

## **Developer constructing Airport and Bridges for Govt. agencies entitled to sec. 80-IA relief**

**Summary – The High Court of Jammu & Kashmir in a recent case of TRG Industries (P.) Ltd., (the Assessee) held that Where assessee-company, carrying on business of developer, entered into valid contract with government and government agency for constructing bridges and developing airports and railway system, deduction under section 80-IA should be granted on profits and gains arising from such contract**

### **Facts**

- The assessee was a company engaged in development of infrastructure like Airport, railway bridges, etc. The assessee during the four relevant years, participated in tenders floated by the Government, Public Sector Undertaking or government agency for construction of bridges and for developing or improving airport facility being the successful tenderer, the assessee executed the work. In relation to the profits and gains derived from those contracts, the assessee claimed deduction under section 80-IA(4).
- The Assessing Officer in respect of each assessment year accepted the plea for deduction partially in some assessment year and denied it fully in some assessment year.
- On appeal, the Commissioner (Appeals) also confirmed the order of the Assessing Officer.
- On further appeal, the Tribunal disposed off the appeals by a common order accepting the plea of the assessee and allowed the appeals.
- On appeal to the High Court:

### **Held**

- The first and the foremost requirement is that the assessee developer should come within the ambit of section 80-IA(4)(i)(a)(b) which the assessee satisfies. There is no dispute since there is a valid contract as required. The next requirement for the benefit to be extended under the said provision is that the enterprise should provide an infrastructure facility in relation to establishing a road, a bridge or a rail system or Airport. There is no specific intendment as to the nature of work to be undertaken as is evident from the explanation. Therefore, the word contained therein has wide amplitude. The Assessing Officer was not correct in prescribing certain limits and describing the nature of work. In other words, the assessing authority attempts to dissect the contract and hold that it does not justify the claim for deduction. This is not inclined to be accepted if the requirement of section 80-IA(4)(i) and section 80-IA(4)(i)(c) explanation is satisfied, then the benefit has to flow.
- The provisions of section 80-IA(4)(i) applies to an enterprise carrying business of a developer, who satisfies the requirement of section 80-IA(4)(i)(a)(b) and provides an infrastructure facility as set out in the explanation.

- If the provision is read as a whole and the explanation is read in terms of the said provision, it would be amply clear from the facts of the present case that the assessee in this case is an enterprise carrying on the business of a developer has entered into an agreement with the Central Government or the State Government or an authority prescribed under section 80-IA(4)(i)(b) and has provided the infrastructure facility in terms of *Explanation* to section 80-IA(4)(i)(c), the details of which are set out in the chart.
- The Assessing Officer has tried to read more into the provision by describing what is the nature of work that will qualify for the benefit of deduction under section 80-IA(4). The authority is bound to consider the claim as is contained in the provisions. If certain works are accepted as infrastructure facility and other works denied at the whim of one or other authority it will lead to an incongruous result whereby different the Assessing Officer will take different yardsticks. The proceedings will thereby become arbitrary and capricious. This position will be clear from the stand of one Assessing Officer who held stand that the benefit of section 80-IA(4) will be available to the assessee in the case of construction of railway bridges for the assessment year 2004-05. The Assessing Officer has taken a different stand insofar as assessment year 2006-07 and denied deduction. The department is not entitled to take inconsistent stand in respect of each assessment year on the same set of facts.
- Since the requirements of section 80-IA(4) are satisfied, the assessee is entitled to the benefit of deduction under section 80-IA(4). The respondent assessee is entitled to the deduction in respect of all assessment years for which deduction under section 80-IA(4) has been denied.