

आयकर अपीलीय अधिकरण न्यायपीठ, पटना ।
IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
(Through virtual hearing at Kolkata)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No. 297/PAT/2023
Assessment Year: 2018-19

I.T.A. No. 298/PAT/2023
Assessment Year: 2019-20

I.T.A. No. 299/PAT/2023
Assessment Year: 2020-21

I.T.A. No. 294/PAT/2023
Assessment Year: 2021-22

DCIT, Central Circle-1, 6 th Floor Central Revenue Building (Annexee), Beer Chand Patel Path, Patna, Patna-800001, Bihar,	Vs	Ganadhipati Construction Pvt. Ltd. 401 B Capital Tower Block B, Fraser Road, Patna, Patna-800001, Bihar [PAN : AADCM2976R]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri AK Rastogi, AR
Revenue by :	Shri Rinku Singh, DR

सुनवाई की तारीख/Date of Hearing : 23.09.2024
घोषणा की तारीख /Date of Pronouncement : 15.10.2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals filed by the Revenue, pertaining to assessment years 2018-19 to 2021-22 are directed against the orders passed by the Learned Commissioner of Income Tax (Appeals), Patna – 3 (hereinafter referred to as the 'Id. CIT(A)') even

dated 03.07.2023 passed u/s 250 of the Income Tax Act, 1961 ('Act').

2. As the issue raised are common and pertains to same assessee, these appeals have been heard together and being disposed of by this common order for sake of convenience and brevity.

3. Perusal of grounds of Revenue's appeal reveals that the sole grievance in all these bunch of appeals by the Revenue relates to allowability of deduction u/s 80IA of the Act. The ld. AO denied the claim u/s 80IA of the Act by observing that the assessee is a works contractor. However, the assessee succeeded before the first appellate authority as ld. CIT (A) has held that the assessee is a developer and has rightly claimed the deduction u/s 80IA of the Act. We for the purpose of adjudication taken up the facts of ITA No. 297/PAT/2023, for A.Y. 2018-19 and our decision shall apply *mutatis mutandis* to all the remaining instant appeals of Revenue in ITA No. 294, 297 to 298/Pat/2023.

4. Revenue has raised following grounds of appeal for A.Y. 2018-19:-

" 1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Patna erred in deleting addition of Rs. 4,47,04,930/- holding that the assessee is eligible to claim deduction u/s 80IA as it is a developer and not a contractor.

2. That on the facts and in the circumstances of the case and in law, Ld. CIT(A)-3, Patna failed to appreciate that within the meaning of section 80IA of the Income-tax Act, the Bihar Rajya Jal Parishad was a developing agency (developer) who awarded contract work and not the assessee who just executed the contract work awarded by the Bihar Rajya Jal Parishad.

3. That on the facts and in the circumstances of the case and in law, Ld CIT(A)-3, Patna failed to appreciate that if the assessee had been a developer he would have got liberty to execute the work of construction of Drinking Water Supply Scheme in anywhere in India or abroad whereas, in the case of the assessee it was compelled to execute its work at the site decided by the Bihar Rajya Jal Parishad only that too in accordance with the plan approved by the Bihar Rajya Jal Parishad.

4. That on the facts and in the circumstances of the case and in law, Ld. CIT(A)-3, Patna failed to appreciate the fact that the audit report was available to the A.O. but correctness of claim of the assessee regarding admissibility of section 80IA could not be audited as the assessee failed to claim the same while filing return u/s 139.

5. That on the facts and in the circumstances of the case and in law, Ld. CIT(A)-3, Patna failed to appreciate the fact that the auditor in his audit report did not confirmed eligibility of deduction u/s 80IA.

6. That the order of the Ld. CIT (A) being erroneous in law and on facts to be vacated and the order/notice of the A.O. be restored.

7. That the applicant craves leave to add, alter, delete, modify the grounds of appeal before the Hon'ble ITAT"

5. Facts in brief are that the assessee is a private limited Company engaged in the business of development and construction. Search and seizure action u/s 132 of the Act was carried out on assessee on 29th October, 2020, being part of Janardhan Prasad Group. The regular return of income u/s 139(1) of the Act furnished on 31st October, 2018, declaring total income of ₹4,47,04,930/-. Subsequent to search notice u/s 153A of the Act was issued and in compliance return of income was furnished on 24th December, 2021, declaring total income of ₹60 lacs after claiming deduction u/s 80IA of the Act at ₹4,47,04,929/- . This deduction u/s 80IA of the Act was not made in the original return filed u/s 139(1) of the Act on 31st October, 2018. During the course of assessment proceedings carried out after valid issuance of notice u/s 143(2) and 142(1) of the Act, ld. AO on going through the available records noticed that the assessee had not claimed deduction u/s 80IA of the Act in the original return and has paid due taxes but now the fresh claim has been made in the return filed in compliance to notice u/s 153A of the Act. The ld. AO was not satisfied with this claim and denied the same and completed the assessment.

6. Aggrieved assessee preferred appeal before the ld. CIT (A) and submitted that in compliance to the return filed u/s 153A of the Act, assessee has submitted tax audit report u/s 44AB of the Act and also furnished audit report on form 10CCB for by claiming deduction u/s 80IA of the Act and has fulfilled all the conditions required to claim the said deduction. It also placed the facts before the ld. CIT (A) that the assessee is engaged in the business of designing, constructing, testing, commissioning and operating and maintenance of water works for five years for Bihar Rajya Jal Parishad and thus, is engaged in developing, operating and maintaining new infrastructure facility and the said works has been carried out under the agreement with the unit of Bihar Government. It was claimed that the assessee is a developer and not a work contractor considering the terms and conditions of the agreement between the assessee and the Bihar Rajya Jal Parishad. The ld. CIT (A) after considering the facts of the case found that the assessee is eligible for the deduction u/s 80IA of the Act and placing reliance to plethora of decisions given relief to the assessee.

7. Aggrieved Revenue is now in appeal before this Tribunal. Ld. DR vehemently argued supporting the order of the ld. AO.

8. On the other hand, the ld. counsel for the assessee apart from relying on the finding of the ld. CIT (A) also made reference to the written submissions as well as paper book filed for each of the years. For A.Y. 2018-19, the documents filed by the assessee in the paper book running into 107 pages are mentioned in the index and the same is reproduced below:-

SL No.	Particulars	Page No.
1.	Copy of paper book submitted before CIT(A)-3, Patna along with the following documents:	

	(i) Written Submission before CIT(A)-3, Patna.	1-29
	(ii) Copy of ledger of gross receipts.	30-32
	(iii) Copy of audited Balance Sheet and Profit & Loss account along with its schedule.	33-49
	(iv) Copy of 26AS.	50-55
	(v) Copy of payment certificate.	56-66
	(vi) Copy of agreement between the appellant and Bihar Rajya Jal Parishad through its Executive Engineer.	67-73
	(vii) Copy of the form-10CCB along with e-filing acknowledgment.	74-81
	(viii) Copy of the e-filing acknowledgment regarding filing of Form 29B.	82
	(ix) Copy of order of rectification order u/s 154 dated 17.02.2023.	83-87
	(x) Copy of Letter dated 24/12/2021 to A.O.	88
	(xi) Copy of the notice u/s 153A for the A.Y.2017-18 8 along with the copy of the return filed.	89-90
	(xii) Copy of the circular dated 11/04/1955.	91
	(xiii) Copy of activities undertaken by the appellant pursuant to contract awarded by Govt. of Bihar (Bihar Rajya Jal Parishad).	92-100
2.	Comparative Chart of income declared in return u/s 139(1), 153A and book profit u/s 115JB and tax payable/ refundable	101
3.	Copy of acknowledgment of Rol u/s 139(1) for A.Y.2018-19	102
4.	Copy of acknowledgment of Rol u/s 153A for A.Y.2018-19 along with computation of income.	103-105
5.	Copy of order giving effect to order of CIT(A) in proceedings u/s 153A for A.Y.2018-19.	106-107

9. We have heard the rival contentions and perused the records placed before us. Revenue's sole grievance in various grounds of appeal is that ld. CIT (A) erred in allowing deduction u/s 80IA of the Act for A.Y. 2018-19 to 2021-22, by treating the assessee as a developer and not a works contractor. We observe that the assessee did not claim the deduction u/s 80IA of the Act in his

regular income filed prior to due date prescribed u/s 139(1) of the Act. Subsequently, assessee made the claim in the return filed in compliance to notice issued u/s 153A of the Act after being subjected to search operation u/s 132 of the Act. We note that the ld. AO in the course of assessment proceedings had not issued any specific show cause notices to the assessee prior to declining the claim made in the return for deduction u/s 80IA of the Act. Though the assessee had furnished audit report on form no.10CCB, in respect of its claim of fulfilling of the conditions requires for claiming deduction u/s 80IA of the Act but the ld. AO declined the claim merely on account of two reasons. Firstly, that the assessee itself has not claimed the deduction in its regular return filed u/s 139 (1) of the Act on 31st October, 2018, and secondly, not claiming of the deduction proves that the assessee is works contractor and not a developer.

10. We notice that the ld. CIT (A) after taking note of the factual aspect of the case namely the audit report u/s 80IA of the Act, audit report on form 10CCB, agreement between the assessee and Bihar Rajya Jal Parisad through its executive engineer, copies of activities undertaken by the assessee pursuant to contract awarded by Government of Bihar found that the assessee has made a rightful claim u/s 80IA of the Act in the return filed in compliance to notice u/s 153A of the Act and such return is treated as a return filed u/s 139 of the Act and that the assessee has fulfilled the necessary conditions for claiming said deduction and also proved that the assessee is a developer and not a work contractor. Since, the findings of the ld. CIT (A) is common for all the assessment years, the one given for A.Y. 2018-19 is reproduced below:-

Ground no. 02 - For that the A.O. has erred in disallowing the deduction u/s 80IA of Rs.44704929/-. No show cause has been issued in respect of disallowances u/s 80IA which is against the Principle of Equity and Natural Justice and no opportunity of being heard was given to the appellant. It is a matter on record and fact that during the course of assessment proceeding the appellant has submitted the computation of income as well as Form 10 CCB. Further, a detailed submission was submitted on 27/03/2022 with regard to fresh deduction claimed u/s 80IA while filing the return in response to section 153A.

Ground no. 03 - As far as the eligibility of the appellant was concerned, the appellant has complied with all the requirements of section 80IA. It was submitted that the appellant is engaged in the business of designing, constructing, testing, commissioning, operating and maintenance of water works for five years for Bihar Rajya Jal Parisad and, thus, is engaged in developing, operating and maintaining new infrastructure facility. It was submitted that the work was done after entering into agreement with the unit of Bihar Government, Bihar Rajya Jal Parisad. It was further submitted that merely because the assessee had entered into an agreement with Bihar Rajya Jal Parisad it cannot be treated only as a works contractor as the statute specifically required the assessee to enter into agreement with the Central Government, State Government or local authorities. It was also submitted that the appellant had procured material on its own and the resources needed for the execution of the projects were also sourced by the assessee on its own and were not provided by Bihar Rajya Jal Parisad. The appellant is not a mere contractor but also a developer and hence is eligible to get deduction under section 80IA.

During the assessment proceedings, it was observed that the appellant has claimed the deduction of Rs. 44704929/- u/s 80IA in its return filed in response to the notice u/s 153A. The claim of the appellant was disallowed by the AO.

The reasons for disallowance by the AO are discussed hereinafter. The appellant is a contractor and not developer which is accepted by the appellant in its ITR wherein the business of the appellant has been declared as civil contractor. Further, the books of accounts of the undertaking should be audited u/s 44AB and such audit report should be duly furnished in prescribed form 32 for the relevant assessment year in which the deduction has been claimed. The AO has also referred to the provisions of the section 80IA and has recorded his finding that the provisions of this section do not apply to the business referred in sub-section (4) which is in the nature of a works contract awarded by any person (including central or state government). The tax benefit was provided for encouraging private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other works contract.

During the course of appellate proceedings, several notice u/s 250 were issued. In response to the said notices, the appellant has filed written submission. The appellant has submitted that the appellant was engaged by Bihar Rajya Jal Parishad for construction of Drinking Water Supply Scheme which included creation of water source, construction of pump-house with attendant room, compound wall and approach road, supply and installation of mechanical and electrical instruments, provision of rising mains, distribution network, elevated service reservoirs, installation of chlorinator etc. under Amrut Mission Siwan Phase-I Nagar Parishad with six months of trial run and thereafter operation and maintenance of system for next five years. The appellant has also furnished the ledger receipt from Bihar Rajya Jal Parishad, audited balance sheet and P&L account, copy of 26AS, payment certificate received from Bihar Rajya Jal Parishad and the agreement entered into by the appellant which makes it clear that the appellant was required not only to construct the infrastructure for water supply but was also required to maintain the same for next five years. The appellant has further submitted that its revenue receipts is 100% from the water supply scheme and not from any other

activity. The appellant has deployed its resources (material, machinery, labour) in construction work which involves design, execution and maintenance. The project involves risks which were clearly borne by the appellant itself. The appellant has also submitted that the definition of word developer or contractor is neither defined in the Act nor in the General Clauses Act. Thus, the appellant has borrowed the meaning of these words from the Oxford Advanced Learners Dictionary. The appellant has referred to the judgement of Hon'ble Bombay High Court in the case of Abdulgafar A. Nadiadwala vs/ ACIT (2004) 267 ITR 488 (Bom.) wherein the Hon'ble High Court was looking into the meaning of the words goods and merchandise, which are not defined under section 80HHC in the context of Income Tax Act, 1961. The Hon'ble High Court held that : 'it is well-settled that in the absence of there being anything contrary to the context, the language of a statute should be interpreted according to the plain dictionary meaning of the terms used therein'. Similar view has been expressed by the Hon'ble Supreme Court in the case of CWT v. Officer-In-Charge (Court of Wards) (1976) 105 ITR 133 in which it was held that the ordinary dictionary meaning of a word cannot be disregarded. Accordingly, the appellant has submitted that the meaning of contractor and developers are not defined in the Income Tax Act, 1961 and in General Clauses Act. Thus, the meaning of contractor and developer has been borrowed from the Oxford Advanced Learners Dictionary which says that the developer is a person or the company that designs and creates new products whereas the contractor is a person or a company that has a contract to do work or provide services or good to another. In short, the developer is a person or the company who conceives the project, plans the execution of the project and complete the project. He may complete the project by himself or contract some part of the project to the others whereas the contractor is someone who works by contract, especially executing specified plans. His job is to simply translate the plans of the principal into reality. The role of the developer is much larger than the contractor. In certain circumstances the work of developer may look similar to that of the contractor but the role of the developer is much larger than the contractor who execute the work according to the pre-decided plan. From the above discussion, it is clear that the appellant is a developer and not the contractor. Further, the appellant is engaged in the business of water supply project which is undoubtedly a work of infrastructure facility. Hence, the appellant is eligible for claiming deductions u/s 80IA. The appellant has further relied on the following authorities wherein the facts and circumstances were similar to the appellant.

In the case of M/s. Sushee Hitech Construction Pvt. Ltd. (supra) ITA No. 414/Hyd/2012 dated 17.06.2013, the Coordinate Bench of this Tribunal after considering several other decisions of various Benches of the Tribunal held as under:

"Therefore, in our considered view, the assessee should not be denied the deduction under section 80IA of the Act as the contracts involves development, operating, maintenance, financial involvement and defect correction and liability period, then such contracts cannot be called as simple works contract. In our opinion the contracts which contain above features to be segregated and on this deduction under section 80-IA has to be granted and the other agreements which are pure works contracts hit by the Explanation section 80IA(13), those work are not entitle for deduction under section 80IA of the Act. The profit from such contracts which involves development, operating, maintenance, financial involvement and defect correction and liability period is to be computed by Assessing Officer on pro-rata basis of turnover. The Assessing Officer is directed to examine and grant deduction on eligible turnover as directed above."

Reliance was placed on order of ITAT Jaipur Bench in the case of Om Metals Infraprojects Limited v. CIT in ITA Nos. 722 and 723/JP/2008 wherein the ITAT Jaipur Bench, while relying on another order of ITAT Mumbai Bench in the case of Patel Engineering Company Ltd. v. ACIT (2004) 4 SOT 1 (Mum.),

had held that development of water supply and irrigation project was infrastructure. The ITAT had further held that the word contractor is not apposite to the word developer and further that the assessee was not a mere contractor but also a developer and hence eligible to get deduction under section 80IA.

It is also seen that ITAT Mumbai Bench, in the case of Patel Engineering Company Ltd. v. ACIT (2004) 4 SOT 1 (Mum.), has on almost similar facts and circumstances held that the assessee therein was the developer of the infrastructure project and eligible for deduction under section 80IA. Paragraph 47 of the said order is being reproduced herein for a ready reference:-

There has also been the contention of the Revenue that the assessee is a contractor, executing civil contract and so it cannot be developer as such. However, we are unable to agree with this contention of the Revenue. A person, who enters into a contract with another person will be a contractor no doubt; and the assessee having entered into an agreement with the Government of Maharashtra and also with APSEB for development of the infrastructure projects, is obviously a contractor but that does not derogate the assessee from being a developer as well. The term contractor is not essentially contradictory to the term developer. On the other hand, rather section 80IA(4) itself provides that assessee should develop the infrastructure facility as per agreement with the Central Government, State Government or a local authority. So, entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to the one being a developer. The assessee, presently under consideration before us, has developed infrastructure facility as per agreement with Maharashtra State Government/APSEB. Therefore, merely because, in the agreement for development of infrastructure facility, assessee is referred to as contractor or because some basic specifications are laid down, it does not detract the assessee from the position of being a developer, nor will it debar the assessee from claiming deduction under section 80IA(4). Discussed/considered as above, we hold that the assessee having carried out the work of constructing the above mentioned two projects, namely Srisailem project and Koyana project, as detailed above, is appropriately a developer of the said two infrastructure facilities, and in turn is entitled, and entitled justifiably, to claim deduction under section 80IA(4).

I have considered the entire gamut of this issue. There is no dispute on the fact that the appellant has entered into an agreement with Bihar Rajya Jal Parishad for construction of Drinking Water Supply. There is also no dispute that the deduction u/s 80IA was not claimed by the appellant in its original return u/s 139(1). The deductions u/s 80IA were claimed in the return in response to the notice u/s 153A. The only dispute here is that whether the appellant is developer or the contractor since the deductions u/s 80IA are available to developers and not to the contractors. The AO has disallowed the claim of the appellant since the return of the appellant reveals the profession of the appellant as civil contractor. The appellant has declared its profession as civil contractor possibly because there is no better option allowed by the ITR form. Accordingly, such a choice cannot be stated to be evidence. It is only indicative. The work of a developer in this case is in the nature of civil contract as distinguished from a defence contract. Further, the AO was of the opinion that the appellant was awarded the contract by Bihar Rajya Jal Parishad which was simply executed by the appellant. Thus, the appellant is a contractor and not the developer. The view is supported by the decision of Hon'ble ITAT Mumbai Bench, in the case of Patel Engineering Company Ltd. v. ACIT (2004) 4 SOT 1 (Mum.). However, the appellant has submitted that the execution of work for construction of Drinking Water Supply Scheme involved designing, execution and maintenance for 5 years. Thus, the work so executed falls under the category of

development and not contract. The appellant has also submitted the copy of the agreement entered into by the appellant with the Executive Engineer, P.H. Division, Patna West, Patna and the appellant to support its claim. The reliance is placed on the decision of ITAT Jaipur Bench in the case of *Om Metals Infraprojects Limited v. CIT* in ITA Nos. 722 and 723/JP/2008. I have considered the assessment order and found that the AO has misunderstood the difference between the meaning of words contractor and developer. To arrive at any conclusion, there must be a clear distinction between the meaning of the words contractor and developer. For the meaning of words contract and developer, the first reference should be made to the Income Tax Act, 1961. However, the words Contractor and Developer have not been defined under the Income Tax Act. Further, the reference is made to section 3 of the General Clauses Act, 1897 which reads as “the definition given in this Act shall have applicability in all the Central Acts unless a contrary definition is provided of a particular word or expression”. However, the meaning of the words contractor and developer has not been defined under section 3 of the General Clauses Act, 1897 also. In such a situation, the plain dictionary meaning of the words has to be considered as also held Hon’ble Bombay High Court in the case of *Abdulqafar A. Nadiadwala vs/ ACIT* (2004) 267 ITR 488 (Bom.). The words contractor and developer has been defined in the dictionary as “the developer is a someone who designs and develop a product whereas the contractor is someone who execute a work on the pre-decided design”. Otherwise also, the work of a developer is different from the contractor. In certain circumstances, the work of a developer may look like that of contractor but the work of a developer involved many complexities and risks which is not in the case of a contractor. A developer, as in this case, has to carve out a complete execution plan to develop an integrated project whereas the contractor has to execute the work on the basis of pre-decided guidelines or plan. The contractor does not own a right to change or alter the pre-decided plan whereas in case of the developer, there can be change or modification in the design or the execution of the works as per the requirements. In the present case, the appellant was given a contract to develop a drinking water supply system. No execution plan or design was supplied to the appellant by Bihar Rajya Jal Parishad. The appellant had to develop the drinking water facility system which involves the survey of site, planning of execution of work and also to maintain the same. Further on perusal of the said agreement, it has been observed that the appellant was not only liable to execute the construction of work but also to design and maintain the same. Accordingly, I find that the execution of the work involved designing, creation of master plan, execution of water supply distribution network, elevated service reservoirs and thereafter operation and maintenance of system. The view is supported by the decision in the case of *M/s. Sushee Hitech Construction Pvt. Ltd.* (supra). Unlike in case of “works contract”, the appellant has procured all the materials itself. Nothing has been supplied by the principal i.e. Bihar Rajya Jal Parishad. Thus, the appellant fulfilled all the criteria to qualify as developer. The AO has also given the finding that the claim of 80IA was not made in its original return filed u/s 139(1). The same was claimed in the return filed u/s 153A of the Act. I have carefully considered the provisions of section 153A and find that section 153A starts with the expression “notwithstanding” which indicates the intention of introduction the section in the Act. The use of non-obstante clause indicates that the provisions of section 153A would have the overriding effect over the provisions contained under sections 139,147,158,149,151 and 153. Therefore, the return filed u/s 153A would be construed to be returns under section 139. The view also gets support from the judgement of Hon’ble Gujrat High Court in the case of *Kirit Dahyabhai Patel v. ACIT* (2015) 280 CTR (Guj) 2016. Therefore, the claim of the appellant for deduction u/s 80IA cannot be rejected mere on the grounds that the same were not claimed in the return filed u/s 139. The appellant can may make or modify a claim at any time before the completion of assessment. Similar view were expressed by Hon’ble Supreme Court in case of *National Thermal Power Co.Ltd. Vs. C.I.T.*, 229 ITR, p.383 (SC), Hon’ble Bombay High Court in case of *C.I.T. Vs. Prabhu Steel Industries Pvt. Ltd.*, 171 ITR, p530, (Bom.), Hon’ble MP High Court in case of *Steel Ingots (P.) Ltd. Vs. C.I.T.*, 86 Taxman, p.440 (MP) and *C.I.T. Vs. Bhopal Sugar*

Industries Ltd., 233 ITR, p.429 (MP) and Hon'ble Karnataka High Court in case of C.I.T. Vs. Motor Industries Co. Ltd., 229 ITR, p.137 (Karn.) Further, the AO has recorded the observations that the books of account of the appellant was required to be audited to claim the deduction u/s 80IA. The appellant has submitted/uploaded the audited books of account/Audit Report before the AO. Thus, it is clear that the books of account of the appellant were duly audited and available before the AO during the assessment proceedings. In view of the aforesaid discussion, it is clear that the appellant is a developer and not a contractor. Further, the appellant is body corporate and the commencement of business was before 01.04.2017. The audit report in form 10CCB was filed online and available before the AO. Accordingly, I find that the appellant fulfills all the criteria to claim the deduction of sec. 80IA. With these remarks, the claim of the appellant for deduction u/s 80IA is sustained and the addition is deleted. The grounds taken are accordingly allowed."

11. From going through the above finding of the ld. CIT (A) and also the ratio of various judgments referred above mainly that Hon'ble Gujarat High Court in case of *Kirit Dahyabhai Patel vs. ACIT (supra)*, where it has been held that the return filed u/s 153A of the Act will be construed to be return filed u/s 139 of the Act. We also observe that the ld. CIT (A) rightly taking note of the judicial precedents that the appellant can make or modify the claim at any time before the completion of the assessment. Ld. CIT (A) has also rightly observed that apart from the fact that the assessee failed to make claim of deduction u/s 80IA of the Act in its regular / original return filed u/s 139(1) of the Act, the Revenue authorities/ ld. DR failed to bring on record any concrete evidence which could negate the rightful claim made by the assessee u/s 80IA of the Act which is duly supported by the documents demonstrating that the assessee is a developer and has carried out the business of designing, constructing, testing, commissioning, operating and maintenance of water works for Bihar Rajya Jal Parisad (unit of state Government of Bihar) therefore, under the given facts and circumstances of the case the settled judicial precedents, we fail to find any infirmity in the finding of the ld. CIT (A) allowing the claim of deduction u/s 80IA of the Act made by the assessee for the impugned year A.Y. 2018-

19. All the effective grounds of appeal raised by the Revenue for A.Y. 2018-19 is hereby dismissed.

12. As far as remaining appeal in ITA nos. 294, 298 & 299/PAT/2023 for A.Y. 2019-20 to 2021-22 are concerned, since the issue raised and facts are *verbatim* similar, except the change in figures and this fact being not controverted by the learned Departmental Representative, we apply our decision of ITA No. 297/PAT/2023 *mutatis mutandis* on the remaining appeals in ITA nos. 294, 298 & 299/PAT/2023 for A.Y. 2019-20 to 2021-22.

13. In the result, all the appeals of the Revenue in ITA No. 294, 297 to 299/PAT/2023 are dismissed.

Order pronounced in the Court on 15th October, 2024 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 15.10.2024

***SS, Sr.Ps**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , पटना /DR,ITAT, **PATNA**,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

**Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, PATNA**