

BSNL franchisee installing, maintaining & operating EPABX system is entitled for deduction u/s. 80-IA

Summary – The Ahmedabad ITAT in a recent case of Himanshu V. Shah, (the Assessee) held that Assessee a franchisee of BSNL, engaged in installing, maintaining and operating EPEX system to support functioning of BSNL, could be treated to have provided 'basic telephonic services' and, thus, was eligible for deduction under section 80-IA(4)(ii)

Facts

- The assessee was a franchisee of BSNL. During relevant year, assessee filed its return showing income from telecommunication. In course of assessment the assessee claimed deduction under section 80-IA(4)(ii).
- The Assessing Officer rejected assessee's claim holding that the assessee has only erected an EPABX system which could not be construed as creation of infrastructure development.
- The Tribunal, however, allowed assessee's claim.
- On revenue's appeal the question came up for consideration was whether deduction under section 80-IA(4)(ii) which is available to basic Telecom Services Providers was also available to franchisees of such basic service providers also, which was only putting EPEX system without creating infrastructure in the field of Telecom.

Held

- It was noted that in earlier assessment year, the jurisdictional High Court has adjudicated this issue in favour of the assessee, wherein it has been held that the assessee who are franchisees of BSNL and who have been permitted to install, maintain and operate in dialling EPABX under the franchisees to support the department can be treated to have provided 'basic telephone services'. This would amount to creation of infrastructure entitling them for deduction under section 80-IA. Relying on authoritative pronouncement of the jurisdictional High Court in the assessee's own case, the issue is decided in favour of the assessee and against revenue.
- It is pertinent to observe that the appeal had also been transferred to the Special Bench, therefore, it is necessary to deal with the appeal on merits. On perusal of the record would indicate that only substantial issue involved in this appeal is, whether deduction under section 80-IA(4)(ii) is available to the assessee or not. Considering the opinion of Special Bench coupled with ratio laid down by the High Court in assessee's own case, it is held that the assessee is entitled for deduction under section 80-IA(4)(ii) of the Act. The Commissioner (Appeals) has rightly granted the same to the assessee. There is no merit in this appeal of the revenue.
- In the result, appeal of the revenue is dismissed.