IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA.No.1774/Hyd/2014
Assessment Year 2010-2011

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| K. Raheja IT Park (Hyderabad) P. Ltd., Hyderabad – 500 081. PAN AACCK1914G | vs. | DCIT-Circle-2(1) Hyderabad. |
| (Appellant) | | (Respondent) |

ITA.No.727/Hyd/2015
Assessment Year 2010-2011

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| K. Raheja IT Park (Hyderabad) P. Ltd., Hyderabad – 500 081. PAN AACCK1914G | vs. | DCIT-Circle-2(1) Hyderabad. |
| (Appellant) | | (Respondent) |

ITA.No.728/Hyd/2015
Assessment Year 2010-2011

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| M/s. Intime Properties Ltd., Hyderabad. PAN AABCI5676A | vs. | DCIT-Circle-2(1) Hyderabad. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Mr. Arvind Sonde |
| For Revenue : | Smt. G. Aparna Rao |

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| Date of Hearing : | 11.04.2016 |
| Date of Pronouncement : | 11.07.2016 |

**ORDER**

**PER SMT. P. MADHAVI DEVI, J.M.**

All these appeals are filed by the assessee for the A.Y. 2010-2011.

**ITA.No.1774/Hyd/2014** :

2. In this appeal, the assessee is aggrieved by the order of the CIT(A) confirming the action of the A.O. in denying the assessee's claim of deduction under section 80IA(4)(iii) of the I.T. Act, 1961 on the ground that the assessee has offered the income from leasing/licensing of the "Industrial Project" in Hyderabad as 'Income from House Property' and not as 'Income or Profits & Gains from Business or Profession'.

3. Brief facts of the case are that the assessee-company is in the business of development and maintenance of infrastructure facilities. For the A.Y. 2010-2011, the assessee filed its return of income declaring income at Rs.15,96,24,114 and claimed deduction under section 80IA to the tune of Rs.13,02,62,800. During the assessment proceedings under section 143(3) of the I.T. Act, the A.O. perused the profit and loss account of the assessee and observed that the assessee had income from house property and also business income. He observed that the assessee has got approval from the Government of India, Ministry of Finance vide notification dated 29th August, 2006 whereby the Government allocated 8 buildings for setting-up of industrial park with the built-up area of 1,32,851.81 sq. metres and lease rent received from the tenants of these buildings has been claimed as deduction under section

80IA(4) of the Act. He observed that the assessee has also derived income from other buildings which was offered as income from house property but the assessee did not claim deduction under section 80IA(4)(iii) of the Act on the said income. On perusal of the provisions of sub-section (1) of section 80IA, the A.O. observed that the deduction under section 80IA is allowable only with regard to business income and not the income from house property. He, therefore, disallowed the claim of the assessee and brought it to tax.

4. Aggrieved, assessee preferred an appeal before the CIT(A) reiterating the contentions made before the A.O. The CIT(A), however, confirmed the assessment order and further directed the A.O. to re-examine the assessee's claim of deduction under section 80IA of the Act in the A.Y. 2009-2010 being the first assessment year and to take suitable action with regard to the same. Aggrieved by the findings of the CIT(A), the assessee is in second appeal before us.

5. The Ld. Counsel for the assessee submitted that the provisions of section 80IA(4) are applicable to the assessee since the project of the assessee was granted approval by the Government of India. According to him, irrespective of the head of income under which the assessee has offered the income from the industrial park, the assessee is eligible for deduction of the same under section 80IA. According to him, the heads of income are prescribed only to classify the income under different sources but not to deny the legitimate claim of an assessee. Further, in support of his contention that irrespective of head of income, the assessee is eligible for deduction under section

80IA(4), the assessee has placed reliance upon the following decisions :

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| 1. | Ryall v. Hoare, and v. Honeywill (1923) 8 TC 521 |
| 2. | Kilburn Properties Ltd., vs. CIT 17 ITR 134 (Cal.) (HC) |
| 3. | Ezra Proprietary Estates Ltd. vs. CIT 18 ITR 762 (Cal.) (HC) |
| 4. | Indra Singh & Sons Ltd., vs. CIT 33 ITR 341 (Cal.) (HC) |
| 5. | CIT vs. Chugandas & Co., 55 ITR 17 (SC) |
| 6. | O.RM.M.SP.SV. Firm vs. CIT 63 ITR 404 (SC) |
| 7. | CIT vs. Smt. Indermani Jatia 77 ITR 133 (All.) (HC) |
| 8. | E.D.Sasoon & Co. Ltd., vs. CIT 86 ITR 757 (SC) |
| 9. | CIT vs. Cocanada Radhaswami Bank Ltd., 57 ITR 306 (SC) |
| 10. | CIT vs. Shrikishan Chandmal 60 ITR 303 (MP) (HC) |
| 11. | CIT vs. Bhavnagar Trust Corporation (P.) Ltd., 69 ITR 278 (Gujrat) (HC) |
| 12. | Western States Trading Co. P. Ltd., vs. CIT 80 ITR 21 (SC) |
| 13. | CIT vs. R. Dalmia 96 ITR 463 (Del.) (HC) |
| 14. | Brook Bond & Co. Ltd., vs. CIT 162 ITR 373 (SC) |
| 15. | CIT vs. Ramnath Goenka 259 ITR 26 (Mad.) |
| 16. | ACIT vs. Solar Chemicals P. Ltd., 190 ITR 216 (All.) |
| 17. | ACIT vs. M/s. Annapurna Builders ITA.No.1177/Hyd/2011 |
| 18. | Janapriya Properties P. Ltd., vs. DCIT ITA.Nos.1594 & 1595/Hyd/2012 |
| 19. | Saurashtra Cement & Chemical Industries Ltd., vs. CIT 123 ITR 669 (Guj.) (HC). |
| 20. | CIT vs. Paul Brothers 216 ITR 548 (Bom.) |
| 21. | CIT vs. Modi Industries Ltd., 327 ITR 570 (Del.) |
| 22. | CIT vs. Western Outdoor Interactive P. Ltd., 349 ITR 309 (Bom.) |
| 23. | ACIT vs. M/s. Apex Packing Products P. Ltd., ITA.Nos.145 to 150/PNJ/2013 |
| 24. | ITO vs. Information Technology Park Ltd., (2012) 17 Taxmann.com 208 (Bang.) |
| 25. | ITO vs. RR Industries Ltd., (2012) 21 Taxmann.com 448. |
| 26. | Global Tech Park (P) Ltd., vs. ACIT (2009) 28 SOT 45 (Bang.) (URO) |
| 27. | DCIT vs. Golfink Software Park P. Ltd., ITA.No.40 & 41/Bang/2010 |

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| 28. | Chennai Properties & Investment Ltd., 373 ITR 673 (SC) |
| 29. | Shreeji Exhibitors vs. ACIT and Shreeji Enterprises vs. ACIT - ITA.No.640/M/2013 & ITA.No.2196/M/2013. |
| 30. | Krishna Land Developers P. Ltd., vs. DCIT ITA.No.1057/Mum/2010 dated 12th August, 2011. |
| 31. | Janapriya Properties P. Ltd., vs. DCIT ITA.Nos.1595 & 1595/Hyd/2012 dated 29th November, 2013 |

6. The Ld. D.R. on the other hand, relied upon the orders of the authorities below and submitted that the assessee has by itself offered the income under the head 'Income from House Property" and therefore, is not eligible for deduction under section 80IA as the provision itself mentions "profits and gains derived by an undertaking to be eligible for the deduction" (emphasis provided by us). He submitted that the decisions relied upon by the Ld. Counsel for the assessee are all on the Head of Income under which a particular income is to be brought to tax and not on the issue of eligibility of deduction under section 80IA(4) of the Act. Further, the Ld. D.R. submitted that though the assessee has claimed the deduction under section 80IA for the first time in A.Y. 2009-2010, it is not clear as to whether the A.O. has examined whether the assessee has fulfilled the required conditions under section 80IA. Therefore, according to him, the CIT(A) was right in directing the A.O. to examine the eligibility of the assessee for claiming deduction for the A.Y. 2009-2010 and take suitable action, if necessary.

7. We have heard the rival submissions and the material on record. We find that undisputedly, assessee has got the approval from the Government of India to set-up and maintain the industrial park. For claiming the deduction under

section 80IA, sub-section (4) enumerates the enterprises which are eligible for such deduction. Clause-(iii) of sub-section(4) of section 80IA prescribes the 'eligible undertaking' to be an undertaking which develops and operates or maintains and operates an industrial park (or Special Economic Zone) notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning 1st day of April, 1997 and ending of 31st March, 2006. The second proviso thereto provides that the provisions of this clause shall have effect as if for the figures, letters and words 31st March, 2006, the figures, letters and words "31st day of March, 2011" had been substituted. This second proviso has been inserted by the Finance Act, 2006 w.e.f. 01.04.2007. In the case before us, the approval by the Government of India has been granted vide notification dated 29th August, 2006. Therefore, the case of the assessee falls under the second proviso to clause (iii) of sub-section (4) of section 80IA of the Act. Sub-section (1) of section 80IA reads that '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), 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 100% of the profits and gains derived from such business for 10 consecutive assessment years. It is the case of the assessee that the A.Y. 2009-2010 is the first year in which the assessee has claimed the deduction and the A.O. has allowed the same. Thus, according to him, where the A.O. has allowed the claim in the first year, the year in which he was supposed to examine the

eligibility of the claim of the assessee, he cannot thereafter disallow the same.

8. Now the question before us is, whether the income from approved industrial park, though offered by the assessee as "Income from House Property" is eligible for deduction under section 80IA(4) of the Act. For this purpose, what constitutes the "Profits and Gains of an undertaking" has to be examined.

9. The Ld. Counsel for the assessee has relied upon a catena of decisions to demonstrate that "Income from house property" also is part of "Profits and Gains" of the undertaking. He submitted that the Hon'ble Courts have been consistent in holding that incomes declared under various heads of income also has to be treated as "Income from Business".

10. The Ld. D.R. has placed much emphasis on the word "Business" occurring the sub-section (1) of Section 80IA of the Act to argue that only income declared under the head "Business income" is eligible for deduction. Let us therefore examine the definition and meaning of the words "Profits and Gains".

11. The first case relied upon by the assessee is Ryali v. Hoare, and v. Honeywill (cited supra) which is a decision of the English Courts. In this case, the question was whether two gentlemen, who were Directors of a company, and who received a commission for guarantying the company's overdraft with a bank, are liable to be assessed to income tax in respect of those commissions. It was the case of the respondents therein that the commission were not profits of a trade, profession; employment or vocation carried on by them and further that they arose from

casual unsought and exceptional transactions and were not chargeable to income tax. Rowlett J., under the circumstances of the said case, examined whether "Commission" is an "Annual profit or gain" within the meaning of the case and held that "Profit or Gains" mean something which is in the nature of interest or fruit, as opposed to principal or tree, thus bringing out the difference between a revenue receipt and a capital receipt. He further held that where an emolument is received or rather, where an emolument accrues, by virtue of some service rendered by way of action or permission, or both, at any rate that is included within the words "Profits or Gains". Therefore, he proceeded to examine whether it is "Annual profit or gain" and explained that it does not require the activity giving rise to the profits to last a year, or to be recurring. Thus, it can be seen that the Hon'ble Court held that the commission received by the Directors falls under the term "Annual profits and gains" and is chargeable to income tax.

12. In the case of Kilburn Properties Limited, Calcutta; the only source of income of the assessee company therein, is house property. The question before the Hon'ble High court was-

> *"Whether in view of the fact that the entire income of the assessee was derived from property assessable under Section 9 of the Indian Income-tax Act, the provisions of Section 23A were at all applicable to the case ?"*
>
> *The Hon'ble High Court has held as under: (Only the relevant paras are reproduced)*

*"Mr. Mitra, learned counsel appearing for the assessee, contended that the words "Profits and gains" used in Section 23A (1) have reference to a company carrying on business and cannot apply to a company whose only source of income is derived from property. He, therefore, submitted that the question referred to this Court should be answered in the negative.*

*In our opinion, this contention cannot be accepted for the following reasons.*

*It would appear from a resume of the Act that the expression "profit and gains" is not limited to business only; it has been used in other case also; again the word "income" and not profits and gains has been used in case of business, see Section (6A), 4(3)(ia), 4(3)(iii), 10(iv), 23A, 24(1)and 24(2). We may particularly refer to Section 24(1) and 24(2) which speak of loss of profits and gains under any of the heads mentioned in Section 6, viz., salary, interest on securities, property, etc. Similarly the second proviso to Section 55 uses the expression "profits and gains" generally in relation to income from all sources, viz., salary, interest on securities, property, etc., of an unregistered firm or association of individuals.*

*In Section 23A(1), (3)(ii), and (4) we find that both the expression "undistributed portion of the assessable income" and "undistributed portion of profits and gains" have been used.*

*Section 6 of the Act classifies the "income", "profits and gains" under several heads, e.g., salary, interest on securities, property, profits and gains from the business, profession or vocation, and "other sources". This classification was intended for the purpose of calculation of assessable income after deductions, as would appear from Section 7, 8, 9, 10 and 11. Reliance was placed on the following observations of Mullick, J., in In re Raja Jyotiprasad Singh Deo, viz., "the Act makes a difference between income and profits. Profits are included within the term income but profits are not synonymous with income."*

*The observations are obiter and were made in a different connection, viz., the decision of cess from rents and royalties under Section 11 and must be limited to the facts of that case.*

*The observations of Courtney-Terrell, C.J., in Commissioner of Income-tax v. Gopal Sharan Narain Singh, to the effect that "there is no definition of income in the Act and the words profits and gains are an application and not a limitation upon the word income", does not, out opinion, help the assessee in any way in the present case. Mr. Mitra strongly relied on the observations of Page. C.J., in commissioner of Income-tax, Burma v. Bengali Urban Co-operative Credit Society Ltd., viz., "prima facie, therefore, neither interest from securities nor income derived from property are profits within the meaning of that term as used in the notification." The question there turned on the intention and purpose as expressed in the notification and as such the observations are not a useful guide in construing the words "profits and gains" occurring in Section 23A.*

*No useful purpose would be served by a reference to English decisions on constructing the section under consideration. It may be noted that in Section 21 of the Finance Act (12 and 13 Geo. 5, c. 17) the words are "actual income".*

*In Commissioner of Income-tax, Bangle v. Shaw Wallace and Company, it was pointed out that "the Indian Act is not in pair materia with the English Act, it is less elaborate in many ways, subject to fewer refinements, and in arrangement and language it differs greatly from the provisions with which the Courts in England have had to deal. Under such conditions little can be gained by attempting to reason from one to the other."*

*In our opinion, the word "profit and gains" used in Section 23A (1) have to be construed on the terms used in the Indian Act without reference to English decisions, bearing in mind the rule of construction laid down by Lord Selborne, L.C., in Caledonian Railway Company v. Notch British Railway Co. : "The more literal construction ought not to prevail, if (as the court below has thought) it is opposed to the intentions of the Legislature, as apparent by the statute; and if the words are*

*sufficiently flexible to admit of some other construction by which that intention will be better effectuated."*

*Mr. Mitra contended that the words "profits and gains" have a technical meaning, which limits it to business profits and gains and that this technical meaning should be applied to be words occurring in Section 23A of the Act on the principal laid down in Commissioner for Special Purposes of Income Tax v. Pemsel.*

*For the reason already stated we cannot accept the contention out forward on behalf of the assessee and give the words "profits and gains" a limited meaning. In the second place, Mr. Mitra contended that where the only assets of a company are derived from property, the assessable income of the company would, under Section 9 of the Act, be the notional income of the property held by the company, such notional income may be unrealizable or in fact not realized, in such a case, if the company is compelled to distribute 60 per cent. of the assessable income, it will have to draw on the capital of the company, which is an impossible position for a company. This argument is plausible but does not bear examination. This decision was considered and followed in the case of Ezra Proprietary Estates Ltd. vs. CIT (cited supra) in similar set facts."*

13. In the case of Indra Singh & Sons Ltd., vs. CIT (cited supra), the Hon'ble Calcutta High Court was dealing with the case of an assessee whose main business is acting as promoters and financiers of companies. According to the P & L A/c of the assessee therein, the assessee had made a net profit of Rs. 8.32,487 which included income from Business assessable under section 10 but it also included income from interest on securities assessable under section 8, income from property assessable under section 9 and income from dividends assessable under section 12. The question before the Hon'ble High Court was -

> *"Whether the expression smallness of the profits made occurring in section 23A(1) means only trading or business profit assessable under section 10 of the Income-tax Act or it also includes income from interest on securities assessable under section 8, income from property assessable under section 9, and income from dividend assessable under section 12."*

13.1. After considering the above two decisions, and the facts of the case before it, it was held as under:

> *" In my view, having regard to the scheme of section 23A(1) and the relation which the size of the profit at the disposal of the company bears to the question which the Income-tax Officer is to decided, there can be no doubt that the profit contemplated is not limited to profit from business or profit from any particular source at all, but it comprises the whole of the profits of the company distributable as dividend. I can see no answer to this construction of the phrase and Mr. Mitra at the end very fairly conceded that he was unable to find any reason for disagreeing.'*

14. In the case of CIT vs. Chugandas & Co., (cited supra), the Hon'ble Supreme Court of India was dealing with the question was to whether the interest on securities formed part of the assessee's business income for the purpose of the exemption from tax under section 25(3) of the Indian Income Tax of 1922. The Hon'ble Apex Court held as under:

> *"It must therefore be held that even if an item of income is earned in the course of carrying on a business, it will not necessarily fall within the head "profits and gains of business" within the meaning of s. 10 read with s. 6(iv). If securities constitute stock-in-trade of the business of an assessee, interest received from those securities will for the purpose of determining the taxable income be shown under the head "interest on securities" under s. 8 read with s. 6(ii) of the Act. Similarly dividends from shares will be shown under s. 12(1A) and not under s. 10. If an assessee carries on business of purchasing and selling buildings, the*

*profits and gains earned by transactions in buildings will be shown under s. 10, but income received from the buildings so long as they are owned by the assessee will be shown under s. 9 read with s. 6 (iii). Income earned by an assessee carrying on business will in each case be broken up, and taxable income under the head profits and gains of business will be that amount alone which is earned in the business, and does not all under any other specific head. Tendolkar J., in the judgment under appeal was of the opinion that income of the business to be computed under s. 10 alone could be admitted to the exemption: the ,majority of the Court held that all income earned by carrying on business qualified for the exemption. Now cl. (3) of s. 25 expressly provides that income of a business, profession or vocation which was charged at any time under Act 7 of 1918 to tax is, on discontinuance of that business. profession or vocation, exempt from liability to tax under Act 11 at 1922 for the period between the end of the previous year and the date of such discontinuance. Tax is charged under the Income-tax Acts on specific units, such 51 S.C.-22 as, individuals, Hindu Undivided Families, Companies Local Authorities, Firms and Associations of persons or partners of firms and members of associations individually, and business, profession or vocation is not a unit of assessment. When, therefore, s. 25(3) enacts that tax was charged at any time on any business, it is intended that the tax was at any time charged on the owner of any business. If that condition be fulfilled in respect of the income of the business under the Act of 1918, the owner or his successor in-interest qua the business, will be entitled to get the benefit of the exemption under it if the business, is discontinued. The section in terms refers to tax charged on any business, i.e., tax charged on any person in respect of income earned by carrying on the business. Undoubtedly it is not all income earned by a person who conducted any business, which is exempt under sub-s. (3) of s. 25: non-business income will certainly not qualify for the privilege. But there is no reason to restrict the condition of the applicability of the exemption only to income on which the tax was payable under the head "profits and gains of business, profession or vocation". The Legislature has made no such express reservation, and there is no warrant for reading into sub-s. (3) such a restricted meaning. Sub- section (3) it may be noticed does not refer to*

*chargeability of income to tax under a particular head as a condition of obtaining the benefit of the exemption."*

14.1. This decision was followed by the Apex Court in the case of O.RM.M.SP.SV.FIRM vs. CIT (cited supra) and also in the case of E.D. Sassoon & Co. Ltd., vs. CIT (cited supra).

15. In the case of CIT vs. Smt. Indermani Jatia (cited supra), the Hon'ble Allahabad High Court has given a similar finding by observing as under:

*"In the wider sense all income, profits or gains resulting from the exploitation of assets of the business might be regarded as income, profits or gains of the business assets not only include the stock-in-trade, or the circulating capital but also fixed assets including investments Such assets are shown on the assets side of the balance-sheet of the business The assessee claimed that the shares and immovable properties had been shown as assets of the business in his balance-sheets all along by the late Ganga Sagar Jatia As already pointed out, it was common ground before the Tribunal that the shares and the immovable properties were held by the assessee as assets of the business That being so, the entire income earned by the assessee by exploitation of the assets of the business, profession or vocation should be entitled to the exemption under section 25(4) of the Act Although the different items of income derived from the different assets might be assessable under different heads"*

16. In the case of CIT vs. Cocanada Radhaswamy Bank Ltd., (cited supra), the Hon'ble Supreme Court was dealing with the provisions of section 6, section 8 and section 10 and section 24(2) of the 1922 Income Tax Act which are corresponding to sections 14, 18 and 72 of 1961 Income Tax Act and as to whether the income assessed under section 8 or under section 12 of the 1922 Income Tax Act could be set-off against the brought forward business losses. The Hon'ble Supreme Court

held that income from interest on securities which form part of the trading asset is income from business and therefore, the business loss of earlier years could be set-off against the income from securities. It was held that the nature of a particular income is to be decided not on the basis of the provisions of section but on commercial principles. On an analysis of similar provisions, the Hon'ble Madhya Pradesh High Court in the case of CIT vs. Shrikishan Chandmal (cited supra) has held that business loss carried forward from earlier years can be set-off against the dividend income derived from shares held as stock-in-trade. Similar views have been expressed by the Hon'ble Supreme Court in the case of Western State Trading Co. P. Ltd., vs. CIT and Brooke Bond & Co. Ltd., (cited supra). The Hon'ble Gujarat High Court and Hon'ble Delhi High Court in the case of CIT vs. Bhavnagar Trust Corporation and CIT vs. R. Dalmia respectively also have expressed similar view.

17. The Hon'ble Madras High Court, while considering the question as to whether business loss carried forward can be set-off against the dividend income from shares held as stock-in-trade under section 72 of the I.T. Act, held that the amount of dividend income would be income from business even if assessed under the head "Other Sources". Similar view was expressed by the Hon'ble Allahabad High Court in the case of ACIT vs. Solar Chemicals P. Ltd., while dealing with the provisions of section 10(4) of I.T. Act relating to super tax and held that additions in the assessment on account of Hundi loans and unexplained capital though included under the head "Other Sources" and not under the head "Business Income" would be covered by section

10(4) of I.T. Act. Section 10(4) of I.T. Act, has since been omitted from the statute.

18. In all the above decisions, it has been held that even though the income of the assessee is computed under different heads of income, in effect, they are all part of the business profits. Classification of income under different heads of income will not entitle or disentitle the same to be considered as part of business income and its allowability as deduction. Therefore, we find strength in the contentions of the assessee that even though the income has been returned and assessed under the head "Income from house property", the assessee is eligible for deduction u/s 80IA (4) of the Act as the business of the assessee is only to develop and maintain infrastructural facilities and though the income from such facility has been offered under the income from house property, it is in fact business income of the assessee. The project from which the assessee has realized lease rentals has also been approved by the Government of India as an eligible project under section 80IA(4)(iii) of the I.T. Act. Therefore, we are of the opinion that the deduction under section 80IA is allowable to the assessee.

19. Further, we also find that this is the second year of the claim of deduction under section 80IA of the I.T. Act. The Coordinate Bench of this Tribunal in the cases of ACIT vs. Annapurna Builders and Janapriya Properties P. Ltd., vs. DCIT (cited supra), has held that as long as the approval given by the Central Government is valid and not withdrawn by it, the assessee would be entitled to deduction under section 80IA(4)(iii) of the Act. Further, various High Courts such as Gujrat High

Court, Bombay High Court and Delhi High Court in the cases relied upon by the Ld. Counsel for the assessee (cited supra) have held that where deduction has been allowed under sections 80HH and 80J in the earlier year, there is no provision for withdrawal of such deduction for the subsequent years for breach of certain conditions.

20. In the case before us, the assessee has been allowed deduction in the first year and it is the bounden duty of the A.O. to examine the eligibility of the assessee to claim the deduction under section 80IA(4) of the Act at the time of allowing such deduction. Since the claim has been allowed, it is to be presumed that the A.O. is satisfied about the allowability of the claim. This being the second year, unless there are distinguishing facts and circumstances for taking a different view and deny the claim of deduction, the A.O. cannot take a contrary stand. The CIT(A) has in fact, directed the A.O. to examine the assessment order for A.Y. 2009-2010 and to see whether the A.O. has examined the eligibility of the assessee and to take suitable action. This direction, in our opinion, is not sustainable. The CIT(A) can only deal with the appeal before him and cannot give a direction with regard to another assessment year not before him. Therefore, such direction is not sustainable and is hereby quashed.

21. The Ld. Counsel for the assessee has also made an alternate claim that the leasing income of I.T. Park/Commercial properties/Shopping Mall is assessable as business income. He has placed reliance upon the various decisions of the Coordinate Benches of the Tribunal at Bangalore and Chennai to this effect.

However, we find that the assessee has not raised any ground of appeal seeking the income to be treated as business income. He has also placed reliance upon the decision of Hon'ble Supreme Court of India in the case of Chennai Properties & Investments Ltd., (cited supra) to contend that the letting of the properties was the business of the company and therefore, the rental income is to be assessed as business income. He has drawn our attention to the memorandum of association of the company to demonstrate that the assessee's business was also letting out of the property and therefore, the income ought to have been treated as business income. However, since we have already held that the words "profits and gains" used in the provisions of section 80IA(4) includes the other heads of income such as 'Income from house property' and more particularly since the only business of the assessee is the development and maintenance of infrastructure facilities, we do not see any reason to adjudicate the alternate ground of appeal more particularly when the assessee itself has not raised such ground of appeal before us.

22. In the result, ITA.No.1774/Hyd/2014 of the assessee is allowed.

**ITA.No.727/Hyd/2015**

23. This is assessee's appeal against the order of the CIT passed under section 263 of the I.T. Act dated 30th March, 2015.

24. Brief facts of the case are that assessment was completed on 31.03.2013 accepting the total income declared as stated in the above appeal i.e., ITA.No.1774/Hyd/2014 for the

very same assessment year. Assessee filed its return of income for the A.Y. 2010-2011 on 30.09.2011 admitting income of Rs.15,96,24,114 and claimed deduction under section 80IA to the tune of Rs.13,02,62,800. The A.O. accepted the returned income of the assessee by accepting the income from lease rentals from the infrastructure facilities as income from house property. The CIT vide his powers vested in him under section 263 of the I.T. Act called for the assessment record of the assessee-company and observed that the A.O. has accepted the lease rentals from I.T. Park as "Income from house property" though denied the claim of the assessee under section 80IA of the Act on the ground that deduction cannot be given under the head "Income from House Property". He observed that for the A.Ys. 2006-07, 2007-08 and 2009-10, the CIT had passed revisionary proceedings under section 263 on 28.03.2014 and directed the A.O. to treat the income from lease rentals as 'Income from Business' observing that the CIT(A) has already dismissed the appeal of the assessee against the assessment order dated 31.03.2013 and that the issue of the head of income under which the leased income has to be brought to tax was not subject matter of appeal before the CIT(A), the CIT sought to revise the assessment order under section 263 of the I.T. Act. He accordingly, issued a show cause notice to the assessee.

25. After considering the assessee's submissions at length the CIT held the assessment order to be erroneous and also prejudicial to the interests of the Revenue and directed the A.O. to bring the income to tax under the head "Business income".

Against this order of the CIT, the assessee is in appeal before us raising the following grounds of appeal :

*"Ground 1: Erroneous and Prejudicial Order*

*1.1. The learned PCIT erred in holding that the assessment order dated March 31,2013, passed by the Assessing Officer ('AO') under section 143(3) of the Act is erroneous and prejudicial to the interest of the revenue although the twin conditions required to be fulfilled for exercising the jurisdiction are not satisfied.*

*1.2. The learned PCIT erred in observing that since the Appellant is not entitled to a deduction under section 32(iia) of the Act, the assessment order is prejudicial to the interest of the revenue although the Appellant did not make any such claim in its return of income nor this formed the basis of the show cause notice invoking jurisdiction under section 263 of the Act.*

*Ground 2: Business Income vs Income from House Property.*

*2.1. The learned PCIT erred in holding that rental income earned on letting out the immovable property is to be assessed as 'Business Income' and not as 'Income from House Property' as returned by the Appellant and accepted in the assessment proceedings.*

*Ground 3: Depreciation on assets*

*3.1 Without prejudice to Ground 2, in case the income of the Appellant is classified as 'Business Income' instead of 'Income from House Property', the Appellant ought to have been allowed depreciation in respect of its assets, including the buildings and fittings and machinery therein.*

*The appellant prays for the following relief*

*(a) The Hon'ble Tribunal be pleased to hold that the assessment order dated March 31, 2013 is not erroneous and prejudicial to the interest of the revenue and hence the PCIT was not justified in exercising the jurisdiction under section 263 of the Act.*

*(b) The Hon'ble Tribunal be pleased to hold that rental receipts are assessable as "Income from House Property" and not as "Business Income".*

*(c) Without prejudice to (b) above, if the rental receipts are assessable as 'Business Income' then, the Hon'ble Tribunal be pleased to hold that the Appellant ought to have been allowed depreciation in respect of its assets, including the buildings and fittings and machinery therein.*

*The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of the appeal, to enable the learned Income-tax Appellate Tribunal to decide the appeal according to law."*

26. The Ld. Counsel for the assessee submitted that there was no prejudice caused to the revenue by assessing the income under the head "Income from House Property". He also made an alternative plea that if the income is to be treated as business income, then the depreciation on the assets is to be allowed.

27. The Ld. D.R. on the other hand, supported the orders of the CIT.

28. Having regard to the rival contentions and the material on record, we find that the stand of the A.O. has been that since the income is not offered as business income, the deduction under section 80IA cannot be allowed. If the stand of the CIT is accepted, and the income is brought to tax under the

head "business income", then the deduction under section 80IA(4) would be allowable whereby the income of the assessee would not be exigible to tax. Therefore, it is clear that there is no prejudice caused to the revenue by the view adopted by the A.O. For a revision order to be sustained, the assessment order should be both erroneous as well as prejudicial to the interests of the Revenue. In the case before us, as we have already held that there is no prejudice caused to the Revenue and further since we have also held in assessee's appeal against the assessment order denying the claim of deduction under section 80IA(4), that the assessee is eligible for deduction under section 80IA even if the income is returned under the head "Income from house property", the revision order is not sustainable.

29. In the result, ITA.No.727/Hyd/2015 of the assessee is allowed.

**ITA.No.728/Hyd/2015 :**

30. Brief facts of the case are that the assessee-company is engaged in real estate development and leasing of properties. It filed its return of income for the A.Y. 2010-2011 on 14.10.2010 admitting loss of Rs.25,88,98,030 which consists of house property loss amounting to Rs.23,32,62,838 and business loss of Rs.2,56,35,192. During the assessment proceedings under section 143(3) of the I.T. Act, the A.O. made an addition of Rs.5,46,281 on account of sale of scrap and reduced the total loss to Rs.25,83,51,749. Subsequently, the CIT by exercising his powers under section 263 of the Act, perused the assessment record and found that the assessee-company had admitted the

income under the head "Income from house property". He observed that M/s. Raheja I.T. Park Limited had transferred certain industrial park units to the assessee company leasing to maintain and operate it. Observing that such income should be offered under the head "Business income", the CIT was of the opinion that the assessment order is erroneous and prejudicial to the interests of Revenue. Further, he also found certain discrepancies in the leased rentals received and admitted by the assessee and also on the compliance of TDS provisions. He, therefore, issued a show cause notice to the assessee seeking assessee's explanation as to why the assessment order should not be revised. The assessee filed detailed explanation stating that the assessment order is neither erroneous nor prejudicial to the interests of the Revenue and that the assessee is in the line of business of letting and therefore, the income would fall under the head "House Property". The CIT was however, not convinced with the contentions of the assessee and holding that the assessment order is erroneous and prejudicial to the interests of the Revenue, he directed the A.O. to give effect to his directions. With regard to other two issues on which the revision was sought to be made, he verified the facts and held that no revision is required on these two issues. Aggrieved by the order of the CIT, the assessee is in appeal before us.

31. Since the facts in the present case are similar to the facts and circumstances of the case in the case of M/s. Raheja I.T. Park Hyderabad Ltd., for the detailed reasons given therein, we hold that the revision order in this case is also not sustainable and there is no prejudice caused to the Revenue.

32. In the result, ITA.No.728/Hyd/2015 of the assessee is allowed.

33. To sum-up, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 11.07.2016.

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|---|---|
| **Sd/-** | **Sd/-** |
| **(S. RIFAUR RAHMAN)** | **(SMT. P. MADHAVI DEVI)** |
| **ACOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Hyderabad, Dated 11th July, 2016

VBP/-

Copy to :

| | |
|---|---|
| 1. | K. Raheja IT Park (Hyderabad) P. Ltd., Mindspace, Cyberabad, Survey No.64 (Part), APIIC Software Layout, 1st Floor, Titus Towers, Building 10, Madhapur, Hyderabad – 500 081. |
| 2. | Intime Properties Ltd., (Formerly known as Intime Properties P. Ltd., ) Mindspace, Cyberabad, Survey No.64 (Part), APIIC Software Layout, 1st Floor, Titus Towers, Building 10, Madhapur, Hyderabad. |
| 3. | CIT(A)-III, Hyderabad |
| 4. | CIT-II, Hyderabad. |
| 5. | Principal CIT-II, Hyderabad. |
| 6. | Addl. CIT, Range-2, Hyderabad. |
| 7. | D.R. ITAT 'B' Bench, Hyderabad. |
| 8. | Guard File |