आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.373 to 377/PUN/2015
निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

Rajdeep Publicity Pvt. Ltd.,
Rajdeep House, Savedi,
Ahmednagar- 414 003 …. अपीलार्थी/Appellant
PAN: AABCR6660F

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-2(2),
PMT Building, Swargate, Pune …. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nitin Kataria
प्रत्यर्थी की ओर से / Respondent by : Shri Sandeep Garg, CIT

सुनवाई की तारीख / **Date of Hearing : 06.04.2017**		घोषणा की तारीख / **Date of Pronouncement: 06 .04.2017**

<u>आदेश / ORDER</u>

<u>PER SUSHMA CHOWLA, JM:</u>

The above appeals filed by the same assessee are against the consolidated order of CIT(A)-12, Pune, dated 30.01.2015 relating to assessment years 2007-08 to 2011-12 passed under section 143(3) r.w.s.153A of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of 5 appeals relating to different assessment years of the assessee were heard together and are being disposed of by this consolidated order.

3. The assessee has raised the following grounds of appeal:-

"The following grounds are taken without prejudice to each other -
On facts and in law,

1] The learned CIT(A) erred in assessing the total income of the assessee at Rs. 67,12, 678/- as against the returned income of Rs. 14,66,483/- declared by the assessee.

2] The learned CIT(A) erred in denying the claim of the deduction u/s 80IA(4) made by the assessee to the tune of Rs. 52,46,195/- on the ground that the assessee was not engaged in development of any infrastructure facility as laid down in section 80IA(4) without appreciating the correct facts of the case.

2.1] The learned CIT(A) erred in holding that the activity of construction of road signages and foot over bridges did not amount to development of infrastructure facility as stipulated in section 80IA(4) and hence, the deduction u/s. 80IA(4) could not be allowed to the assessee for this year.

3] The learned CIT(A) failed to appreciate that the assessee had fulfilled all the conditions laid down for claiming deduction u/s.80IA(4) and hence, the assessee was eligible to claim the said deduction in respect of the profits derived from the activity of construction of road signages and foot over bridges over the roads carried on by the assessee for this year.

3.1] The learned CIT(A) ought to have appreciated that the activity of construction of foot over bridges and construction of road signages amounted to development of roads and thus, the said activity was in the nature of development of infrastructure facility as stipulated u/s.80IA(4) and therefore, the deduction u/s 80IA(4) was allowable to the assessee.

4] The learned CIT (A) erred in not appreciating that-

a. The road signages constructed by the assessee included various directions boards, cautionary signs, informatory signs etc. and the said signages constructed over the roads were a part and parcel of the roads and hence, the construction of the same amounted to development of roads and thus, the deduction u/s 80IA(4) was allowable to the assessee.

b. The road signages form a mandatory part of roads as per the standards prescribed by the Ministry of Surface Transport (Roads Wing) and hence, there is no reason to hold that the construction of road signages does not amount to development of roads and thereby deny the deduction u/s 80IA(4) of the Act.

c. The assessee had obtained composite contracts for construction of foot over bridges and constructing road signages thereon and at various stipulated locations and since, the foot over bridges were notified as infrasturcure facility, the signages constructed thereon and at various stipulated locations could not be held to be in the nature of 'non-infrastructure' facility and therefore, the addition made was not justified.

5]. The learned CIT (A) erred in making the said disallowance by relying on the orders of Hon'ble ITAT in the case of the assessee for earlier years without appreciating that the assessee had filed an appeal before Hon'ble Bombay High Court against the said orders and the said appeal has also been admitted and hence, the addition made on the basis of the said IT AT orders was not justified.

6] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

4. A perusal of the grounds of appeal itself reflects that the issue raised in the present appeals is decided by the Pune Bench of the Tribunal in assessment years 2003-04 to 2005-06 and 2006-07, against the assessee. The assessee claimed that an appeal was filed before the Hon'ble Bombay High Court which has been admitted and the issue is pending before the Hon'ble High Court.

5. The representative appearing on behalf of the assessee stressed that since the appeal was pending before the Hon'ble High Court the present appeals also be kept pending.

6. The learned Departmental Representative for the Revenue on the other hand stressed that where the issue has already been decided against the assessee and there is no change in the facts, there is no merit in the plea of the assessee.

7. Briefly in the facts of the case a search action under section 132 of the Act was conducted in the Rohan Group of cases on 27-10-2010. The assessee in response to notice issued under section 153A of the Act filed return of income. The Assessing Officer noted that the assessee had claimed deduction under section 80IA(4) of the Act. The assessee was asked to justify its claim and the submission of the assessee is reproduced at pages 2 to 7 of the assessment order. The Assessing Officer noted that the claim of the assessee was not in accordance with the provisions of the Act and the issue was decided against the assessee in the original assessment proceedings for the years under consideration and also the Tribunal has confirmed the addition in assessment years 2003-04 to 2006-07 against which the assessee is in appeal and hence rejected the claim of the assessee. The CIT(A) upheld the order of the Assessing Officer against which the assessee is in appeal.

8. We find similar issue of claim of deduction under section 80IA(4) of the Act arose before the Tribunal in assessee's own case relating to assessment years 2003-04 to 2005-06 and 2006-07. The Tribunal in ITA Nos. 1782, 1783 and 1414/PN/2008 relating to assessment years 2003-04 to 2005-06 vide order dated 04-06-2010 and thereafter in assessment year 2006-07 in ITA No. 864/PN/2009 vide order dated 30-11-2010 decided the issue against the assessee holding as under :

> *"3. As regards the submission of assessee that Circular No.10/2005 dt. 16.12.2005 state that "for the purpose of Section 10(23G) and Section 80 IA, structure includes structures at the Ports for storage, loading, unloading etc. and only stipulation put by this circular is that the concerned authority should issue certificate that the said structures form a part of the Port and that such structures are built on BOT or BOLT Scheme and there is an agreement that the same should be transferred to the said authority on the expiry of the time stipulated in the agreement. The C.B.D.T being the competent authority for the purpose of delegation of legislation as law making power of C.B.D.T is understood, the ambit of circular should not be enlarged to include the activity into which the assessee is engaged. There cannot be any implied enlargement of sub-section. The stand of the assessee that structures of foot over bridge and road signals are necessary to develop infrastructural facility which is road, lack merit for simple reasons that road on which signals have been put was existing before signals were put. In this background, it was rightly observed that road signals could not be said to be an integral and in-separable part of the road. They can make the use of road more convenient but it cannot be said that without the signals, the road cannot be used.*
>
> *4. As regards the submission of assessee that Section 80IA uses the word 'developing' as against Sec 80 IB(10) which uses the term the development and construction and therefore, for claim of deduction u/s. 80IA(4), there may be development of infrastructure without its construction. It was rightly found misplaced to the facts in the case of the assessee. As per the provisions of Sub Section (1) to Section 80 IA, where gross total income of assessee include any profit and gain derived by an undertaking or an enterprise from any business referred to Sub-section (4), and deduction of an amount equal to 100% of profit and gain derived by the assessee shall be available for 10 consecutive years. According to the provision of Section 80IA (4), it apply to any enterprise carrying on business of*
>
> *(i) developing or*
> *(ii) operating or maintaining of,*
> *(iii)developing, operating and maintaining any infrastructural facilities.*
>
> *The Explanation to Section 80IA (4) exhaustively defines infrastructural facility in its clause (a) as road including toll road, bridge or a rail system. The assessee has constructed two foot over bridges and road signals. Most of the income of the assessee is on account of putting road signals. It does not fit into development of infrastructural facilities as defined in Explanation to Section 80 IA(4). So, there cannot be any development of any road without its construction. Adding additional facility cannot be said that an infrastructural facility in the nature of road as defined in Explanation to Section 80IA(4).*
>
> *5. In view of the above, we hold that the assessee did not develop any infrastructural facility in the nature of road as defined in Explanation to sub-section (4) to 80 IA of Income Tax and therefore, the action of the A.O denying the*

> *deduction to assessee under 80 IA need no interference from our side. We uphold the same.* ***Similar issue arose in A.Y. 2004-05 and 2005-06. Facts being similar and following the same reasonings, the rejection of claim u/s. 80IA(4) need no interference*** *from our side."*
>
> *3. In view of the above covered nature of the issue, we are of the opinion that the order of the CIT(A) does not call for any interference.*

9. The assessee has filed an appeal before the Hon'ble Bombay High Court and the appeal is admitted for deciding the following question of law :

> *"Whether the activity undertaken by the Appellant is 'infrastructure development' are understood in section 80-IA of the Income Tax Act?"*

10. It is further observed by the Hon'ble High Court *that there shall be no stay to the execution of the impugned order. It is made clear that the Revenue can take its own view in future, till we decide this Appeal.* In view thereof where the issue is decided against the assessee by the orders of the Tribunal, we find no merit in the pleadings of the assessee that the issue be kept pending. The representative of the assessee has filed the copy of order of the Hon'ble Bombay High Court in admitting the appeal and also the copy of order of the Tribunal. Applying the said principle as decided by the Tribunal, we dismiss the grounds of appeal raised by the assessee.

11. The issue arising in all the appeals is identical and accordingly we hold that the assessee is not entitled to claim deduction under section 80IA(4) of the Act in the captioned assessment years.

12. In the result, the appeals of the assessee are dismissed.

Order pronounced on this 6th day of April, 2017.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 6th April, 2017.
Satish

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. The Appellant;
2. The Respondent;
3. The CIT(A)-12, Pune;
4. The CIT Central, Pune;
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार / Assistant Registrar,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune