IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Naveen Chandra, Accountant Member

ITA No. 5026/Del/2016 : Asstt. Year: 2011-12
ITA No. 645/Del/2018 : Asstt. Year: 2012-13
ITA No. 6533/Del/2017 : Asstt. Year: 2013-14

ACIT, Circle-2(1), New Delhi	Vs	M/s Air India Sats Airport Services Pvt. Ltd., A-63, IGI Airport Road, NH-08, New Delhi-110037
(APPELLANT)		(RESPONDENT)
PAN No. AAICA4279L		

Assessee by : Sh. Percy Pardiwalla, Sr. Adv.,
Ms. Ananya Kapoor, Adv. &
Sh. Divesh Dhawan, CA
Revenue by : Ms. Monika Singh, CIT-DR

Date of Hearing: 05.02.2026		**Date of Pronouncement: 26.02.2026**

ORDER

Per Satbeer Singh Godara, Judicial Member:

These Revenue's three appeals pertains to the single assessee/respondent herein namely, M/s Air India Sats Airport Services Pvt. Ltd. arise against the CIT(A)-I, New Delhi (A.Ys. 2011-12 & 2013-14) and CIT(A)-32, New Delhi (A.Y.2012-13), orders dated 05.07.2016, 08.08.2017 & 19.09.2017, in case Nos. 432/14-15, 710/16-17 & 11/17-18, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act"), respectively.

2. Heard both the parties at length. Case files perused.

3. It transpires at the outset during the course of hearing that the Revenue's identical sole substantive ground raised in all the three instant cases pleads that that CIT(A)'s impugned lower appellate findings have erred in law and on facts in holding the assessee as entitled for section 80IA deduction involving varying sums, assessment year wise, respectivley. We further find that this is the "second" round of proceedings before the tribunal as earlier learned co-ordinate bench's order in ITA No. 5026/Del/2016 for assessment year 2011-12 had upheld the CIT(A)'s impugned findings as under:

> *"2. Facts, in brief, are that assessee company was incorporated on 20.04.2010 and is engaged primarily in the business of providing ground handling and cargo handling services at Indian airports. As per the details available on the record, SATS Ltd., Singapore and Air India Ltd. (AIL) entered into a joint venture agreement dated 16.04.2010 for setting up the joint venture company and providing ground & cargo handling services (business division) at Indian Airports. Accordingly, SATS and AIL incorporated the assessee company on 20.04.2010 for the purpose of undertaking of the ground handling & cargo handling services at various Airports in India in accordance with the Cabinet approval. In accordance with the Joint Venture Agreement, the 'ground handling services' and 'cargo handling services' business carried out by AI-SATS (unincorporated JV) inclusive of all assets and liability was transferred to the newly established company on a slum exchange basis to the company. The business has been transferred from 1st August, 2010 (the transfer date) vide 'business transfer confirmation agreement' (BTA Agreement) between AIL, SATS and the company executed on 30.03.2011. The*

activities carried out by AIL or SATS through the AI-SATS (unincorporated JV) in relation to the ground handling services at Bangalore and Hyderabad airport and Cargo handling services and Bangalore Airports are stated to be carried out by the company since the transfer date. The assessee for rendering the ground & cargo handling services at Airport had claimed deduction u/s 80IA of the Act, 1961.

3. The AO was not satisfied with its claim and show caused the assessee to explain as to how its business falls in the category of infrastructure facility u/s 80IA because 80IA (4) only covers Airport and not cargo handling etc. AO observed that since the agreement is not directly with the Government of India, as required by Section 80-IA, and the agreement is with BIAL, so also benefit of Section 80IA shall not be eligible.

4. On behalf of assessee, relying various judicial pronouncements, it was submitted that the 'Cargo handling' falls in the definition of 'infrastructure facility' and further with regard to the agreement with Bengaluru International Airport Limited ('BIAL') it was submitted that BIAL has entered into a Concession Agreement with the Government of India ('GOI') for developing, operating and maintaining the Bangalore airport. The GOI had granted BIAL the exclusive rights for development, operation, maintenance and management of the Bangalore airport. Further, the Concession Agreement authorizes BIAL to grant 'service provider rights' to any person for carrying out the development and other activities originally entrusted on it. Accordingly, BIAL granted 'service provider rights' for developing the cargo handling facility, providing cargo and ground handling services at the Bangalore airport to the JV partners by way of an agreement.

4.1 Subsequently in accordance with the Joint venture agreement, necessary Cabinet approval was communicated vide its press release dated 23rd February 2009 and upon receipt of approval from Foreign Investments Promotion Board on 31st March 2010, the business of providing cargo and ground handling services was succeeded by the assessee. The said business was effectively transferred from 1 August 2010 to the assessee. Consequently, all the rights granted by BAIL to JV Company were transferred to the assessee with effect

from 1st August 2010. Since 1 August 2010, the assessee carries on business of operating and maintaining of air-cargo facility at Bengaluru air port in India in accordance with the rights provided by BIAL. Thus it was claimed that GOI has granted rights of development, operation etc, to BIAL by way of the Concession agreement and has also given the authority to BIAL to further grant such rights to any other person. It submitted that it would be difficult for GOI to enter into contract with each and every developer developing the relevant Airport facility. Accordingly, GOI has allowed BIAL to grant service provider rights to any person for carrying out the development and other activities entrusted on BIAL. Thus, the agreement with the assessee to grant the rights to perform the service of cargo and ground handling facility should be considered as an agreement with GOI via BIAL.

4.2 Further, pursuant to the concessional agreement, the assessee has been vested with all rights and obligations with respect to the cargo and ground handling operations from BIAL and is independently responsible for all activities carried on by them. Consequently, the assessee company who is assigned the right to develop, operate and maintain the air-cargo facility will be eligible to deduction under section 80-IA of the Act.

5. However, learned AO was not satisfied and concluded that the company had come into existence in violation of clause (i) to sub-section (3) of Section 80-IA and concluded that assessee company is nothing but reconstitution/ reconstruction of the joint venture which was already being carried out by Air India SATS Airport services (JV), in the capacity of an unincorporated joint venture, which was formed on 27.07,2006 and owned by Air India Ltd. and SATS Ltd., Singapore. Further, learned AO observed that assessee company has been formed by transfer of machine and plant previously used by joint venture and thus clause (i) of subsection (3) of Section 80-IA of the Act was violated.

5.1 Then, the learned AO concluded that the assessee company does not fulfill all the essential conditions of Sub-section (4) of Section 80-IA of the Act, as it is not a company registered in India or owned by consortium of such companies.

5.2 Learned AO also observed that since assessee company had not entered into agreement with Central Government for the eligible business, the case of assessee is not covered by conditions of Section 80-IA.

5.3 Learned AO concluded that ground handling and Cargo handling services at Airport are not covered in the activity of maintaining or developing, operating and maintaining Airport.

5.4 Learned AO also took note of the fact that erstwhile joint venture had not made any claim u/s 80-IA whose business was transferred to assessee company on going concern basis and in the relevant assessment year i.e. 2011-12 also the joint venture has shown income but no deduction u/s 80-IA has been claimed in respect of income shown for the part period 1.4.2010 to 31.7.2010. Accordingly, deduction u/s 80-IA of Rs. 23,90,03,420/- was disallowed.

6. Further, the learned AO examined the question of reconciliation of TDS for each head of expenses and with regard to concession fees, found that a sum of Rs. 11,65,38,217/- has been debited to P&L A/c for which assessee admitted that tax has been deducted at source on payment of Rs. 6,44,37,848/-. As with regard to remaining Rs. 5,21,00,369/-, assessee claimed that Rs. 1.39 crores arises in transaction with GMR, Hyderabad, for which TDS certificate Nil was filed. Assessee had claimed that remaining amount of Rs. 3.82 crores was of provisional nature FY 2010-11 which was reversed on September, 20, 2011 and actual bill expenses were booked and TDS is deducted thereon. Learned AO took it as an admission that no tax at source had been deducted while making provision of Rs. 3.82 crores in the year under consideration.

6.1 The assessee company relied on the accounting standard and accounting policy of the assessee company and submitted that amounts were not quantifiable, and determined on best estimate basis and provision were reversed when the actual bills were raised. However, learned AO did not accept the plea and disallowed Rs. 3.82 crores u/s 40(a)(ia) read with section 200 of the Act.

7. In appeal, before learned CIT(A) the assessee succeeded on both the counts, against which the Revenue is in appeal raising following grounds:
"1. The Ld. CIT(A)has erred in law and on facts in directing the AO to allow deduction u/s 80IA of income Tax without appreciating the following factual position.

(i) The assessee company is a joint venture which was formed by Air India Ltd. and SATS Ltd., Singapore and thus it is nothing but a reconstitution/reconstitution of the same joint venture for carrying out the same business activity.

(ii) As per 80IA(4) clause (i) of the Act, the enterprise should be owned by a company registered in India where as the assessee company is formed by M/s Air India Ltd. an India Company and M/s SATS Ltd., a Singapore based company and thus one of the owner or participant of the consortium is not a company registered in India.

(iii) Deduction u/s 80IA is allowable for certain basic infrastructure facilities and not for providing utility services whereas assessee is engaged in the business of providing ground handling and 8 ITA No. 5026/Del/2016 cargo handling services at Indian Airport which activities are not covered within the meaning of explanation referred to section 80IA.

2. The Ld. CIT(A) erred in law and on facts in deleting addition of Rs. 3,82,00,000/ on account of disallowance u/s 40(a)(ia) of the Income Tax Act.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

8. Heard and perused the records. The Ground-wise findings are as follows.

9. Ground no 1 with sub-grounds; After taking into consideration the material on record and the submissions, we are of the considered opinion that ground no. 1 along with its sub-grounds are based on common facts and can be conveniently disposed of together avoiding cost of repetition. At the outset

learned Senior Counsel submitted that the issue with regard to provision of ground handling and Cargo handling services at Airport being covered under the activities of maintenance of Airport, is now a duly settled preposition of law and learned CIT(A) has rightly relied the judgment in the case of Menzies Aviation Bobba (Bangalore) Pvt. Ltd. in ITA no. 1160/Bang/2012, which has been confirmed by Hon'ble Karnataka High Court on 25.01.2021 vide ITA no. 186 of 2016.

9.1 Learned DR, however, resisted the same, submitting that the nature of activity of maintaining the Airport is one where technical facilities connected with the flying of aircrafts is concerned and ground activities like Cargo handling do not fall in the category of maintenance of Airport.

10. Further Ld. Sr. Counsel submitted that there is no requirement that the share holders of an Indian Company, as mentioned in Section 80-IA(4)(i)(a), should also be Indian companies. For this, reliance was placed on the judgment of Chennai Tribunal in the case of PSA Sical Terminals Ltd. vs. ACIT, ITA no. 1604 to 1607/Mds./2012 order dated 06.12.2012.

11. On the other hand, learned DR took the Bench across the assessment order pointing out how learned AO has examined every aspect meticulously to conclude that the assessee was incorporated in the manner that it is only a reorganized business set up. It was submitted that assessee company has not entered into direct agreement with the Government of India. He also pointed out that erstwhile joint venture was not claiming the exemption. It was submitted that learned CIT(A) has relied the Hon'ble Karnataka High Court judgment without taking into consideration the facts were distinguishable.

12. Now appreciating the aforesaid, the first and foremost thing to be decided is whether the cargo handling facility which includes storage, loading and unloading is an infrastructure facility for the purpose of Section 80-IA of the Act. This aspect is actually no more res-integra, before Tribunal and in fact in an order of Coordinate Bench, in which one of us (JM) was on the bench, vide ITA No. ITA No. 8301/Del/2019; Acit, Circle-5(2), New Delhi vs Celebi Delhi Cargo Terminal decided on 24 August, 2023, the issue has been considered and

decided against the Revenue holding that air cargo handling facility fall into the scope of infrastructure facility. In that case too Ld. AO was not satisfied with the deduction u/s 80IA as it considered the Cargo Services rendered by the assessee company to be not covered for the benefit of Section 80IA of the Act. Ld. CIT(A) had deleted the disallowance of deduction u/s 80IA of the Act following finding in assessee's own case in ITA no. 3376/Del/2017 order dated 18.02.2019 for A.Y. 2012-13. It will be appropriate to reproduce here in below the relevant findings of CIT(A) in that case, which were approved in co-ordinate Bench order;

> *6.1. The appellant has submitted that these contentions are supported by the decisions of the Hyderabad ITAT in the case of Ocean Sparkle Ltd Vs Deputy Commissioner of Income Tax 155 Taxman 133, and in the case of Hyderabad Menzies Air Cargo P. Limited vs. DCIT at ITA No 421, 422 and 423/Hyd/2015 for AYS 2009-10 to 2011-12 and at ITA No 1094/Hyd/2016 for AY 2012-13, and of the Bangalore Tribunal in the case of ACIT vs. M/s Menzies Aviation Bobbe (Bangalore) Pvt. Ltd., at ITA No 1160/Bang/2012. The Karnataka High Court in the case of Ms. Flemingo Dutyfree Shops P Ltd in W.P. No. 14215 of 2006 dated 19.12.2008 has considered the functions as well as various aspects relating to Bangalore International Airport Ltd. (BIAL) for coming to the conclusion that BIAL is a statutory body. The Hon'ble Court has held that providing duty free shops in the BIAL is in the nature of statutory functions/public functions for the convenience of the public. "All the facilities provided by BIAL, be it a state, lessee, or entity, performs statutory functions in the Airport," The said decision has been followed by the Bangalore Tribunal in the case of Menzies Aviation Bobba (Bangalore) Pvt. Ltd. (supra).*
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> *6.2 The facts of the appellant's case are similar to that of Menzies Aviation Bobba (Bangalore) Pvt. Ltd and Hyderabad Menzies Air Cargo P. Ltd which have entered into an agreement with BIAL and GHIAL respectively for Air Cargo facility at Bangalore and Hyderabad airport, Hence, respectfully following the decision of the Karnataka High Court in the case of Flemingo Dutyfree (supra) and the decision of the Bangalore Tribunal in the case of ACIT vs. M/s.*

Menzies Aviation Bobba (Bangalore) Pvt. Ltd. (supra) which has held the agreement between that assessee and BIAL granting the assessee the concession to operate and maintain the cargo facility to be a valid agreement for the purposes of section 80IA(4), it is held that the appellant has entered into an agreement with a statutory body being DIAL for operation and maintenance of an Infrastructure facility i.e. cargo facility at Delhi Airport. Therefore the appellant has satisfied the condition laid down In section 80IA(4)(i)(b).

6.3 Besides, the appellant has taken permissions from the office of the Commissioner of Customs (Import & General) and the Ministry of Civil Aviation to enable it to carry on the business of operation and maintenance of the cargo facility at IGIA, New Delhi. As held by the Madras High Court in the case of CIT v A.L. Logistics (P) Ltd. 55 taxmann.com 283 such approvals obtained From the government authorities would be regarded as an agreement with the government for the purposes of section 801A(4)(i)(b). Considering the aforesaid legal position, I am of the view that the second condition of section 80IA(4) is satisfied in the appellant's case and accordingly, the said contention of the appellant is upheld.

12.1 We are of the considered view that learned AO has fallen in error in considering Airport as a facility standing in isolation and giving a very restrictive interpretation to the scope of 'developing, operating and maintaining' Airport. Airport is a facility for transportation of passengers or cargo or both at the same time. The passengers may also travel along with their baggage and cargo may be accompanied by people handling that cargo. Thus the facilities of Airport is not restrict to the fixed structure or equipment connected with the Aircrafts' maintenance, their running, flying or landing alone. The functionality of the Airport arise from all the facilities which bring utility or add utility to the premises, convenience to passengers, crew, ground staff. Facilities like cargo handling, ground handling, announcement crew, security, check-in counter, baggage management facility, the Airport crew, airlines crew, aircraft crew facility etc. collectively and independently use the premises, the fixed structures, the equipments etc. The developing, operating and maintaining Airport,

therefore, encompasses all these activities which are incidental or supplemental to the transportation of passengers or cargo or both together. These facilities of various kind may be provided by one company or different companies but in any way they operate in consortium and having interdependence. Learned AO has fallen in error in observing that different companies have developed the running of Banglore Airport and the assessee is merely providing utility services beyond the scope of Airport for the purpose of Section 80-IA. Thus, on the basis of aforesaid decision, the Bench is inclined to hold that ground handling and cargo handling services provided by the assessee are covered within the meaning of Explanation referred to Section 80-IA and assessee is entitled to claim the benefit of same.

12.2 Then the assessee has come into existence not by reconstitution or reconstruction of the joint venture of Air India Ltd. and SATS Ltd. Singapore on its own, rather it was at the initiation of the Government of India that the assessee came into existence and there is no rebuttal by way of any enquiry by Ld.AO, to the submissions of assessee that the Cabinet had given an approval of the establishment and functionality of assessee. The copy of letter dated 16th March, 2009 from the Ministry of Aviation, Government of India addressed to Chairman and Managing Director, Air India Ltd. is made available at page no. 112 and 113 of the paper book and same shows that on 23rd February, 2009 the Cabinet in its meeting had approved the setting off of joint venture of Air India with SATS for ground and cargo handling activities at Indian Airports. The letter describes as to how the workforce, assets and equipments shall be evaluated in the joint venture company. It specifically make a direction of getting the company incorporated under the Companies Act, 1956. It was also provided that assets and equipments would be transferred to the joint venture company after approval of this ministry. We are of firm view that such approval of Cabinet by all means amounts to approval of incorporation of assessee under SPRHA and Ld. CIT(A) has duly taken cognizance of this letter to set aside the findings of the Ld. Assessing officer that there was absence of an agreement with the Central Government. There is no fault in the conclusion of ld. CIT(A) as the SPRHA entered into by BIAL with Air India and SATS, dated 16.05.2006, the copy of which is available in the paper book from page no. 114 to 191,

specifically opens with the recitals that in pursuant to the concession agreement, the Government of India has granted BIAL the inclusive rights to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport, in accordance with terms contained therein and that the concession agreement recognizes that BIAL may, subject to the concession agreement, grant service provider rights to any person for carrying out aforesaid activities on such terms and conditions as BIAL may determine are appropriate. Accordingly, on the basis of aforesaid tenders were invited for the cargo services. The SPRH agreement of AI and SATS with BIAL, at page no. 123 of the paper book has an important recital No. 1.3 which provides that in furtherance of agreement, the SPRH was under obligation to get incorporated a joint venture company under the Companies Act, 1956 and this recital further describe the liability of SPRH for subscription of shares by AI and SATS equally and that SPRH has right to transfer this agreement to the newly incorporated JVC by way of novation of agreement. This leaves no doubt in the mind of this bench that BIAL had delegated Authority from the Government of India to enter into SPRH agreement and the assessee is a natural child of this alliance. Ld. CIT(A) has not fallen in error in accepting that BIAL is statutory body as held by Hon'ble Karnataka High Court in the case of M/s. Flemingo Duty-Free Shops P. ltd. Therefore, there was no substance in the allegation of Ld. AO that the basic condition provided in Section 80IA(iv)(i)(b) is not fulfilled. This was also the view of Banglore Tribunal in the case of M/s. Menzies Aviation (supra) as duly appreciated by ld. CIT(A).

12.3 Then it comes up that Ld. CIT(A) has duly appreciated the fact that Ld. AO had fallen in error in applying provision of Section 80IA(iii) with regard to allegation of the assessee company being a mere reconstitution and reconstruction of unincorporated JV by taking into consideration that the said provision is not applicable to the assessee company claiming benefit by way of infrastructural facility of the nature of Airport. Ld. CIT(A) has also duly appreciated the fact that assessee is company incorporated India and owns the infrastructural facility and Ld. AO has fallen in error in alleging violation of the condition of Section 80IA(iv)(i)(a). In this context, as relied by Ld. Sr. Counsel in the case of M/s. PSA Sical

Terminals (supra), laying down that there is distinction between the company and the share holders, as in the case of that assessee also the company equity was subscribed by three companies and the Tribunal had considered the fact that being a registered company independently holding the assets was entitled to benefit u/s 80IA.

12.4 This also takes care of the allegation of the ld. AO that earlier joint venture was not taking the benefit of Section 80IA as that was for the reason that the earlier 16 ITA No. 5026/Del/2016 joint venture was not company incorporated Indian and was merely an Association of person which was not entitled for reduction u/s 80IA. Thus, we are determine the ground no. 1 along with sub-grounds against the appellant Revenue.

13. Ground No. 2: At outset we agree with the submission of Ld. Sr. Counsel that as ground no. 1 on deduction under section 80IA is decided in the assessee's favour and it is held that the assessee is entitled to a deduction under section 80IA of the Act, then, any increase in the assessee's income as a consequence of the disallowance would be offset, since the increased income would also be eligible for deduction under section 80IA. In this regard, the reliance is rightly place by him on CBDT circular no. 37/2016 wherein the CBDT has accepted the position that when there are specific disallowances in the assessment / appeal proceedings leading to enhanced business profits, the deduction under Chapter VI-A shall be admissible on such enhanced business profits. Accordingly, the issue raised in grounds of appeal no. 2 will be rendered wholly academic.

14. Still, for ending controversy for all purposes, it comes up that on merits Ld. Sr. Counsel has submitted that the concession fee was not debited in favour of BIAL unless invoice was raised after taking into consideration certain aspects regarding sale of scrap, parking fees, foreign exchange gain etc., which were uncertain and disputed. It was submitted that therefore on the basis of best estimate provision was made for concession fees. Creation of provision was necessary as actual turnover was more than projected turnover and liability had to be created as per mercantile system of accounting. In the year, provision of Rs. 3,82,00,000/- was reversed and expenses were booked as per the final invoice received in

September, 2011 and taxes were duly deducted at source.

14.1 It was also submitted that infact in the present case, section 194C of the Act cannot have any application since no work has at all been carried out by BIAL for the assessee. If at all it is the assessee who has carried out work. BIAL has simply charged a concession fee as consideration for the rights it has granted the assessee by virtue of the SPRH agreement.

14.2 It is further submitted that in subsequent years, namely, assessment year 2012-13 and 2013-14, the said provision is disallowed only on the ground that it is a contingent liability. In other words, the issue about section 40(a)(ia) is not raised. The relevant extract of the assessment order for AY 2012-13 and AY 2013-14 were relied by Ld. Sr. Counsel. It was submitted that thereafter in subsequent assessment years, no disallowance of the provision is made. A copy of the assessment order for AY 2014-15 was relied in that context.

15. Learned DR, however, relied the findings of learned AO and relied the Banglore Bench order in case of IBM India (P) Ltd. V ITO(TDS) LTU, Bangalore (2015) 59 taxmann.com 107 and Delhi Bench order in ITA No 5347/Del/2012 Inter Globe Aviation Ltd V ACIt order dated 07/01/2019 to submit that the provision is made by present assessee under the specified head, provision is also made to on certain basis thereby ascertaining the amount. It is not the case of the assessee that it has made an ad hoc provision. The payee is identified. Therefore, according to Ld. DR, the tax is required to be deducted on the year-end provisions made by the assessee which are ascertained liabilities.

16. After giving thoughtful consideration to the matter on record and the contentions we are of the view that the credit contemplated in sub-section (2) of section 194C is one that enables the person who has carried out the work to make a claim for the sum. The provision of Rs.3,82,00,00,000/-, as made by assessee did not as such create a debt in favour of BIAL as the concession fee did not arise out of any contract performed by BIAL but was more in the form of royalty with uncertainty of

actual amount due and therefore no income can be said to have accrued or arisen to BIAL.

16.1 Further, the methodology adopted for estimation of turnover / profits and subsequently creating the year-end provision and reversing the same in next financial year, remains the same in all subsequent years. Thus, given the fact that in AY 2014-15 the Department has now accepted that the disallowance is not required to be made under section 40(a)(ia) in respect of the year end provisions for concession fee, same sustains the claim of asseessee.

17. The reliance as placed by Ld. Sr. Counsel on the decision of the Hon'ble Karnataka High Court in Toyota Kirloskar Motor (P.) Ltd. vs. ITO [2021] 128 taxmann.com 266 also supports the case of assessee as therein year end provisions were made for expenses on estimate basis in respect of which bills were yet to be submitted. The provisions were reversed upon receipt of invoice and expenses were booked as per the invoices and taxes were deducted there from. The Hon'ble High Court referred to the principle laid down in CIT v. Shoorji Vallabhdas & Co. 46 ITR 144 (SC) that if income does not result at all, there cannot be a levy of tax even though a book entry is made. Thus ground is determined against the appellant Revenue.

18. As a sequel to the aforesaid determination of the grounds against the appellant Revenue, the appeal is dismissed."

4. There is further no dispute that this tribunal's latter co-ordinate bench order dated 09.04.2024 in Revenue's remaining twin appeals herein ITA Nos. 645/Del/2018 and 6533/Del/2017 (supra) had reiterated the very findings on 09.04.2024 whilst affirming the CIT(A)'s impugned action.

5. A combined perusal of the entire case record reveals that the Revenue thereafter preferred it's as many appeals ITA Nos.

535, 536 & 537/2024 dated 01.05.2025 before the hon'ble jurisdictional high court wherein their lordships have restored the issue back to the tribunal as under:

> *"1. After some arguments, the learned counsel appearing for the parties are ad idem that the issue regarding the applicability of the proviso to sub-section 4 of Section 80IA of the Income Tax Act, 1961 was not advanced and examined before the learned ITAT and therefore, the learned ITAT had no occasion to examine the same.*
>
> *2. The learned counsel submits that the matter be remanded to the learned ITAT to consider afresh.*
>
> *3. The parties are also ad idem that no objection would be taken by the respondent on the ground that the apposite grounds of appeal, which could possibly lead to the questions of law as projected by the Revenue in this appeal, were not raised before the learned ITAT.*
>
> *4. In view of the above, we set aside the impugned order and remand the matter to the learned ITAT to consider afresh.*
>
> *5. The above captioned appeals are disposed of in the aforesaid terms.*
>
> *6. It is clarified that this order has been passed with the consent of the parties."*

5.1 It is in this factual backdrop that we now take up the Revenue's instant three appeals in the second round in furtherance to their lordships' remand directions.

6. Learned CIT-DR, Ms. Monika Singh at this stage sought to revive the Assessing Officer's action holding the assessee as not eligible for section 80IA deduction in entirety. She has further

taken pains to file the Revenue's written submissions/synopsis reading as under:

"WRITTEN SUBMISSIONS ON BEHALF OF REVENUE

A. List of dates and events -

SI. No	**List of Dates**	**Events**
1.	30.11.2011	Original return filed showing income of Rs.6,69,82,770 after claiming deduction u/s 80IA of Rs.23,52,43,622
2.	28.03.2013	Revised return filed showing income of Rs.6,80,96,664 after claiming revised deduction u/s 801A of 23,90,03,420
3.	08.08.2013	Notice issued u/s 143(2) for scrutiny assessment
4.	15.11.2014	Notification No. CIT-l/Juris/2014-15 issued for jurisdiction change by Commissioner of Income Tax, Delhi-1 Order No. Addl. CIT/Range-2/Juris/2014-15 issued u/s 120 by Addl. C1T, Range-2, New Delhi for jurisdiction change
5.	Post 15.11.2014	Fresh notice u/s 142(1) issued after jurisdiction was reallocated
6.	30.01.2015	Assessment order passed u/s 143(3)
7.	05.07.2016	CIT(A) deleted the addition made by AO
8.	20.09.2016	Department went on an Appeal against the CIT(A) order.

B. Statement of Facts-

- *The appellant is a joint venture company between Air India Ltd. and Singapore Airport Terminal Services Ltd. (SATS).*
- *The Government of India (GOI) signed a Concession Agreement with Bangalore International Airport Ltd. (BIAL) on 5 July 2004, authorizing BIAL to grant service provider rights.*
- *BIAL entered into a Cargo Handling Agreement with Air India (formerly NACIL) and SATS.*

- *This led to the formation of an unincorporated joint venture (JV) between AI and SATS, which began operations in FY 2008-09.*

Formation of the Company

- *Following a Cabinet press release dated 23 Feb 2009, GOI required the parties to incorporate a JV company:*
- *With equal shareholding and*
- *Equal board representation.*

Ministry of Civil Aviation granted approval on 16 March 2009.

- *FIPB approved the JV on 31 March 2010.*
- *Consequently, Air India SATS Airport Services Pvt. Ltd. was incorporated on 20 April 2010 via JV Agreement dated 16 April 2010.*
- *The incorporated entity took over the J V business w.e.f. 1 August 2010.*

Claim and Disallowance by AO

- *The appellant invested 61.17 crore to develop cargo infrastructure at Bangalore Airport.*
- *Claimed deduction of ^23,90,03,420/- u/s 80IA of the Income Tax Act for developing infrastructure.*
- *Assessing Officer (AO) disallowed the deduction, stating that the appellant is not an infrastructure company under Section 801 A.*
- *AO also disallowed 3.82 crore as a provision for concession fees, citing non-deduction of TDS u/s 40(a)(ia).*

Appeal Filed by Assessee before CIT(A)

The assessee filed an appeal against both disallowances made by the AO:

- *Denial of deduction u/s 801 A.*
- *Disallowance of concession fee provision due to non-deduction of TDS.*

CIT(A) decision

- *Deduction u/s 80-IA of Rs. 23,90,03,420/- deleted. (Ref- Page 13-21 of the CIT (A) order).*
- *Disallowance of Rs. 3,82,00,000/- u/s 40(a)(ia) deleted. (Ref- Page 22-24 of the CIT (A) order).*

C. Grounds of Appeal-

The Ld. CIT (A) has erred in law and on facts in directing the AO to allow deduction u/s 80IA of Income Tax without appreciating the following factual position.

(i) The assessee company is a joint venture which was formed by Air India Ltd and SATS Itd, Singapore and thus it is nothing but a reconstitution/reconstitution of the same joint venture for carrying out the same business activity.

(ii) As per 801A (4) clause (i) of the act, the enterprise should be owned by a company registered in India where as the assessee company is formed by M/s Air India Ltd. an Indian Company and M/s SATS Ltd. a Singapore based company and thus one of the owner or participant of the consortium is not a company registered in India.

(iii) Deduction u/s 801A is allowable for certain basic infrastructure facilities and nor for providing utility services whereas assessee is engaged in the business of providing ground handling and cargo handling services at Indian Airport which activities are not covered within the meaning of explanation referred to section 801 A.

The Ld. CTT(A) erred in law and on facts in deleting addition of Rs. 3,82,00,000/- on account of disallowance u/s 40(a)(ia) of the Income Tax Act.

The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

D. Issues raised-

1. Whether the assessee company has been fulfilling the deduction claimed under section 801 A.

E. Arguments Advanced-

1. Assesse Company is JV company

The assessee company is a joint venture which was formed by Air India Ltd and SATS Ltd., Singapore and thus it is nothing but a reconstitution/reconstitution of the same joint venture for carrying out the same business activity.

2. Ownership Condition Not Met (Clause a of Section 80IA (4)(i))

Section 801A allows deduction only if the enterprise is owned by:

- *A company registered in India,, or*
- *A consortium of Indian-registered companies, or*
- *A statutory body under a Central/State Act.*

The assessee company is a joint venture of:

Air India Ltd. - registered in India.

SATS Ltd., Singapore - incorporated in Singapore.

Since one partner (SATS Ltd.) is a foreign company, the ownership condition is violated, and the assessee fails the first eligibility test.

3. Nature of Activities Not Eligible

Section 801A (4) covers businesses engaged in:

- *Developing,*
- *Operating and maintaining, or*
- *Developing, operating and maintaining infrastructure facilities (including airports as per clause (d)).*

Moreover, the assessee provides ground handling and cargo handling services at airports.

- *AO held that such utility services do not amount to development or operation of airport infrastructure.*
- *The airports (Bangalore and Hyderabad) are developed/operated by BIAL and GMR Hyderabad Ltd., not by the assessee.*

- *Assessee is a third-tier service provider, hence does not qualify as a developer/operator of infrastructure.*

4. No Agreement with Central Government (Clause b of Section 801A(4)(i))

- *The assessee has no such agreement with the Central Government.*
- *Agreements were entered with BIAL and GMR, not the Central Government.*
- *The business was taken over from an unincorporated JV; no new agreements were made by the assessee with the government.*

Thus, the assessee fails to meet all three key eligibility conditions under Section 801 A(4)(i):

- *Not owned solely by Indian companies.*
- *Not engaged in the specified infrastructure activities.*
- *No agreement with the Central Government.*
- *Therefore, the claim for deduction u/s 801A is rejected.*

F. Case Laws in support-

1. CIT v. Container Corporation of India Ltd. [2012] 18 taxmann.com 132 (Delhi HC)

Facts: Assessee claimed 80-1A deduction for operating Inland Container Depots (ICDs) and providing cargo handling services.

Held: Only operation of infrastructure facility like port/ICD is eligible. Cargo handling per se is not infrastructure development.

Ratio: Cargo handling is a support service, not an infrastructure facility under section 80-IA(4).

2. United Liner Agencies (India) Pvt. Ltd. v. DCIT [2009] 29 SOT 152 (Mumbai ITAT)

Facts: Assessee provided cargo handling and related logistics support to port operators. Claimed 801A deduction.

Held: Assessee not engaged in development or operation of port itself.

Ratio: The service provider is not the one who developed, maintained or operated the infrastructure.

3. ACIT v. Gateway Terminals India Pvt. Ltd. [2015] 69 SOT 306 (Mumbai - Trib.)

Facts: Assessee operated a terminal at port and claimed 8O-1A(4) deduction.

Held: Assessee did not develop the port; merely provided services on port premises.

Ratio: Only developers/operators of port infrastructure are eligible for deduction, not service providers.

4. Hindustan Cargo Ltd. v. DCIT (2014) 47 taxmann.com 387 (Mumbai Trib.)

Facts: Claimed 80-1A on cargo and ground handling services.

Held: Activities not involving development / maintenance/operation of port or infrastructure facility.

Ratio: Service provision alone doesn't qualify unless the assessee is developer/operator.

5. Menzies Aviation Bobba (Bangalore) Pvt. Ltd. v. DCIT [2016] 69 taxmann.com 448 (Bangalore - Trib.)

Facts: Ground handling and air cargo services at airport. Claimed 80-IA deduction.

Held: Such services are ancillary and do not amount to development or operation of airport.

Ratio: Ground handling is not operation of airport infrastructure as envisaged under 80-IA(4).”

7. Mr. Percy Pardiwalla on the other hand has invited our attention to the assessee’s detailed paper book(s) thereby

explaining the brief background of the first and foremost agreement dated 16.04.2010 forming a JV between SATS Ltd., Singapore and Air India Ltd. followed by the business transfer agreement dated 30.03.2011 which further culminated in the assessee entering in the field as the developer of the Bangalore International Airport Ltd. (supra).

8. Mr. Pardiwalla further seeks to clarify that all this voluminous evidence and facts emerging therefrom are admittedly not in dispute between the parties. His case therefore is that we are now to decide the solitary issue of applicability of section 80IA(4) proviso herein than the entitlement of the assessee's claim u/s 80IA which has already attained finality in the above former round.

9. It is in this factual backdrop of these rival pleadings that we first of all need to ascertain as to whether we need to examine assessee's section 80IA deduction in entirety or applicability of section 80IA(4) Proviso only. We find that their lordships remand directions restored the issue of applicability of foregoing statutory proviso than the entire provision itself vis-à-vis the assessee's deduction claim. We must reiterate the fact that the earlier learned co-ordinate bench's detailed discussion

had already recorded it's categorical finding(s) that the assessee's is indeed entitled to claim section 80IA relief in light of the detailed/overwhelming supportive evidence. We thus reiterate the very findings herein as well so as to avoid any mutuality contradictory approach; more particularly, in light of the fact that the Revenue has nothing more to say than to place reliance on the Assessing Officer's assessment findings. We thus uphold the assessee's section 80IA deduction claim in principle in very terms.

10. Next comes the remaining issue of applicability of section 80IA proviso which admittedly applies in an instance wherein an eligible enterprise transfers the corresponding infrastructure facility to another enterprise for the purpose of operation and maintenance thereof. We are of the considered view that the purport of the said proviso is to restrict the impugned section 80IA deduction to the maximum specified period; inclusive of that claim by the transferor as well as the transferee enterprise, as the case may be. Faced with this situation, we observe that there is no material in the case records that the assessee's impugned deduction claim has any way travelled beyond the maximum specified period in section 80IA of the Act

so as to attract the foregoing statutory proviso. We thus reject the Revenue's instant legal grounds/arguments seeking to invoke section 80IA(4) 1st proviso in the assessee's case in very terms. Ordered accordingly.

11. Same order to follow in the Revenue's latter twin appeals since involving common/identical facts.

12. These Revenue's three appeals ITA Nos. 5026/Del/2016, 6533/Del/2017 and 645/Del/2018 are dismissed. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 26/02/2026.

Sd/-	Sd/-
(Naveen Chandra)	**(Satbeer Singh Godara)**
Accountant Member	**Judicial Member**

Dated: 26/02/2026

Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR