IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER SHRI

ITA No. 691/H/2016 Assessment Year: 2011-12		
K. Raheja IT Park (Hyderabad) Pvt. Ltd., Hyderabad. PAN – AACCK 1914G	`	Dy. Commissioner of Income-tax, Circle – 2(1), Hyderabad.
(Appellant)		(Respondent)

Assessee by:	Shri Vijay Mehta & Ms. Aarthi Sathe
Revenue by	Shri YVST Sai
Date of hearing:	18/03/2021
Date of pronouncement:	06/05/2021

O R D E R

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against Pr. CIT - 2, Hyderabad's order dated 30/03/2016 involving proceedings u/s 263 of the Income- Tax Act, 1961; in short "the Act.

2. Briefly the facts of the case are that the assessee company, engaged in the business of developing industrial and non-industrial parks, filed its return of income for the

AY 2011-12 on 29/11/2011 declaring total income of Rs. 15,30,02,887/- after claiming deduction u/s 80IA(4) amounting to Rs. 14,97,83,693/-. Subsequently, the case was selected for scrutiny and the assessment was completed u/s 143(3) on 27/03/2014 by determining the total income at Rs. 28,18,46,030/-.

3. By exercising powers vested u/s 263 of the Act, the Pr. CIT called for assessment records of the assessee and on perusal of the same, he observed that, prima facie, assessment order passed u/s 143(3) dated 27-03-2014 is erroneous and prejudicial to the interests of revenue as the Assessing Officer while passing the impugned order allowing the deduction u/s 80IA(4)(iii), has not verified all relevant facts in respect of satisfaction or otherwise of all conditions regarding its claim for deduction u/s 80IA(4). He further observed that while completing the assessment, the Assessing Officer treated the lease rentals received from industrial park as business income and allowed deduction u/s 80IA(4) amounting to Rs.13,67,23,850/- by relying on the decision of the Hon'ble ITAT, Hyderabad in the case of M/s Janapriya Properties Pvt. Ltd. Also he observed that assessment orders for the A.Ys 2006-07, 2007-08 and 2009-10 had been reviewed by the CIT-2, Hyderabad and orders u/s 263 were passed on 28-03-2014 wherein the CIT-2, Hyderabad held that the income from lease rentals is income from business but not income from

house property and also held in respect of AY 2009-10 that the assessee is not entitled for deduction u/s 80IA for A.Y 2009-10 as it did not fulfill the eligibility conditions (The assessee claimed this deduction for the first time in AY 2009-10).

3.1 In view of the above observations, he issued a show cause notice dated 23/01/2015 to the assessee proposing to revise the assessment specifying the above issue. Against the show cause notice, the assessee furnished written submissions, which were extracted by the Pr. CIT in his order at pages 2 & 3. After considering the submissions of the assessee, the Pr. CIT directed the AO to revise the assessment order by disallowing the deduction claim u/s 80IA (4)(iii), by, inter-alia, observing as under:

> *"18. It is trite law that the beneficial provisions provided in the statute rendering certain benefits to certain eligible assessees are to be strictly construed so as not to fritter away those benefits to ineligible persons, Since, the condition that the date of commencement of the industrial park should not be beyond one year from 31.01.2006, is not satisfied atleast in respect of 2 buildings out of the proposed 8 buildings in which all the proposed 30 units are to be located. The assessee is clearly ineligible to claim and to be allowed the deduction u/s 80IA(4)(iii). As the Assessing Officer, while completing the impugned Assessment Order has not verified these aspects which are at the root of the assessee's claim u/s 80IA(4)(iii), the impugned Order allowing the said deduction is clearly erroneous and as substantial amount of*

deduction u/s 80IA(4)(iii) was allowed incorrectly, the impugned Order is also prejudicial to the interest of revenue. Therefore, the impugned Assessment Order dated 27.03.2014 is revised u/s 263 and the Assessing Officer is directed to revise the Assessment Order by disallowing the deduction claim u/s 80IA(4)(iii) and issue the revised demand notice to the assessee."

4. Aggrieved by the order of the Pr. CIT, the assessee is in appeal before the ITAT raising two grounds of appeal on validity of jurisdiction u/s 263 of the Act and denial of deduction u/s 80IA of the Act.

5. Before us, the ld. AR of the assessee filed elaborate written submissions in support of his oral arguments which are as under:

"2. The Appellant company is engaged in the business of developing Industrial and Non-Industrial Park in Cyberabad located in Hyderabad.

3. The appellant company, through Form No. IPS-1 dated 20.10.2004, had made an application under the Industrial Park Scheme, 2002 (IPS, 2002). The Ministry of Commerce and Industry (MCI) vide order dated 24 November 2004 (A copy of the same is at pages 27-30 of the paper book), accorded it's approval to the appellant company for setting up an Industrial Park, in terms of the IPS 2002. Thereafter, the Central Board of Direct Taxes (CBDT), acting on behalf of the Ministry of Finance, vide notification dated 22 August 2006 notified the appellant as an Industrial Park eligible for deduction u/s 80-IA(4)(iii) of the Act (a copy of the said notification is available at pages 31-35 of the paper book).

4. As per this approval and the notification, the date of commencement of the Industrial Park was prescribed as 31.01.2006 and in case of delay by more than a year, i.e to say after 31.01.2007, the Appellant company ought to approach the Ministry of Commerce and Industry for a fresh approval. One more note worthy point mentioned in the MCI approval as well as the CSDT notification was that the benefit of deduction u/s 80-IA(4)(iii) of the Act would only be available after 30 units would be located in the Industrial Park. The appellant had, though, commenced the operation of the Industrial Park from AY. 2004-05, the criteria of locating 30 units in the Industrial Park was satisfied only in AY. 2009-10. Therefore, the appellant company made a claim of deduction u/s 80-IA(4)(iii) of the Act for the first time only in AY. 2009-10.

5. The major streams of income from the operation of Industrial Park are as under:

a. Income from leasing of space and

b. Income from maintenance activities.

6. While filing the return of income for the year under consideration, the appellant had offered income from leasing of space under the head 'Income from House Property' while the Income from maintenance activities was offered under the head 'Profits and gains of business or profession'. It shall be pertinent to note that while furnishing it's return of income, the appellant had claimed a deduction u/s 80-IA(4)(iii) of the Act of Rs 14,97,83,669.

7. The said return of income was subject to scrutiny proceedings. Vide the assessment order passed u/s 143(3) of the Act dated 27.03.2014, the Ld AD. taxed the Income from leasing of space under the head 'Profits and gains of business or profession' as against 'Income from House Property' offered by the Appellant.

Thereafter, the Ld AO., after discussing and verifying the eligibility of the deduction u/s 80-IA(4)(iii) of the Act allowed a deduction under that section to the extent of Rs 13,67,23,850. The matter pertaining to head of taxation of the Income from leasing activities was then subject to litigation. Since the same is not a subject matter of dispute before Your Honours, it has not been discussed in detail in the present written submission. Suffice to state that the CIT(A) confirmed the action of the Ld AG. and thereafter before the Tribunal, the appellant had conceded it's ground of appeal. The Hon'ble Tribunal vide order dated 22.01.2021 upheld the treatment given by the Ld AG. Thus, finally, the income from leasing activities is taxed under the head 'Profits and Gains from business or profession' .

8. In the meanwhile, vide show cause notice issued u/s 263 of the Act dated 23.01.2015 (enclosed in the paper book at pages 148-149) the Ld. PCIT, on the basis of the order passed u/s 263 of the Act for AY. 2006-07, 2007-08 and 2009-10, proposed to hold the assessment order passed for AY. 201112 u/s 143(3) of the Act as prejudicial to the interest of revenue and sought to revise u/s 263 of the Act. The Ld. PCIT further mentioned that in the proceedings u/s 263 of the Act for A Y. 2009-10, it was seen that the appellant had not fulfilled the eligibility conditions for claiming deduction u/s 80-IA of the Act. ,

9. Thereafter, submissions along with documentary evidences were made before the Ld. PCIT. However, the Ld. PCIT rejected all the submissions made by the appellant and vide his order dated 30.03.2016 withdrew the claim of deduction u/s 80-IA of the Act. The observations as well as the decision of the Ld. PCIT will be dealt more elaborately by the appellant in subsequent paragraphs. Broadly, the Ld. PCIT held as under:

a. The appellant has not commenced the Industrial park before the cut off date, which is 31-01-2007 as per the approval from the MCI as well as notification of the CBDT. Thus, the appellant has violated the terms of approval.

b. As per the Industrial Park Scheme 2008, a Park can be said to have commenced when completion certificate in respect of the building has been obtained from the local authority. In the case of the appellant, since full Occupation Certificates in respect of 4 out of 8 buildings were not obtained before 31-01-2007, these 4 buildings were incomplete. Further, out of these 4 incomplete buildings, 2 buildings were not having NOC from the fire department before 3101-2007.

10. For the sake of convenience, the appellant would like to draw Your Honours' attention to the details of buildings constructed by the appellant, the date on which the OC was received, the date on which the Fire NOC was received and the remarks made by the Ld. PCIT, if any.

Sr.No.	*Building No.*	*Date of OC*	*Date of Fire NOC*	*Remarks of Ld. PCIT, if any*
1	*1A*	*31/01/07*	*23/03/07*	*1. OC obtained on 31/01/07 was partial OC and not final OC* *2. NOC from fire department was received after 31/01/2007.*
2	*1B*	*31/01/07*	*29/01/07*	*1. OC obtained on 31/01/07 was partial OC and not final OC*
3	*2B*	*31/01/07*	*06/02/07*	*1. OC obtained on 31/01/07 was partial OC*

				and not final OC *2. NOC from fire department was received after 31/01/2007*
4	*3A*	*24/03/06*	*15/06/05*	
5	*3B*	*31/01/07*	*29/01/07*	*1. OC obtained on 31/01/07 was partial OC and not final OC*
6	*6*	*28/06/04*	*25/06/04*	
7	*7*	*28/06/05*	*06/05/05*	
8	*8*	*13/06/05*	*06/05/05*	

Based on the above objections, the Ld. PC IT has held that the appellant is not eligible for the deduction u/s 80IA(4) of the Act. He has, accordingly, directed the A.O. to withdraw the deduction.

The appellant most humbly submits that the impugned order is unsustainable on jurisdictional ground as well as on merits. The appellant challenges the revisionary proceedings on the basis of following propositions;

a. When deduction u/s 80-IA(4) of the Income-tax Act, 1961 has been granted in first year of claim, the same cannot be declined in subsequent years;
b. Without prejudice to the above, the Ld. PCIT has no jurisdiction to adjudicate on the compliance to the conditions of approval granted by the Ministry of Commerce and Industry;

c. Without prejudice to the above, the approval has been granted to the appellant under the Industrial Park Scheme, 2002 (IPS 2002) wherein there is no requirement to obtain building DC to mark the commencement of the Industrial Park. The requirement under the Industrial Park Scheme 2008 can not be applied to the appellant;

d. Without prejudice to the above, all the buildings were ready before the cut-off date of 31.01.2007 and hence the condition was complied with.

We submit our detailed arguments in respect of each of the propositions as under;

I: When deduction u/s 80-IA(4) of the Income-tax Act; 1961 has been granted in first year of claim. the same cannot be declined in subsequent years

11. Under the provisions of section 80-IA of the Act, an eligible industrial undertaking is entitled to claim a 100% deduction of the profits and gains arising out of the eligible business. The said deduction is available for 10 consecutive years from the initial year.

12. In case of the appellant, it is pertinent to note that the initial year i.e. the first year in which the deduction u/s 80-IA(4) of the Act was claimed is A.Y. 2009-10. Accordingly, the impugned A.Y. is the third year of claim. Thus, the humble point which the appellant is making here is that the examination of the eligibility of deduction u/s 80-IA(4) of the Act should have been made by the department in AY 2009-10 itself. It cannot, in the third year of the claim. turn back and say that the deduction was erroneously allowed in year 1 and thus in year 3 also, deduction should be disallowed.

13. It is relevant to note that the condition regarding commencement of the Industrial Park, which is issue under consideration, is the condition in respect of setting up of the Industrial Park. This issue arises only in the initial year and not in subsequent years. In other words, we are concerned with condition of setting up - a one time affair - and not annual or repetitive issue like conditions pertaining to number of workers employed, filing of audit report etc.

14. For deduction u/s 80-IA of the Act, the test of eligibility has to be done in the first year and the department is not entitled to withdraw the deduction in the subsequent year. It would be truly unfair to the businessman if he is kept under uncertainty for each of the 10 years if the department were to test the eligibility criteria on a year on year basis.

15. It is submitted that the above is settled legal proposition duly supported by the series of the decisions. Before coming to the decided cases, the appellant would like to refer to proceedings in its own case for A.Y. 2009-10 and 2010-11, which is as under. However, it is worthwhile to note at this stage that the proposition that the deduction can not be withdrawn in subsequent year has been laid down in appellant's own case by the coordinated bench in A.Y. 2010-11 and thus the issue is squarely covered in favour of the appellant.

Appellant's own case in AY 2009-10

16. At the cost of repetition, we would like to submit that the first year for the claim of deduction was AY 2009-10. A brief background of the proceedings for A.Y. 2009-10 is as under:

a. The return of income was furnished wherein rental income was offered to tax under the head 'Income from House Property' and maintenance Income was offered under the head 'Profits and Gains from business or profession'. Being the year in which the 30 units were located in the Industrial Park, deduction u/s 80-IA(4)(iii) of the Act was claimed by the appellant.

b. The assessment order u/s 143(3) of the Act was passed on 30 December 2011 accepting the claim of the appellant.

c. Thereafter, the Hon'ble Commissioner of Income Tax-II (CIT), issued a notice u/s 263 of the Act dated 27

January 2014 stating that the order passed on 30 December 2011 is erroneous and prejudicial to the interest of revenue and thus needs to be revised. Subsequently, the order u/s 263 of the Act was passed holding that i) the income of the appellant is to be taxed as income from business and ii) since the minimum of 30 units have not been located in the Industrial Park, a pre-condition of claiming the deduction, the appellant is not eligible for deduction u/s 80IA(4) of the Act.

d. This order was then challenged before the Hon'ble Hyderabad bench of the IT AT. The Hon'ble Bench vide common order dated 7 November 2014 for AY. 2006-07, 2007-08 and 2009-10 decided the appeal in favour of the appellant. A copy of the order has been enclosed in the paper book at pages 120-147.

17. Aggrieved by the order of the Hon'ble Tribunal, the department has preferred an appeal before the Hon'ble High Court which is pending as on date. However, the ground raised by the department before the Hon'ble High Court does not dwell with the 30 units criteria which as per the CIT, the Appellant had breached. Thus, the issue of completion of the building was not raised by any authority in the first year i.e. AY. 2009-10. Further, the deduction u/s 80lA (4), although sought to be denied by CIT, albeit on a different ground, has been restored by the Hon'ble Tribunal.

Appellant's own case in A Y 2010-11

18. With the background of AY. 2009-10, now we would like to draw Your Honours' attention to the facts of the assessee's case for AY 2010-11; being the second year for the claim of deduction u/s 80-IA of the Act. The same have been captured as under:

a. The return of income was furnished wherein rental income was offered to tax under the head 'Income from

House Property' and maintenance Income was offered under the head 'Profits and Gains from business or profession'. A deduction of Rs 13,02,62,800 was claimed u/s 80-IA(4)(iii) of the Act.

b. Vide order dated 31 March 2013, the Ld AD. disallowed the claim of deduction u/s 80-IA of the Act on the ground that the appellant has offered the income under the head income from house property and deduction u/s 80lA (4) is not allowable in respect of such income.

c. The CIT(A) confirmed the action of the AD. vide order dated 12 September 2014. He further held that the appellant has failed to comply with the directions of the CSOT notification to locate 30 units in the industrial park. He also directed the AD. to verify whether in AY 2009-10, the deduction is given correctly or not.

d. This order was further challenged by the appellant before the Hon'ble Tribunal.

e. Meanwhile, on 23.01.2015, the assessee received a notice u/s 263 of the Act for AY. 2010-11 from the office of the Ld. Pr.CIT seeking to tax the income from lease rental under the head 'Profits and Gains from business or profession'. The assessee raised its objections which were rejected and an order u/s 263 of the Act was passed on 30 March 2015 pursuant to which the lease rental was assessed under the head 'Profits and Gains from business or Profession'. This order was also challenged before the Hon'ble Tribunal.

f. The Hon'ble ITAT passed its order on 11 July 2016, which is enclosed at pages 314-337 of the paper book. It was held y the Hon'ble Tribunal that once the deduction u/s 80-IA(4)(iii) of the Act has been granted in AY. 2009-10, it is not open for the department to dispute it in the second year, being AY. 2010-11. The relevant

extracts of the decision are reproduced below for the sake of ready reference;

Page No. 16 of the ITAT order, Page No. 329 of the Paperbook:

"19. Further, we also find that this is the second year of the claim of deduction under section 80lA of the I. T. Act. The Coordinate Bench of this Tribunal in the cases of ACIT vs. Annapuma 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 80lA(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 BOHH and BOJ in the earlier year, there ;s 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. 0. to examine the eligibility of the assessee to claim the deduction under section 801A(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.D. 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." (Emphasis supplied)

19. Based on the above, the appellant strongly contends that the eligibility of the deduction under section 80-IA(4)(iii) of the Act must be tested in the first year of the claim. The department is not empowered to test the requirement of the section for each of the 9 consecutive years. This argument has been upheld by the Hon'ble ITAT in the appellant's own case in A.Y. 2010-11 and in the year under consideration a different view can not be taken. No new facts have been pointed out which were not existing in the earlier years.

20. Further, there are various judicial pronouncements holding that where deduction under section 80-IN80HH/80J has been granted in the first year of the claim, it is not open for the department to challenge the same in subsequent years. These decisions are not discussed elaborately but are listed below for the purpose of record:

a. CIT v. Tata Communications Internet Services Ltd. [251 CTR 290 (Del)]

b. CIT Vs Paul Brothers [216 ITR 548(Bom)]

c. Saurashtra Cement and Chemical Industries Ltd. v. CIT [123 ITR 669 (Guj)]

d. CIT v. Western Outdoor Interactive (P.) Ltd. [254 CTR 593 (Bom)]

e. lAC v. Hoechst India Ltd. [32 ITO 689 (Mum)]

f. CIT v. Fateh Granite (P) Ltd. [314 ITR 32 (Bom)]

g. CIT v. AR.J. Security Printers [264 ITR 276 (Del)]

Contention II: Without prejudice to the above, the Ld. PCIT has no jurisdiction to adjudicate on the compliance to the conditions of approval granted by the Ministry of Commerce and Industry

21. At the outset, we would like to draw Your Honours' attention to the IPS 2002. A copy of the same is enclosed in the Paper book at Page No.1. The said scheme was introduced by the MCI (DIPP) on behalf of the Central Government. As per the scheme, undertakings engaged in the business of developing, developing and operating or maintaining and operating an industrial park notified by the Central Government in accordance with that scheme shall be eligible for deduction u/s 80-IA(4)(iii) of the Act. The same is as per para 2(h) of the IPS 2002.

22. Further, para 5 and para 7 of the IPS 2002 deal with the mode of getting approval in the said scheme. Para 5 deals with Automatic Approval and para 7 deals with Non-Automatic Mode. There are conditions attached to these modes. Para 9 deals with the General Conditions. The same has been reproduced below for the sake of convenience;

"9. General Conditions-

(1) In case the commencing of the Industrial Model Town or Industrial Park or Growth Centre gets delayed by more than 1 year from the date indicated in the application, fresh approval may have to be obtained to get the benefits under the Act. This condition also applies to the existing approvals under the Industrial Park Scheme, which envisages commissioning of the Parks, latest by March 31, 2002.

(2) The tax benefits under the Act can be availed only after the number of units indicated in the application, are located in the Industrial Park.

(3) The undertaking applying for approval shall undertake to continue to operate the Industrial Model Town or Industrial Park or Growth Centre during the period in which the benefits under the Act are to be availed

(4) .

(5) Every undertaking which has been granted approval shall continue to furnish to the Central Government on t" January and t" July of every year a report in the form Number IPS-II during the period in which the benefits under the Act are to be availed. "

23. At this juncture it shall not be out of place to draw Your Honours' attention to para 8 of the Scheme which deals with withdrawal of approval. The Scheme empowers the Central Government to withdraw the approval if there is a failure on the part of the undertaking in complying with any of the conditions. The relevant extract of the said para is reproduced as under:

"8. Withdrawal of approval- The Central Government may withdraw the approval given to an undertaking under this Scheme when such undertaking fails to comply with any of the conditions of grant of approval: Provided that before withdrawal of approval, the undertaking being industrial park, shall be given an opportunity of being heard."

24. The appellant had made an application for registration on 20 October 2004.

Thereafter, the MCI accorded approval on 24 November 2004. Your Honours' attention is drawn to para 4 of the approval, which is at page 29 of the paper book. The relevant extract has been reproduced below for the sake of brevity;

"4. The conditions mentioned in para 1 above are as per the proposal made by the undertaking and are within the provisions of the Industrial Park Scheme, 2002, notified by this Department vide S.D. No. 354 € dated 01.04.2002. The conditions mentioned in this letter as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period when benefits under this Scheme are to be availed. The Government may withdraw the above approval in case of failure to comply with any of the conditions" (Emphasis supplied)

25. Thereafter this approval has been notified by the Ministry of Finance through the CBDT vide notification dated 22 August 2006 which has been enclosed at pages 31-35 of the paper book. In that notification as well, it is mentioned that the approval may be withdrawn by the Central Government. The relevant extract of the notification has been reproduced below:

"11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case Mis. K Raheja IT Park (Hyderabad) Private Limited, fails to comply with any of the conditions. " (Emphasis supplied)

26. It shall be pertinent to note that after receiving the accord from the Central Government through the Ministry of Commerce and Industry, the appellant was required to file bi-annual returns in IPS-II containing various particulars. It shall be pertinent to note that the appellant has been adhering with such a requirement across all the years when the deduction u/s 80-IA(4)(iii) was claimed. The Central Government has never found any inconsistencies with regard to fulfilment of conditions and never pointed out any

breach of condition. Thus, the approval was effective and subsisting for the entire period of 10 years.

27. Since the power to examine the compliance with the conditions are vested with the Ministry of Commerce and Industry, it is not open for the Ld. PCIT to hold that the condition of the approval has been violated. The said aspect has been considered and decided by various courts and more over this argument was accepted by the Hon'ble Tribunal in the appellant's own case for AY 2010-11. We have relied upon various decisions in the ensuing paragraphs wherein the proposition raised by the appellant has been upheld and matter has been adjudicated in favour of the assessee.

28. We would like to draw Your Honours' attention to the decision of the Hon'ble Hyderabad bench of the Tribunal in the case of ACIT v. Annapurna Builders [I.T.A 1177/Hyd/2011] (a copy of the said decision has been enclosed as Annexure 1). The relevant extract of the said decision has been reproduced below:

"27. Further, it is seen that this Tribunal in the case of Meenakshi Infrastructures P. Ltd. vs. DCIT (supra) have opined that 'when the Central Government approves the assessee's project under Industrial Park Scheme framed by the Central Government, the conditions under sec. 80lA (4)(iii) are satisfied. ' It is clear that while the assessee has received such approval and notification, the same has not been withdrawn till date for contravention of any of the conditions, even though there is a specific provision for Withdrawal, in case the Central Government finds that the conditions prescribed therein have not been adhered to. However, it is also clear that such withdrawal has to be done bv the Central Government only and as long as this is not done, the assessee having such approval and notification cannot be denied the deduction. Under the circumstances, I am of the view that since the assessee had developed the industrial park duly approved and

notified by the Central Government and the same has not been withdrawn for any reasons, the assessee would be entitled to the benefit of deduction u/s. 80lA (4)(iii). II (Emphasis supplied)

29. Further, we would like to draw Your Honours' attention to the decision of the Hon'ble Tribunal in the case of DCIT v. Janapriya Properties Pvt Ltd [ITA No. 1746/Hyd/2016] (a copy of the decision has been enclosed as Annexure 2). While adjudicating the matter, the Hon'ble Tribunal relied on the decision of the Annapurna Builders. The relevant extract of the decision has been reproduced as under:

"11. Considered the rival submissions and perused the material facts on record. The issue under consideration is squarely covered by the decision of the coordinate bench of this Tribunal in the case of Annapurna Builders (supra). The Id. DR neither controverted this fact nor brought any contrary decision in this regard. Therefore, we uphold the order of the CIT(A) in allowing the assessee's claim of deduction u/sBDIA(4)(iii) as his decision is in consonance with the decision of the coordinate bench. "

30. We would like to place reliance on the decision of the Hon'ble Gujarat High Court in the case of Creative Infocity Ltd v. Under secretary [Special civil application no. 9247 of 2011] (a copy of the same has been enclosed as Annexure 3). The relevant extract of the decision has been reproduced below:

"7. Therefore, we find substance in the contention of Mr. Shah, the learned counsel appearing on behalf of the petitioner, that once approval is given by the Commerce Ministry to the petitioner in terms of sub-rule [2] of Rule 1BC, the Board is duty bound to notify the industrial parks for benefits under Section BD-IA without any further investigation as to whether the petitioner has complied with the terms and conditions

envisaged in the scheme. Since the power of grant of approval has been conferred upon the Commerce Ministry, in the absence of any express provision in the Rules, it should be presumed that the authority, which has given approval, has the power of revocation and examination of compliance of the conditions upon which the approval has been accorded. Therefore, it is the duty of the Commerce Ministry to decide whether an industrial undertaking is complying with the conditions envisaged in the scheme and if the undertaking fails to comply with those conditions, it is the Commerce Ministry alone, which has the right to withdraw the benefit granted under sub-rule [2] of Rule 1BG of the Rules. As soon as the approval under sub-rule [2] of Rule 1BG is given, it is obligatory on the part of the Central Board of Direct Taxes to notify industrial parks in terms of sub-rule [4] of Rule 18C."

31. Further, we would like to draw Your Honours' attention to the decision of the Hon'ble Gujarat High Court in the case of PCIT v, B.A. Research Ltd [tax Appeal 233 and 234 of 2016] (a copy of the same has been enclosed as Annexure 4) wherein the department contended before the Hon'ble High Court that the Hon'ble ITAT has erred in holding that once the prescribed authority has granted approval, the revenue department cannot deny deduction u/s 8018 of the Act. While adjudicating the matter, the Hon'ble High Court has held that the tax authorities cannot go behind the approval granted by the prescribed authority and re-examine it. The relevant extract of the decision has been reproduced as under for the sake of ready reference:

"18. Under the circumstances, once such authority grants approval and such approval holds the field, it would not be open for the Assessing Officer or any other revenue authority to go behind such approval certificate and reexamine for himself, the fulfillment of the conditions contained in sub-rule(1) of rule 18DA.

These conditions are prescribed in terms of clause no. (iv) of Subsection(8A) of section 80lB of the Act. The Commissioner was therefore, completely in error in observing that even though the assessee company had valid approval issued by the prescribed authority, the Assessing Officer still had to examine whether such company had fulfilled the conditions referred to in clause(iv), as such other conditions as may be prescribed, reference to which we find in rule 18DA. Any other view would create conflict of decision making process. Even counsel for the Revenue could not dispute that many of these requirements prescribed under rule 18DA are to be examined by the prescribed authority. If once the prescribed authority examines such conditions and upon being satisfied that the conditions are fulfilled, grants approval, can the Assessing Officer take a different view? The answer obviously has to be negative.}} (Emphasis supplied)

32. Further, kind attention is also invited to the corresponding order of the Hon'ble Tribunal in the case of PClT v. B.A. Research Ltd [I.T.A No 1915/AHD/2012 and I.T.A No. 1623/AHD/2014] wherein the Hon'ble Tribunal held that the department cannot decline the deduction claimed by the assessee by simply burnishing aside the approvals of the concerned authorities (a copy of the ITAT Order has been enclosed as Annexure 5). The relevant extract of the order has been reproduced as under for the sake of ready reference:

"The Revenue fails to point out any distinction on law and facts to the contrary. We draw support therefrom and hold that once the DSIR which is an expert body exercises power to grant approval for the purpose of the impugned deduction u/s. 80lB (8A) read with "rule 18D & 18DA of the Income tax Rules, the Revenue cannot decline the deduction claims arising thereunder on pretext or the other by simply brushing aside the approvals obtained. More so, when the Revenue's seeking to get approval cancelled from the DSIR stands

declined. We hold the assessee entitled for Section 80 IB (8A) deduction accordingly on merits in both the assessment years." (Emphasis supplied)

33. Also, we would like to draw Your Honours' attention to Rule 18C of the Income-tax Rules, 1962 (Rules). The said rule has been reproduced below for the sake of brevity:

"[Eligibility of Industrial Parks for benefits under section 80-IA(4)(iii).

18C. (1) The undertaking shall begin to develop, develop and operate or maintain and operate an industrial park any time during the period beginning on the 1st day of April, 2006, and ending on the 31st day of March, [2011].

(2) The undertaking and the Industrial Park shall be notified by the Central Government under the Industrial Park Scheme, 2008.

(3) The undertaking shall continue to fulfil the conditions envisaged in the Industrial Park Scheme, 2008.]"

34. Thus, it is humbly submitted that the Central Government (Ministry of Commerce and Industry) is the relevant authority to approve the Industrial Park under the 2008 scheme (Prior to that, similar position prevailed for 2002 scheme also). The same authority has been given power to withdraw the approval in the event of non-compliance with the conditions governing the approval. Therefore, the income-tax authorities should be driven by the approval accorded by the Central Government pursuant to IPS 2002. The Central Government is the only authority to grant the approval and withdraw it in the event of non-compliance to the conditions of the approval.

35. Further, in the appellant's own case for A.Y. 2010-11, the Hon'ble ITAT at paragraph 19 of the order (Page No. 329 of the Paper book) has held as under:

"19. Further, we also find that this is the second year of the claim of deduction under section 80-IA of the I.T. Act. The Coordinate Bench of this Tribunal in the case 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 BOIA(4)(iii) of the Act."

36. Thus, the above proposition stands considered and accepted by the Hon'ble Tribunal in the case of the appellant in the immediately preceding year and hence the issue is fully covered in favour of the appellant. Therefore, we humbly submit that the Industrial Park of the appellant has been approved by the Ministry of Commerce and Industry as an eligible undertaking vide it's approval dated 24.11.2004 which was subsequently notified by the CBDT vide it's notification dated 22.08.2006. The approval granted to the appellant is valid and not withdrawn by the Central Government, thus subsequently it cannot be re-examined by the tax authorities.

Contention 11I- Without prejudice to the above, the approval has been granted to the appellant under the Industrial Park Scheme, 2002 (IPS 2002) wherein there is no requirement to obtain building OC to mark the commencement of the Industrial Park. The requirement under the Industrial Park Scheme 2008 can not be applied to the appellant.

37. As mentioned in the preceding paragraphs of this submission, the appellant company, through Form No. IPS-1 dated 20.10.2004, had made an application under the IPS, 2002. Subsequently, the Ministry of Commerce

and Industry, vide order dated 24.11.2004 (a copy of the approval is enclosed in the paper book at pages 27-30), accorded it's approval to the appellant for setting up an Industrial Park, in terms of the IPS 2002.

38. Thereafter, the CSOT vide it's notification dated 22 August 2006 notified the appellant as an Industrial Park eligible for deduction u/s 80-IA(4)(iii) of the Act (a copy of the said notification is available at pages 31-35 of the paper book). Thus, there is no doubt about the fact that the appellant applied and got approved by the Ministry of Commerce and Industry and the CSOT under the IPS, 2002.

39. Accordingly, the appellant was supposed to fulfill the conditions mentioned in the IPS, 2002. At this juncture, we would like to submit that the appellant was required to commence Industrial Park on or before 31.01.2007. In case, the commencement of the IP is delayed beyond 31.01.2007, then the appellant ought to obtain a fresh approval from the Ministry of Commerce and Industry. It is the case of the appellant that the appellant had commenced the Industrial Park as per the condition of approval. Further, the approval was subject to the condition that the appellant had a minimum of 30 units located in the Industrial Park. As mentioned above, the appellant had located 30 units in the Industrial Park in A.Y. 2009-10 for the first time and thus has rightly claimed the deduction for the first time in A.Y. 2009-10.

40. Further, we would like to state that the IPS, 2002 had no specific definition of the date of commencement. It is only the Form IPS-I which defines the expected/actual date of commencement to be:

"The 'Expected/Actual date of commencement of Industrial Model Town/ Industrial Park/ Growth Centre' denotes the date of when all infrastructural facilities for the proposed number of industrial units

have been provided. If the Park is proposed to be developed in Phases, the detailed information on the same may be also suitably mentioned along with the application."

41. Upon perusal of the above paras, it becomes clear that the appellant was governed by IPS 2002. It is nobody's case that the appellant has not satisfied the condition of the commencement within the meaning of IPS 2002. Now attention is drawn to the order of Ld. PCIT, para 11, which is reproduced below for the sake of ready reference:

"11. A copy of the Industrial Park Scheme which was published in the Gazette of India vide SO 354 (e) states that in exercise of the powers conferred by Section 80lA 4(iii) of the IT Act, 1961, the Central Government hereby frames the said scheme for industrial parks. In the scheme, infrastructure development was defined to include roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom net work, generation and distribution of power, air conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms. Clause (ix) of the industrial park scheme specifies the general conditions stating that in case the commencement of the industrial model town or industrial park or growth centre gets delayed by more than one year from the date of commencement indicated in the application, fresh approval has to be obtained. The prescribed Form for setting up industrial park in Form IPS 1 defines that 'expected/actual date of commencement of industrial model town/industrial park/growth center denotes the date when all the infrastructural facilities for the proposed number of industrial units have been provided'. The notification issued by the Central Board of Direct Taxes under Section 801A4(iii) on 08.01.2008 also defines the 'date of commencement' which means the date of obtaining

of completion certificate or occupation certificate as the case may be from the relevant local authority, certifying thereby that all the required development activities for the project have been completed. II (Emphasis supplied)

42. Thus, upon perusal of the order of the Ld. PC IT, it can be seen that suddenly the Ld. PCIT has deviated to the Industrial Park Scheme, 2008 wherein the requirement of OC has been prescribed. But the Ld. PCIT failed to appreciate that the appellant is governed by the provisions of IPS 2002 where there is no glimpse of obtaining any OC. Thus, the Ld. PCIT has read in the conditions of IPS 2008 in the IPS 2002 which is patently impermissible and illegal. Strangely, the Ld. PCIT do not cite any reasoning for adopting such illogical untenable view.

43. At this juncture, we would like to draw Your Honours' attention to the decision of the Hon'ble Karnataka High Court in the case of Softzone Tech Park Ltd v. CIT [421 ITR 398] (a copy of the said order has been enclosed as Annexure 6). In the said case, the Ld. counsel of the Revenue argued that the assessee has not complied with the conditions mentioned under the IPS, 2008 Scheme. While adjudicating the matter, the Hon'ble Karnataka High Court held that the Scheme of 2002 is applicable to the assessee and the assessee could not have visualized the scheme of 2008 in the year 2002. The relevant portion of the decision has been reproduced as under for the sake of ready reference:

"9. .. .. In the absence of any definition of date of commencement in the Scheme 2002, the definition clause of Scheme 2008 cannot be borrowed/adopted to deny the benefit of Scheme 2002. The arguments of the learned counsel for the revenue that issue of Occupation Certificate by the competent Authority is the relevant date for the date of commencement cannot

be countenanced, there being no such reference made in the Scheme 2002. In the year 2002 the petitioner would not have visualized the Scheme of 2008 coming with specific definition clause."

44. To put the argument of the appellant - that its case is not governed by 2008 scheme - beyond any doubt, the reliance is placed upon para 6 of 2008 scheme (page 69 of the paper book) according to which Industrial Park approved by 2002 scheme will continue to be governed by the 2002 scheme.

45. Therefore, it is submitted that the action of the Ld. PCIT in imposing one of the condition of 2008 scheme in the case of the appellant is patently illegal and his conclusion based thereon needs to be set aside.

Contention IV: Without prejudice to the above, all the buildings were ready before the cut-off date of 31.01.2007 and hence the condition was complied with.

46. The appellant had constructed eight buildings as part of Industrial Park. The Ld. PCIT, has in his order, pointed out that there were discrepancies with respect to the OC and Fire NOC with respect to the following four buildings out the total eight buildings:

Sr.No.	*Building No.*	*Date of OC*	*Date of Fire NOC*	*Remarks of Ld. PCIT, if any*
1	*1A*	*31/01/07*	*23/03/07*	*1. OC obtained on 31/01/07 was partial OC and not final OC* *2. NOC from fire department was received after 31/01/2007.*
2	*1B*	*31/01/07*	*29/01/07*	*1. OC obtained on 31/01/07 was partial OC*

				and not final OC
3	2B	31/01/07	06/02/07	1. OC obtained on 31/01/07 was partial OC and not final OC 2. NOC from fire department was received after 31/01/2007
4	3B	31/01/07	29/01/07	1. OC obtained on 31/01/07 was partial OC and not final OC

47. We would first like to make our submissions with respect to the OC received by the appellant from the relevant authorities for the above mentioned four buildings.

48. At the outset, we would like to draw Your Honours' attention to page no. 44 of the paper book filed which contains the OC for Building No.1 A. This submission will hold good even for Building No. 1 B, 2B and 3B. The Ld. PC IT has observed the following portion of the OC to hold that the OC dated 31.01.2007 is a partial OC:

" The Completed portion of the said Building No. 1A was inspected by me and are found fit for occupation"

49. On the basis of the words 'The Completed Portion', the Ld. PCIT holds that the OC is not final OC but partial OC. The Ld. PCIT observes that the OC for Building No.1A is in stark difference with the Final OC of building No. 5,7 and 8 where it is mentioned that 'the said building has been inspected by me and found fit for occupation'.

50. In this regard, we would like to submit that the Ld. PCIT is reading the OC for building No.1A hyper

technically. The Ld. PC IT has failed to notice the covering letter to the Final OC. In the covering letter to the Final OC, the subject clearly states 'Final Occupancy Certificate-issued-reg'. The body of the covering letter also states 'With reference to the above, I enclose herewith Final Occupancy Certificate in respect of Building NO.1A'. Further, the OC itself contains heading 'Final Occupancy Certificate'. Also, the body of the OC states 'This building has been completed under the supervision of the Structural Engineers Mis Potential Services Consultants (License No. 240/SEITP10 /MCH/04) and Architect Sri Bihari Lund) CA 80/5547.'

51. All the above highlighted portions clearly substantiate that the OC issued on 31.01.2007 is Final OC and the apprehensions drawn by the Ld. PCIT are clearly misplaced. Further, at page 8 of the order u/s 263, the Ld. PCIT is referring to the Fire NOC of the building no. 1A. The relevant extract of the Ld. PCIT's observation has been reproduced below:

ii •••••• The NOC issued by the Director General of Fire Services in respect of this building NO.1 A is dated 23.03.2007. This certificate was issued with reference to the Multi Storeyed Building (MSB) Inspection Committee Report dated 12.03.2007 in LR RC No. 7256/E4/04 and it states that occupancy certificate may be issued to party for the said multi storeyed building"

52. With respect to the said observation of the Ld. PC IT, the appellant vehemently submits that though the report of the Inspection Committee for building No. 1A is on 12.03.2007; i.e after 31.01.2007, the Ld. PCIT did not give an opportunity to the appellant to explain as to why the report is post the cut-off date. Had the Ld. PCIT given an opportunity to the appellant, he would have learned that the application to the fire safety department was made prior to the cut-off date of 31.01.2007. In any case the relevant date in this kind of

situation is the date of application made to the concerned authority and not the date of certificate. This is duly supported by several decisions referred to herein below. The Ld. PC IT, having not inquired and having not brought on record the relevant date, has erred in arriving at incorrect conclusion.

53. In respect of the building no. 28 the date of inspection report is 29.01.2007 which is prior to 31.01.2007 (enclosed at page 48 of the paper book). Therefore, the delay in obtaining the Fire NOC cannot be attributed to the appellant.

54. In this regard, once again reliance is placed on the decision of the Hon'ble Karnataka High Court in the case of Softzone Tech Park Ltd v. CIT [421 ITR 398]. While adjudicating the matter, the Hon'ble Karnataka High Court held that the assessee had applied for the DC before the stipulated time and thus, it will not obliterate the assessee to avail the benefits u/s 80IA(4) of the Act. The relevant portion of the decision has been reproduced as under:

"13. It is not in dispute that the petitioner had applied for the Occupancy Certificate along with Architect's Certificate before the BDA on 29.12.2006 well within the stipulated period of one year as enumerated in condition NO.5 (ii) of the approval under the Scheme 2002 and the said occupancy certificate was issued on 23.6.2007. The delay caused by the Authority in issuing the Occupancy Certificate would not obliterate the rights of the petitioner to avail the benefit under Section 801A(4) of the Act vitiating the very purpose of the approval granted by the respondent NO.2. If the compliance is made on the part of the petitioner, the same cannot be frustrated on technicalities or minor deviations by applying the IPS scheme 2008 which was not in force during the relevant period. The arguments of the learned counsel for the revenue on these grounds requires to be negated. "

55. The Hon'ble Karnataka High Court has further relied upon following decisions in support of the proposition that the relevant date is the date of application made by the assessee;

a) CIT v. Tarnetar Corporation 362 ITR 174 (Guj)
b) CIT v. Ceebros Hotels P. Ltd. 409 ITR 423 (Mad)
c) PCIT v. Ambey Developers P. Ltd. 399 ITR 216 (P&H)

56. Further, we would like to draw Your Honours' attention to the decision of the Hon'ble Bombay High Court in the case of CIT v. Hindustan Samuh Awas Ltd [2015] [62 taxmann.com 175 (Bombay)] (a copy of the said order has been enclosed as Annexure 7) wherein it is held that if an application is moved quite in time, for seeking completion certificate from the Municipal Authorities, and if they do not take steps urgently and delay the issuance of completion certificate from their side, it cannot be said that such certificate would alone decide the date of completion of the project. The relevant extract of the order has been reproduced as under:

" Unfortunately, Sub-section (10) and the explanation do not give any importance to the issuance of such Completion Certificate by the concerned architect. It gives importance only to the certificate of Municipal authority. It is common knowledge that an application for Completion Certificate submitted to the Municipal Authorities is accompanied by a Completion Certificate issued by the concerned architect. No doubt, the Municipal authorities then cause inspection of the site and verify the claim. Thereafter, they issue Completion Certificate. But, if a project is really complete before 31.03.2008 and an application is moved quite in time, for seeking Completion Certificate from the Municipal authorities, and if they do not take steps urgently and delay the issuance of Completion Certificate from their side, can it be said that such certificate would alone

decide the date of completion of the project? The answer is in negative."

In view of the above contentions, the ld. AR prayed for allowing deduction u/s 80IA(4)(iii) of the Act."

6. The ld. DR, on the other hand, also filed 'synopsis of arguments', which are as under:

"1. In the proceedings ix] s 143(3) of the Act, AO mentioned that the assessee fulfilled the conditions required to be met for claiming deduction ul s 80IA(4)(iii) of the Income Tax Act. The Pr.CIT examined the record and noticed that the twin conditions of approval of the Industrial Park viz., (a) date of commencement before 31.01.2007 and (b) establishment of minimum 30 industrial units were not met. As the order ix] s 143(3) is erroneous and prejudicial to the interest of revenue by way of grant of ineligible deduction, the Pr.CIT revised the assessment.

2. During the course of hearing before the Hon'ble ITAT, the Ld.AR (i)questioned the jurisdiction of Pr.CIT as there is no error in the Asst Order; (ii)questioned the jurisdiction of the Pr.CIT on the ground that once approval is granted by the Department of Commerce & Industries, unless the same is revoked, the Income Tax Authorities have no ground to decide the eligibility. (iii)argued that once deduction is granted in the first year, the same cannot be denied in the later year. (iv)argued that even on merits, the industrial park was set up by 31.1.2007.

3. It is humbly submitted that in a scrutiny or revisionary proceedings, the Department has every right to examine the eligibility conditions. Approval by the Department of Commerce & Industries and notification by CBDT are the essential requirements.

These approvals presume that the assessee will meet the conditions. In a case where the assessee resorts to violation or non-compliance of the said conditions and such violations are not in the notice of the approving Authority, it does not mean that the assessee is eligible for deduction even when the assessee does not meet the required conditions. The argument that the provisions of Section 80IA have to be applied automatically as long as approval is not revoked is devoid of merit because verification of eligibility conditions by the LT. Authorities is an inherent statutory duty. Accepting such a plea would defeat the purpose of granting of deduction. Therefore, the Income Tax Authorities are well within their statutory power to examine whether the eligibility conditions are met or not.

4. In the present case, the Pr.CIT assumed jurisdiction u/s 263 of the Act in rightful manner because there was clear evidence on record that the conditions were not met and the AO did not examine the matter and granted deduction in an ineligible case. Explanation to Sec.263 squarely applies to the present case.

5. It is submitted that it is trite law that Res Judicata does not apply to Income Tax proceedings as was held by Hon'ble Supreme Court in the case of Raja Bahadur Visheshwara Singh[(1961)41 ITR 685(SC)J. As on 23.01.2015 on which a show-cause notice was issued for the present year, time would not have been available to initiate revisionary proceedings for earlier year. Merely because there is failure to take action for earlier years, the assessee cannot claim deduction in the present year. It is humbly submitted that principle of consistency applies only to such cases wherein the entire gamut of facts were examined in prior year and a considerate decision was taken. In the present case, no such considered decision exists for earlier years.

6. On the merits, it is submitted that the Pr.CIT examined the issue at length and pointed out the

discrepancies in the occupancy certificates. The findings of Pr.CIT are not based upon surmises as alleged by the assessee but based on minute examination of facts. When the fire service authorities issued NOC on 23.3.2007, the claim of the assessee that there was occupancy by 31.1.2007 is in contradiction to the actual facts. Without fire safety clearance, it is illegal as well as hazardous to occupy a building on the basis of a routine certificate from Project Manager, APIIC. It is settled law that higher forums of appeal do not take cognizance of illegal practices. In the present case, the Pr.CIT examined the facts in detail and found that for building No.1A, NOC was issued by the Director General Fire Services on 23.3.2007. For the building No.2B, the said NOC was issued on 6.2.2007. The Pr.CIT also examined the discrepancy in occupancy certificate and noticed that out of 8 buildings for setting up of 30 units, 4 buildings had incomplete occupancy certificate and at least 2 buildings were not complete as on 31.1.2007.

7. Against the backdrop of the above facts, the assertions made by the Ld.AR wholly on the basis of occupancy certificate and on the fact that for one of the buildings, the Fire Inspection Committee has issued report at a prior date are squarely in contradiction of the actual facts.

8. Before the Hon'ble ITAT, the assessee filed four documents as additional evidence and it is humbly submitted that with regard to three documents which are in the nature of application for fire safety NOC are not admissible as additional evidence because the assessee did not cite any reasons as to why he was prevented by any sufficient cause for not filing the same before lower authorities. Also, the said three documents involves matters necessitating detailed factual enquiry and therefore on this ground also, the same are not admissible.

9. With regard to fourth document which is a confirmation letter of issuing occupancy certificate at an earlier date by TSIIC Ltd on 9.10.2020, it is submitted that this document is of no relevance because it is again a routine certificate issued on the basis of earlier routine occupancy certificate.

10. Lastly, reliance is placed on the decision of Hon'ble Supreme Court in the case of Dilip Kumar & Company [95 taxmann.com 325] wherein the Constitutional Bench of Hon'ble Supreme Court held that exemption provisions are to be interpreted strictly and in case of any ambiguity the benefit will flow to the Revenue. In the present case, unless fire safety clearance is available, the routine occupancy certificates are of no use and the assessee would not be eligible to claim deduction u/s 80IA(4). In light of the above, the appeal of the assessee may kindly be dismissed."

6.1 A rejoinder was also filed by the AR of the assessee in reply of the arguments advanced by the Ld. CIT DR wherein in respect of the argument of the ld. DR in paragraph no. 3 of the above synopsis of arguments regarding additional evidence filed by the assessee, the ld. DR submitted that the additional evidence was filed to demonstrate that, in any case, the applications for building OCI fire NOC were made before the cut off date. Since this was in the nature of alternate/without prejudice argument, the additional evidence was not referred to during the course of the hearing as well as in the written submission dated 24.03.2021.

7. We have considered the rival submissions & their written submissions quoted supra and the material on record as well as gone through the orders of the revenue authorities. It is observed that while filing the return of income for the year under consideration, the appellant had offered income from leasing of space under the head 'Income from House Property' while the Income from maintenance activities was offered under the head 'Profits and gains of business or profession'. It shall be pertinent to note that while furnishing it's return of income, the appellant had claimed a deduction u/s 80-IA(4)(iii) of the Act of Rs 14,97,83,669. The said return of income was subject to scrutiny proceedings. Vide the assessment order passed u/s 143(3) of the Act dated 27.03.2014, the AO taxed the Income from leasing of space under the head 'Profits and gains of business or profession' as against 'Income from House Property' offered by the Appellant. Thereafter, the Ld AO., after discussing and verifying the eligibility of the deduction u/s 80-IA(4)(iii) of the Act allowed a deduction under that section to the extent of Rs 13,67,23,850. The matter pertaining to head of taxation of the Income from leasing activities was then subject to litigation. Suffice to state that the CIT(A) confirmed the action of the Ld. AO and thereafter before the Tribunal, the appellant had conceded it's ground of appeal. The Hon'ble Tribunal vide order dated 22.01.2021 upheld the treatment given by the Ld. AO. Thus, finally, the income from leasing

activities is taxed under the head 'Profits and Gains from business or profession'.

7.1 The Pr.CIT relying on the orders passed u/s 263 of the Act for AY 2006-07, 2007-08 and 2009-10, held that the assessment order passed for AY 2011-12 is prejudicial to the interests of the revenue and directed the AO to revise the assessment order by disallowing the assessee's claim of deduction u/s 80IA of the Act as the assessee has not fulfilled the eligibility conditions for claiming deduction u/s 80IA.

7.2 The contention of the ld. AR of the assessee before us is that when deduction u/s 80IA(4) has been granted in the first year of claim, the same cannot be declined in the subsequent years. In this connection, ld. AR of the assessee relied on the decision of the ITAT in assessee's own case for AY 2009-10 wherein the ITAT decided the issue in favour of the assessee. In assessee's own case for AY 2010-11 in ITA No. 1774/Hyd/2014 and others, dated 11/07/2016, the order of which is placed at pages 314 to 337 of the paper book, the coordinate bench of ITAT, Hyderabad held as under:

> *"19. Further, we also find that this is the second year of the claim of deduction under section 80lA of the I. T. Act. The Coordinate Bench of this Tribunal in the cases of ACIT vs. Annapuma 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 80lA(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 BOHH and BOJ in the earlier year, there ;s 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. 0. to examine the eligibility of the assessee to claim the deduction under section 801A(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.D. 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." (Emphasis supplied)

7.3 Further, the AR of the assessee relying on the decision of the coordinate bench in assessee's own case for AYs 2006-07, 2007-08 and 2009-10 in ITA Nos. 1033, 1039 & 1040/Hyd/2014, order dated 07/11/2014, which is placed at pages 120 to 126 of paper book, wherein the coordinate bench has held as under:

"22. As briefly stated above, we are unable to give any finding whether the incomes are to be assessed under the head "Business" or under the head "House Property" in the impugned assessment years in the absence of complete details. Suffice to say that for analyzing the issue in respect of jurisdiction under section 263 by Ld, CIT, we are convinced that the orders of A.O. are not either erroneous or prejudicial to the interests of Revenue. In A.Ys. 2006-07 and 2007-08, since the issues were concluded in earlier orders and not in the orders sought to be revised, they are also time barred. In view of this, in all the impugned assessment years assessee's contentions are accepted and the orders of Ld, CIT under section 263 are set aside. We restore the orders of Assessing Officer in respective years. Accordingly, in all the three appeals, grounds raised by assessee are allowed."

7.4 Referring to the above decisions of coordinate bench in assessee's own case, the ld. AR of the assessee strongly contended that the eligibility of the deduction under section 80-IA(4)(iii) of the Act must be tested in the first year of the claim. The department is not empowered to test the requirement of the section for each of the 9 consecutive years. This argument has been upheld by the Hon'ble ITAT in the appellant's own case in A.Y. 2010-11 and in the year under consideration a different view can not be taken. No new facts have been pointed out which were not existing in the earlier years.

7.5 Ld. AR of the assessee in support of assessee's case relied on various case law quoted supra. He has placed reliance on the decision of the Hon'ble Karnataka High

Court in the case of Softzone Tech Park Ltd v. CIT [421 ITR 398]. While adjudicating the matter, the Hon'ble Karnataka High Court held that the assessee had applied for the Occupancy Certificate before the stipulated time and thus, it will not obliterate the assessee to avail the benefits u/s 80IA(4) of the Act. The relevant portion of the decision has been reproduced as under:

> *"13. It is not in dispute that the petitioner had applied for the Occupancy Certificate along with Architect's Certificate before the BDA on 29.12.2006 well within the stipulated period of one year as enumerated in condition NO.5 (ii) of the approval under the Scheme 2002 and the said occupancy certificate was issued on 23.6.2007. The delay caused by the Authority in issuing the Occupancy Certificate would not obliterate the rights of the petitioner to avail the benefit under Section 801A(4) of the Act vitiating the very purpose of the approval granted by the respondent NO.2. If the compliance is made on the part of the petitioner, the same cannot be frustrated on technicalities or minor deviations by applying the IPS scheme 2008 which was not in force during the relevant period. The arguments of the learned counsel for the revenue on these grounds requires to be negated. "*

7.6 The ld. CIT-DR has pointed out that the buildings were not completed in all respects, but, the AR of the assessee drew our attention to the paper books filed by the assessee in this regard in respect of the final occupancy certificate dated 31/01/2007 issued by the Commissioner and Project Manager (IPU), APIIC – IALA, Hyderabad and they have not given any adverse report

7.7 In view of the above discussion, we find force in the contention of the ld. AR of the assessee that when deduction u/s 80IA(4) has been granted in first year of claim the same cannot be denied in subsequent years, unless the assessee has changed the original terms and conditions in the first year while fulfilling for the granting deduction in the first year of operation. On perusal of the documents, we did not notice any deviation from the first year of operation. The revenue side also could not bring any such deviation to establish that the assessee has changed the original terms and conditions from the first year of operation. Even the coordinate benches of this Tribunal in assessee's own case in earlier AYs has allowed the assessee's claim of deduction u/s 80IA(4) of the Act. In view of this, in our considered opinion, the order passed by the AO is not erroneous and prejudicial to the interests of revenue as alleged by Pr. CIT. Therefore, we quash the order passed by the Pr. CIT u/s 263 of the Act in the impugned AY and restore the order of AO.

8. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 6th May, 2021.

Sd/-	**Sd/-**
(S.S. GODARA)	**(L.P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 6th May, 2021.

kv

copy to :

1	*K. Raheja IT Park (Hyderabad) Pvt. Ltd., Mindspace, Cyberabad, Survey No. 64, APIIC Software Layout, 1st Floor, Titus Towers, Building 10, Madhapur, Hyderabad – 81*
2	*DCIT, Circle – 2(1), Hyderabad.*
3	*Pr. CIT – 2. Hyderabad.*
4	*ITAT, DR, Hyderabad*
5	*Guard File.*