



BOM HC: Periodic Payments Do Not Convert Developer Into Contractor To Deny Deduction U/S 80-IA For Infrastructure Projects

Facts

The assessee is a public limited company engaged in the business of developing civil engineering projects such as tunnels, water supply projects, irrigation projects, hydel power projects, dams, bridges, rail projects etc.

For the year under consideration, the assessee was engaged in the activity of construction of two projects allotted by the Government. The assessee claimed that the said two projects were infrastructure projects and it was entitled to deduction u/s 80-IA (4) in respect of the profits derived from the development and execution of the said projects.

The assessing officer (AO) denied deduction u/s 80IA of the Act for the following reasons:

- The assessee was not the owner of the projects. the infrastructure projects belonged to the State Governments.
- The assessee is only a civil contractor and not a developer of the infrastructure.
- The various amounts expended by the assessee were in the nature of expenditure and not investment.
- The infrastructure was not “transferred” to Government
- The assessee has only developed a part of the infrastructure and not the whole of it.
- The assessee did not own or operate the infrastructure facility
- The deduction u/s 80IA (4) was provided to the persons who develop infrastructure projects by mobilizing their own resources. Thus, the assessee cannot be said to be the developer of the project.

The CIT(A) confirmed the assessment order. The ITAT allowed the appeal of the assessee.

Contentions of the Revenue

The Revenue contended that the assessee was only a contractor executing civil construction work and not a developer of infrastructure facilities. According to the Revenue, section 80-IA(4) intended to grant deduction only to entities that develop infrastructure using their own financial resources and entrepreneurial investment.

It was argued that the projects belonged to the Government of Andhra Pradesh; therefore, the real developers were the respective Governments and not the assessee.

The Revenue emphasized that:

- the assessee was paid periodically for work executed,
- no substantial financial risk was borne by the assessee,
- expenditures incurred were merely contractual expenses and not investments, and
- the assessee did not operate or maintain the infrastructure facility.



- It was further contended that the assessee:
 - had not transferred the infrastructure facility to the Government,
 - had developed only a portion of the overall project,
 - did not own the land or project,
 - and merely carried out work as per Government specifications.

The Revenue argued that mere “handing over” of the project to the Government could not amount to “transfer” as contemplated u/s 80-IA(4). Ownership always remained with the Government.

Contentions of the Assessee

The assessee contended that it was not a mere works contractor but an infrastructure developer undertaking highly specialized engineering activities involving substantial technical expertise, investment, and operational risks.

It was submitted that:

- the assessee undertook planning, designing, and execution of the projects,
- deployed substantial machinery and manpower,
- bore geological, operational, and financial risks,
- and independently determined execution methodologies.

For the first project, the assessee highlighted that it constructed underground tunnels, surge chambers, and related structures for irrigation and hydroelectric generation and deployed machinery worth approximately ₹30 crores along with engineers, subcontractors, and large labour force.

For the second project, the assessee pointed out that it undertook technically complex underwater blasting operations and deployed machinery worth approximately ₹10 crores.

The assessee contended that after the amendments made by the Finance Act, 1999 and Finance Act, 2001, deduction u/s 80-IA was available even to enterprises engaged only in “developing” infrastructure facilities and not necessarily operating or maintaining them.

It was further contended that:

- ownership of infrastructure is not a prerequisite,
- periodic payments do not convert a developer into a contractor,
- and developing a part of the infrastructure project is sufficient for claiming deduction.

Observations and Ruling of the High Court

Section 80-IA was introduced to incentivize the private sector to participate in infrastructure development and key industrial activities, which were traditionally dominated by public sector. Memorandum explaining the provisions of Finance Bill, 1995 clarified that since the India was deficient in respect of infrastructure, additional resources would be needed to fulfil the needs. Section 80-IA was accordingly amended to allow deduction of profit and gains derived from a business for developing, maintaining and operating any infrastructure facility. Thus, section 80IA deduction should receive a purposive and liberal interpretation.

The term ‘developer’ means a person carrying out the action of development. Development by its intrinsic nature means bringing something into existence by way of scientific structural planning, technical expertise and precise execution. On the other hand, a works contract means a contract executed as per the planning, design and direction of some other person.



The High Court noted that the assessee had borne and undertaken all the development risks, geological risks and investment risks. The assessee was not involved in merely executing any specific direction given by the authorities but was involved in complete development of the project from designing the project as per the specification provided in the tender, deciding the assets to be deployed on its choice and discretion, amount and resources to be invested, costing the same out, bearing the financial and operational risks and ultimately executing the project.

A mere award of the contract by the Government to the assessee does not debar the assessee to be called a developer.

In the terms of the contract, the obligations which were assumed by the assessee were obligations involving the development of an infrastructure facility.

The deduction u/s 80IA can be availed by any person who either (i) develops; or (ii) operates and maintains; or (iii) develops, maintains and operates that infrastructure facility. Therefore, an assessee who was engaged only in development of infrastructural facility is also eligible for deduction u/s 80-IA of the Act.

The contention of the Revenue that the assessee is a works contractor and not a developer, is completely contrary to the legislative intent of the provision, which was to provide tax holiday to achieve private participation in infrastructural development of the country. In case of every public project, the Government has sought private participation for which tax holiday is granted. If interpretation of Revenue that the entity executing the project is merely a works contractor and not a developer was accepted, no assessee would ever be able to claim deduction u/s 80-IA of the Act. Thus, High Court rejected the contention of the Revenue as such interpretation was not workable.

Mere fact that the assessee was receiving periodic payments as and when a particular stage of the project was completed, does not make the assessee a works contractor. The periodic payments are merely a part of the agreement between the parties. In any big project it is obvious that an assessee is bound to receive periodic payments for work done.

Citation:

Patel Engg. Ltd [TS-362-HC-2026(BOM)]

Our comments

A sun set clause was introduced to section 80IA effective from April 1, 2017. Thus, no new deduction can be claimed. Section 80-IA is applicable only to those assesseees who are yet to claim the deduction for eligible balance period. This has been codified in ITA 2025 in section 138.

This case clarifies that a developer need not own the infrastructure asset. EPC/infrastructure execution entities can qualify as “developers”. However, it may be noted that a mere civil works contractor was debarred from claiming deduction u/s 80IA effect AY 2007-08. Thus, civil works contractors engaged by the assessee in the execution of the project would be debarred from claiming deduction u/s 80IA(4).

This case also confirms that Incentive provisions should be interpreted purposively and not restrictively. A milestone payment do not convert a developer into a mere contractor. The activity of partial infrastructure development is also eligible for deduction u/s 80IA.