

## Assessee to initiate fresh proceedings if it's not satisfied with consequential order passed after ITAT's direction

**Summary –** The Hyderabad ITAT in a recent case of Koya Constructions (P.) Ltd., (the Assessee) held that where Tribunal set aside order passed by Assessing Officer and restored matter to him with direction to allow deduction under section 80-IA to assessee on eligible turnover, if there was any grievance to assessee on account of consequential order passed by Assessing Officer, remedy for assessee lay in fresh proceedings commencing with such consequential order.

### Facts

- The Tribunal held that the assessee was a developer of infrastructure projects and not a works contractor as presumed by the Assessing Officer and it was entitled for deduction under section 80-IA(4) on the projects carried out by it. It accordingly set aside the orders passed by the lower authorities and restored the matter to the Assessing Officer with the direction to grant deduction under section 80-IA(4) to assessee on eligible turnover on *pro-rata* basis.
- The Assessing Officer, in remand proceedings, issued fresh notice to the assessee and after making enquiries again declined deduction under section 80-IA(4).
- The assessee filed miscellaneous application under section 254(2) before the Tribunal seeking rectification of its order on the ground that certain mistakes apparent from record had crept into the same.

### Held

- Once the Tribunal has set aside the orders of the lower authorities and restored the matter to the file of the Assessing Officer with directions, the duty of Assessing Officer is to pass order giving effect to the order of the Tribunal. The findings of the Tribunal are unambiguous, clear and categorical inasmuch as it has specifically directed that the assessee should not be denied deduction under section 80-IA, as the contracts undertaken by the assessee involve development, operating, maintenance, financial involvement, defect correction and liability period, and such contracts cannot be called as simple works contract.
- According to the assessee, the Assessing Officer has not properly understood the order of the Tribunal and there appears to be misconceptions about the nature and the binding effect thereof.
- The decision of the Tribunal is binding on the Assessing Officer and he cannot pick up a word or sentence from the order of the Tribunal *de hors* the context of the question under consideration and construe it to be complete law declared by the Tribunal.
- When the Tribunal on earlier occasion in its order has given direction to the Assessing Officer to grant deduction under section 80IA(4) on the projects, the duty of the Assessing Officer is to grant deduction in respect of projects carried out by the assessee. It has also given a categorical finding

that as the contracts involve development, operating, maintenance, financial involvement, defection correction and liability period, such contracts should be treated as eligible for deduction under section 80-IA(4).

- It is needless to mention that the Tribunal has not rejected the claim of the assessee under section 80-IA and, on the other hand, it was held that the assessee is entitled for deduction under section 80-IA, if it has carried on infrastructure projects.
- It is for the purpose of analyzing such other projects, if any, which are not in the nature of works contracts, and to quantify the deduction, the issue was remitted back to the file of the Assessing Officer. If the Assessing Officer fails to properly understand or appreciate the directions of the Tribunal, all that can be done at this stage is to mention that the assessee has liberty to explore and pursue the remedies available under law, as the Assessing Officer is duty bound to pass the consequential order in conformity with the order of the Tribunal and he has no discretion or choice to overlook the order of the Tribunal.
- In the instant miscellaneous application and the arguments made in support thereof, the assessee has not pointed out any mistake in the order of the Tribunal which warrants rectification. All that the assessee mentioned was about the grievance that it has suffered on account of the consequential order passed by the Assessing Officer while giving effect to the order of the Tribunal.
- If the consequential order passed by the Assessing Officer is *de hors* the directions of the Tribunal, or if there is any grievance to the assessee on account of such consequential order, the remedy for the assessee lies in the fresh proceedings commencing with such consequential order and not in the proceedings that culminated with the order of the Tribunal.
- Accordingly the ITAT declined to rectify its earlier order and the miscellaneous application of the assessee was dismissed.