e., carries

out the civil construction work, it will be eligible for tax benefit under section 80 IA of the Act. In contrast to this, a assessee, who enters into a contract with another person including Government or an undertaking or enterprise referred to in Section 80 IA of the Act, for executing works contract, will not be eligible for the tax benefit under section 80 IA of the Act. At this stage, we deem it appropriate to reproduce hereunder section 80IA of the "Act" providing deduction in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development which reads as follows:-

80IA. (1)Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

(2)

(2A)

(3)

(4) This section applies to—

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:—

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining

- or (iii) developing, operating and maintaining a new infrastructure facility;
- (c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

Explanation.—For the purposes of this clause, “infrastructure facility” means—

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway, inland port or navigational channel in the sea;
- (5)
- (13)

***Explanation. - For the removal of doubts, it is hereby declared that nothing contained in this section shall apply in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1).**

***It introduced by Finance (No.2) Act, 2009 w..e.f. 1.4.2000**

A perusal of the statutory provisions makes it clear that it does not provide a blanket deduction i.e. in order to succeed in a claim of deduction; the concerned assessee has to derive profits and gains

from any business referred to in sub-section 4. Further, sub-section 4 prescribes applicability of clause i.e. the case in which the deduction provision would apply. It is in this sub-section that the legislature has enumerated the nature of the undertakings, their activities in contributing raising of infrastructure. Further, in the explanation attached to the sub-section, the legislature has also entrusted the meaning of the infrastructure facilities. In our opinion, an assessee while claiming deduction has to satisfy all conditions in sub-section 4(1)(a) or (b) or (c). It is mandatory for the assessee to first satisfy sub-section clause i(a), then (b) then (c), then proviso and so on. In case the concerned assessee fails in any one of the clauses, even if it satisfies the other part of the sub-section, the claim has to be rejected. Now we proceed to decide as to whether the assessee proprietorship concern satisfies sub-section 4(i) of the "Act" or not. For the said sub-section, a reading of the provision makes it unambiguous that the concerned claimant has to be an enterprises carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility and it has to be owned by a consortium of such company or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act. Admittedly, the assessee is a proprietorship. As

we notice from the relevant statutory provision, the enterprise in the nature of proprietorship nowhere finds mention in the mandate of the legislature. Although it was emphasized from the definition of the word 'body' in the Law Lexicon which reads as follows:

“Statutory definition, includes partnership, Financial Services and Markets Act, 2000 (c.8), S. 367(2) (Stroud, 6th Edn., 2000, Supplement, 2003).

It also includes group of bodies, partnership of enterprise card on by one or more persons or bodies and a body which is substantially the same at or successor, to, another body, Government Resources and Accounts Act, 2000 (c.20), S. 17(7) (Stroud, 6th Edn., 2000, Supplement, 2003).

The main-central or principal part [Art. 110 (2), Const.]; physical or material frame of a man or animal; gang of thieves etc.”

8.1 In our opinion, the said definition being a general preposition does not help the assessee's case. It is a trite preposition of law while interpreting a statute and more so a fiscal statute, neither the judicial forum concerned can insert its own words nor it can take away any from the statute. As it is seen, the earlier portion of the statutory provision prescribes a company registered in India or a consortium of such companies or by an authority or corporation or any other body established or constituted and so on. In our view, the latter part is liable to be read in the light of the earlier part by following the principles of *ejusdem generis*.

8.2 Further, it was noticed that in the case of *M/s. Ramky Infrastructure Ltd vs. DCIT, in ITA No.472/Hyd/2009 & others* the Hyderabad bench of the Tribunal vide order dated 17.07.2013 observed in his order in para 14 following the earlier order of the Tribunal in the case of *NCC-ECCI(JV) vs. ITO in ITA Nos. 124 & 125/Hyd/2009* vide order dated 17.06.2013 inter alia that word 'owned' in sub-clause (a) on clause (1) of sub-section (4) of section 80IA of the Act referred to the enterprise. In other words, the enterprises carrying on development of the infrastructure facilities should be owned by a company or consortium of companies. The infrastructure facilities need not be owned by a company. It was held that the word 'ownership' is attributable only to the enterprise carrying on the business which would mean that only companies are eligible for deduction under section 80IA(4) and not any other person like new HUF Firm etc. Hence, we hold that the assessee fails to satisfy the applicability clause of the provision as envisaged under section 80IA(4)(i) of the "Act".

9. So far as catena of the judgments submitted by the AR of the assessee, we notice that they only pertain to section 80IA(4)(i)(b) i.e. regarding the issue of contractor viz-a-vis developer. Hence, we do not deem it appropriate to decide on the said issue since the assessee does not fulfill the condition enumerated in the first part of the

statutory provision.

10. Consequently, in the light of our above discussions, the appeals of the Revenue in ITA No.620/Mds/2013 and ITA No.360/Mds/2015 are allowed.

Order pronounced on Friday, the 6th day of November, 2015 at Chennai.

Sd/-

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:06.11.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3.

आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER