

IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**BEFORE: SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND  
SHRI BR BASKARAN, ACCOUNTANT MEMBER**

**ITA No.540/Vizag/2009**  
Assessment Year : 2006-07

**M/s. Transstory (India) Ltd.**  
**Guntur**  
(Appellant)  
PAN No.AABCT 4226B

**Vs.**

**ITO Ward-2(2)**  
**Guntur**  
(Respondent)

Appellant By: **Shri G.V.N. Hari, CA**  
Respondent By: **Shri TH.L. Peter, CIT(DR)**

**ORDER**

Per Shri S.K. Yadav, Judicial Member:-

This appeal is preferred by the assessee against the order of the CIT(A) on a solitary ground that CIT(A) has erred in denying the deduction u/s 80IA eligible to the assessee in respect of the works executed by it for Government of Karnataka and Government of Andhra Pradesh.

2. We have heard the rival submissions and carefully perused the orders of the authorities below and documents placed on record. The facts in brief borne out from the orders of the lower authorities are that assessee is a company and it formed joint venture named "Navayuga Transtoy (JV)" (herein after to be referred as J.V.) which bid for the contract. The Irrigation Department of Andhra Pradesh awarded the contract to JV, which became entitled to execute works worth Rs.664.50 crores. As per the terms of the JV, the assessee was to execute 40% of the work in Navayuga, the other constituent partner was to execute 60% of the works awarded. The assessee was therefore to execute work worth Rs. 265.80 crores, out of which works valued at Rs.18.12 crores were executed during the A.Y. 2006-07. Both the constituent partners of the JV raised bills on the JV for quantity of work as certified by technical consultant appointed by the State Government. The JV in turn raised a consolidated bill on the Irrigation Department of Andhra Pradesh Government without making any additions. The Department makes

the payments to the JV, which shares the payment in accordance with the bills raised by each. The JV files its Income Tax returns separately but does not claim any deduction u/s 80IA(4) therein.

3. The assessee had also formed a consortium along with one M/s. Corporation Transtroy, OJSC, Moscow, with the understanding that the assessee would execute 100% of the works which were awarded to the consortium by KSHIP, a body of the Government of Karnataka. During the year assessee executed works valued worth Rs.31.09 crores. The assessee claimed deduction u/s 80IA(4) on the profits derived out of the aforesaid works. But it was disallowed by the assessing officer on the ground that the work was not awarded to the assessee.

4. The assessee preferred an appeal before the CIT(A) with the submission that the joint venture or the consortium was formed only with an object to obtain a contract from the Government but in fact the work was executed by the constituents of the JV i.e. the assessee and the other constituent. The deduction u/s 80IA(4) is to be allowed to those enterprises who are engaged in the business of developing, maintaining and operating any infrastructure facility. The other conditions laid down u/s 4A of section 80IA are fulfilled in the instant case. Therefore, the assessee is entitled for deductions on profit earned from the aforesaid activities.

5. The CIT(A) re-examined the issue but was not convinced with the assessee's explanations and he confirmed the disallowance made by the A.O.

6. Now the assessee has preferred an appeal before the Tribunal with the submission that the JV or the consortium has not offered any income/profit out of the work contract awarded to it and also did not claim any deduction u/s 80IA of the Act. The Ld. Counsel for the assessee further contended that deduction u/s 80IA is to be allowed to those enterprises who were carrying on the business of developing, maintaining and operating any infrastructure facility. In the instant case, the consortium or the JV did not execute any work. The work awarded to JV was executed by its constituents. In support

of this contention, he has invited our attention to the joint venture agreement and the consortiums which are available at page no.4 to 8 & 30 to 36 respectively of the compilation of the assessee. He has also invited our attention to the agreement executed between the JV and the consortiums with the Government. He has also invited our attention to the relevant clauses of the JV and the consortiums according to which it was agreed at the time of formation of JV that whatever work is awarded to it, it would be executed by its constituents and they will be solely responsible for the responsibilities and liabilities of the execution of the work. It was further contended that these provisions are beneficial provisions and were introduced to provide incentives to those enterprises who in fact execute the work. The Ld. Counsel for the assessee further invited our attention to the order of the Tribunal in the case of ITO Vs. UAN Raju Constructions ITA No.344/Vizag/2009 of this bench with the submissions that the concept of joint venture was examined by the Tribunal in this case and the Tribunal has given a specific finding that joint venture cannot be held to be the main contractors and the members of the same are the sub-contractors. Reasons for holding so were given that as per the concept of a joint venture each joint venturer shall stand in relation to a principal as well as an agent of others. Once it is held that joint venturer or the constituent of the ventures cannot be called to be a sub-contractor of the joint venture, the constituents of joint venturer are eligible for all benefits or deductions or exemptions which are available to the joint venture for the reasons that the work awarded was executed by the constituents of the joint venture and not by the joint venture itself. In fact joint venture is an artificial body in whose name the contract was awarded. A reliance was also placed upon the judgement of the Bombay High Court in the case of CIT Vs. ABG Heavy Industries Ltd. & Ors. 322 ITR 323. During the course of hearing, the Ld. Counsel for the assessee also filed the copy of return and the assessment order of the J.V. in support of his contention that joint venture neither offered any income out of this business nor claimed any deduction u/s 80IA of the Act. The Ld. Counsel for the assessee further urged that under this situation, the deduction u/s 80IA(4) may be allowed to the assessee.

7. The Ld. D.R. on the other hand besides, placing a heavy reliance upon the order of the CIT(A) has emphatically argued that the work contract was awarded to the joint venture and not to the assesseees. The Bills were raised by the joint venture and payments were also made to the joint venture by the Government bodies. Therefore, in all respects, the work contract was executed by the joint venture and not by the assesseees. The Ld. D.R. further contended that joint venture is an independent identity and is assessable to tax and these facts are evident from the record that joint venture itself has filed its return of income and the assessment order was passed in its hands. It is totally irrelevant whether joint venture has claimed any deduction u/s 80IA or not. Non-claim of deduction u/s 80IA by the joint venture would not make the assessee entitled to claim deduction u/s 80IA for the work executed by him. Since the assessee and the joint venture are independent assesseees, the benefit eligible to the joint venture cannot be transferred to the assesseees. Therefore, the revenue has rightly denied the deduction u/s 80IA to the assesseees.

8. Having given a thoughtful consideration to the rival submissions and from a careful perusal of the orders of the authorities below and documents placed on record, we find that undisputedly the joint venture or the consortium was formed only to obtain the contract from the Government bodies. At the time of execution of the joint venture or the consortium, it has been made clear that work/project awarded to the joint venture would be executed by the joint venturers or the constituents. As per mutually agreed terms and conditions between them, it was also agreed that each party shall be responsible for the provisions of without limitation on resources required for the purpose of fulfillment of the scope and also solely responsible for the performance of its scope of work and shall bear all technical, commercial and facing risk involved in performing its scope of work. It was also agreed that none of the party shall assign its rights and obligations to any other party without written consent of other party. From a careful perusal of this joint venture agreement and the consortium agreement, it is evidently clear that the joint venture and the consortium was formed only with an object to bid contract. Once the project or contract is awarded to the joint venture or the

consortium, it is to be executed by its constituents or the joint ventures in a ratio agreed upon by the parties. In the instant case in case of a joint venture agreement, the assessee was entitled to execute the 40% of total work awarded by the Andhra Pradesh Government to the joint venture and in case of a consortium it was agreed that the entire work is to be executed by the assessee itself. Therefore for all practical purposes, it was the assessee who executed the work contract or the project awarded to the joint venture. No doubt the joint venture is an independent identity and has filed its return of income and was also assessed to tax but it did not offer any profit or income earned on this project/works awarded to it nor did he claim any exemption/deduction u/s 80IA(4) of the Act. These facts clearly indicates that the joint venture was only a de-jure contractor but in fact the assessee was a de-facto contractor.

9. The scope of joint venture and its relation with its constituents were examined by this bench of the Tribunal in the case of ITO Vs. UAN Raju Constructions (supra) and the Tribunal has given the finding that there cannot be any relation of contractor and sub-contractor between the joint venture and its constituents after making a detailed analysis of this relationship. The relevant observation of the Tribunal are extracted hereunder:

*"6. We have heard the parties and carefully perused the record. We have also gone through the "Joint venture partners Agreement" entered by the parties on 20-10-2003 and also the codicil entered between them. The main dispute is with regard to the assessability of income, if any, in the hands of the assessee-AOP. The case of the AO is that the "Joint Venture" and its members should be treated as separate persons and hence the contract allocated to the members should be treated as "Sub-contracting". However, the case of the assessee is that the Joint Venture has come into existence only to procure and win the contracts and since the contracts were allocated between the members and further they were executed separately by each of the members, no income can be said to have arisen in the hands of the assessee-AOP.*

*7. In our country, the implementation of infrastructure projects is taking place in a massive scale. In this connection, global tenders are invited. Hence two or more business enterprises are joining hands by forming a consortium of Joint Venture in order to*

get qualified for participating in tender process. They regulate themselves, by entering into an agreement, the methodology to be adopted for executing the contract obtained. Before going into the main issues, we feel that it is imperative to discuss about the status and legal position of "Joint Venture" vis-a-vis Income tax Act. The Joint Ventures are not be governed by the provisions of the "Indian Partnership Act, 1932. It is also a known fact that there is no statute which governs a Joint Venture. Hence the issue regarding the relationship between the members and also between the members and the Joint venture has to be decided on the basis of the terms of agreement entered between the parties. Though the "Joint Venture Agreements" generally fall in the category of "Association of Persons" (AOP) under the Income tax Act, yet their assessability in the status of "AOP" was not free from doubt and we notice that the authorities have decided this issue on the basis of facts and circumstances of each case.

8. The Hon'ble Supreme Court has made a detailed discussion on the concept of "Joint Venture" in the case of *Fazir Chand Gulati Vs. Uppal Agencies Private Ltd.* (2008) 10 SCC 345. The relevant observations are extracted below:-

"17. This Court had occasion to consider the nature of 'joint-venture' in *New Horizons Ltd vs. Union of India* [1995 (1) SCC 478]. This Court held :

"The expression "joint venture" is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. **It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.** [Black's Law Dictionary; Sixth Edition, p.839]. According to *Words and Phrases, Permanent Edition*, a joint venture is an association of two or more persons to carry out a single business enterprise **for profit** [P.117, Vol. 23]. "[Emphasis supplied]

The following definition of 'joint venture' occurring in *American Jurisprudence* [2nd Edition, Vol.46 pages 19, 22 and 23] is relevant:

"A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and **carry out a single business venture for joint profit**, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a

corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and **that each joint venture must stand in the relation of principal, as well as agent, as to each of the other coventures within the general scope of the enterprise.** Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships."

"A joint venture is to be distinguished from a relationship of independent contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer except as to the result of the work, while a joint venture is a special combination of two or more persons where, in some specific venture, a profit is jointly sought without any actual partnership or corporate designation." (Emphasis supplied)

To the same effect is the definition in *Corpus Juris Secundum* (Vol. 48A pages 314-315):

"Joint venture," a term used interchangeably and synonymous with joint adventure', or coventure, has been defined as a special combination of two or more persons wherein **some specific venture for profit is jointly sought** without any actual partnership or corporate designation, or as an association of two or more persons to carry out a single business enterprise for profit or a special combination of persons undertaking jointly some specific adventure for profit, for which purpose they combine their property, money, effects, skill, and knowledge..... Among the acts or conduct which are indicative of a joint venture, no single one of which is controlling in determining whether a joint venture exists, are: (1) joint ownership and control of property; (2) sharing of expenses, profits and losses, and having and exercising some voice in determining division of net earnings; (3) community of control over, and active participation in, management and direction of business enterprise; (4) intention of parties, express or implied;

and (5) fixing of salaries by joint agreement." (emphasis supplied)

Black's Law Dictionary (7th Edition, page 843) defines 'joint venture' thus  
"Joint Venture: A business undertaking by two or more persons engaged in a single defined project. The necessary elements are: (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project."

9. On a careful reading of the order of the Hon'ble Supreme Court, we notice the following essential ingredients for a "Joint Venture".

a) It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. (or)

b) it is in association of persons with intent, by way of contract, express or implied, to engage in and **carry out a single business venture for joint profit**, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership. (or)

c) a special combination of two or more persons wherein **some specific venture for profit is jointly sought** without any actual partnership or corporate designation, or as an association of two or more persons to carry out a single business enterprise for profit.

d) that each joint venturer must stand **in the relation of principal, as well as agent**, as to each of the other covertures within the general scope of the enterprise.

e) Among the acts or conduct which are indicative of a joint venture, no single one of which is controlling in determining whether a joint venture exists, are:

- (1) joint ownership and control of property;
- (2) sharing of expenses, profits and losses, and having and exercising some voice in determining division of net earnings;
- (3) community of control over, and active participation in, management and direction of business enterprise;
- (4) intention of parties, express or implied; and
- (5) fixing of salaries by joint agreement."

10. As stated earlier, in order to participate in the global tender process, some of the foreign companies have established joint ventures with the Indian Companies. With regard to the issue of the assessability of Joint ventures, the foreign companies have approached the Authority for Advance Ruling (AAR). We discuss below the decision rendered by AAR in brief.



a) *Van Oord ACZ BV (248 ITR 399): In this case the parties therein had specifically provided in the agreement that each party will bear its own loss and retain the profits separately. There was also specific declaration that it was not the intention to create a joint venture to carry on business in common. The parties therein had undertaken separate scope of works according to their respective technical skills. There was no control and connection between the work done by each of the parties. Thus it was noticed that there was no intention to carry out any business in common. Under these factual circumstances, the AAR held that the consortium cannot be treated as Association of Persons under the Income Tax Act. It is pertinent to note that this decision was rendered prior to 1.4.2002, i.e. prior to the insertion of the Explanation to section 2(31).*

b) *Geo Consult ZT GMBH (304 ITR 283): In this case, though the work was allotted to each of the members and each member has to bear its own costs and expenses, yet it was noticed that the agreement stated that the members will collaborate for all the work associated with the project which is to be managed on a joint basis by all the members. Further the agreement provided that the members are jointly and severally responsible for execution of project. The AAR has expressed opinion, by placing reliance on the decision of Hon'ble Supreme Court in the case of N.V.Shanmugam and Co. V CIT (1971) 81 ITR 301, that the ultimate division of profits amongst members of the joint enterprise is not a relevant criterion. Finally it was held that the Joint venture is assessable as "AOP".*

c) *M/s Hyundai Rotem Co., Korea and M/s Mitsubishi Co., Japan (AAR Nos. 798-799 of 2008 dt. 23-03-2010. In this case, the AAR has held that the Consortium formed by four members is not assessable as AOP, since the AAR has felt that the facts of the case are similar to the facts relating to Van Oord ACZ BV, supra.*

*Section 2(31) of the Act defines the term "Person", which interalia, includes "an association of persons or a body of individuals, whether incorporated or not. Since the term "Association of Persons" (AOP) was not defined in the Act, the Courts have interpreted to mean that it is an association established to produce income. Hence the Finance Act 2002 has inserted an "Explanation" to section 2(31), according to which, an AOP shall be deemed to be a person, whether or not such AOP was formed or established with the object of deriving income, profits or gains. However, in the instant case, there is no dispute with regard to the assessability of the "Joint Venture" per se. Both the assessee and the department*

have taken the stand that the "Joint Venture" is assessable in the status of "Association of Person". However, the issue is whether the AO is right in treating the Joint Venture-AOP as the main contractor and its members as the sub-contractors, thereby estimating the income which was not earned by the Joint Venture.

11. On the basis of the understanding of the concept of "Joint Venture", let us consider the facts in the present case. The amended clause 3 reads as under:

"a) The joint venturers shall subject to the provisions hereinafter contained, be entitled to share the work as mutually agreed on item wise, depending on the work schedule. Sharing of the work and execution of the work can be altered at any given time with mutual consent of both the J.V. Partner's".

As per the original clause 3(a), the members of Joint Venture would share in a prescribed percentage in all profits arising out of joint venture. However, the said clause was in contradiction to the preamble of the agreement; wherein it had been stated that the members are desirous of sharing the contract amount. In view of the above, it appears that the Clause 3(a) was amended in accordance with the original intention of the members. However in clause 12 dealing with Final Accounts, we find a mention about sharing of profit or loss, but there is no mention about the proportion. However, in reality, the members have shared the work only and hence there was no profit or loss for the Joint Venture.

11.1 Further, clause 9 of the agreement which deals with the "Resources" specifically states that each joint venturer shall provide plant and equipment required for the execution of their portion of contract and such plant and machinery shall not become asset of the joint venture. Thus there is no clear provision in the Joint Venture which provide for joint execution of the project and joint realization of profit.

11.2 Clause-4 deals with the relationship between the members of the joint ventures. Sub-clauses (c) and (d) are relevant.

"c. This Agreement shall not be construed by either Joint Venturer hereto as constituting each of them the agent of the other nor the Joint Venture as the agent for either of them.

"e. The Joint Venturers agree that this Agreement shall not constitute a partnership and any liabilities of any sort whatsoever which one Joint Venturer may

*incur towards or on behalf of the other Joint Venturers shall be in accordance with this Agreement and be thereto limited”*

*As per the concept of the Joint Venture, each joint venturer shall stand in the relation of a principal as well as an agent of the other. However clause 4(c) of the agreement specifically states that the members do not constitute the agent of each other. The said clause also states that the "Joint venture" should not be taken as the agent of the members also. Thus, according to the agreement, each member stands in its own right and no specific relationship is created between the Joint Venture and its members.*

12. *Thus, on an understanding of the concept of the "Joint Venture" and the terms of agreement between the members of the present case, we are of the view that in the instant case, the consortium of Joint Venture has been formed only to procure the contract works. By way of the agreement, the parties have only regulated the relationship inter se with respect to their joint responsibility that existed in relation to the Principal, viz., M/s Konkan Railway. In reality, both the parties have divided the contract works between themselves and they have executed their share of work on their own risks. It is pertinent to note here that the AO has not given any finding on the issues like that each member had authority to interfere with or control the work executed by the other member; that both the members have jointly executed the project and thus produced the income jointly. In our opinion, the finding on the lines stated above is crucial to determine the issue of availability of income in the hands of Joint Venture- AOP. On the contrary, the AO is on record that the each of the members has declared the income derived from their respective share of contract works in their hands. In this kind of situation, we do not find any merit in the presumption made by the AO that the Joint Venture is the "Main Contractor" and the members are the "Sub-contractors". Once this presumption has been found to be wrong, then the question of estimation of income by way of Sub-contract commission does not arise. So also the question of deduction of tax u/s 194C(2) of the Act and the disallowance u/s 40(a)(ia) does not arise. In view of the foregoing discussions, we do not find any infirmity in the decision reached by the Ld CIT(A)."*

10. There is no dispute with regard to the nature of business or the activities undertaken by the assesseees. The dispute is only with regard to the identity of a person to whom this benefit of deduction u/s 80IA(4) can be allowed. We have carefully perused the provisions of section 80IA(4) and we find that the benefit of exemption/deduction is to be allowed to any

enterprise carrying on business of developing or operating and maintaining or developing, operating, maintaining any infrastructure facility subject to fulfillment of certain conditions. One of the condition is that the enterprise should be owned by a company registered in India or by a consortium of such companies or any other body established or constituted under any centre or any state Act. The other condition is that it has entered into an agreement with the Central Government or a State Government or local authorities or any other statutory body for developing, operating and maintaining or developing, operating & maintaining a new infrastructure facility. There is no dispute with regard to the fulfillment of other requisite conditions. The dispute was only raised that the contract was awarded only to the joint venture and not to the assessee and therefore assessee is not entitled for deduction. If we read these provisions of sub-section 4 of 80IA, we would find that this benefit of deductions is to be given to an enterprise who carry on the aforesaid classified business. The legislature have also used the word consortium of such companies, meaning thereby the legislature was aware about the object of formation of consortium and joint ventures. Generally the joint ventures or consortiums are formed to obtain a contract from the Government body for its execution by its constituents. If the constituents do not want to execute the work, there was no need to form a consortium. Therefore, mere formation of consortium for obtaining a contract should not debar the enterprises who in fact carried on the aforesaid classified business from claiming the deduction or exemption u/s 80IA(4). For the sake of reference, we extract the provisions of section 80IA(4) as under:

*Section 80IA(4): This section applies to –*

- (i) Any enterprise carrying on the business [of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining] any infrastructure facility which fulfils all the following conditions, namely:-*
  - (a) it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;]*
  - (b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating*

and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;]

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1<sup>st</sup> day of April, 1995:

**Provided** that where an infrastructure facility is transferred on or after the 1<sup>st</sup> day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

**[Explanation.—**For the purposes of this clause, "infrastructure facility" means—

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway [inland port or navigational channel in the sea];]

[(ii) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services on or after the 1<sup>st</sup> day of April, 1995, but on or before the 31<sup>st</sup> day of March, [2005].]

**Explanation.—**For the purposes of this clause, "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service;

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park [or special economic zone] notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1<sup>st</sup> day of April, 1997 and ending on the 31<sup>st</sup> day of March, [2006]:

**[Provided** that in a case where an undertaking develops an industrial park on or after the 1<sup>st</sup> day of April, 1999 or a special economic zone on or after the 1<sup>st</sup> day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case

*may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking:*

**[Provided further** that in the case of any undertaking which develops, develops and operates or maintains and operates and industrial park, the provisions of this clause shall have effect as if for the figures, letters and words "31<sup>st</sup> day of March, 2006", the figures, letters and words "31<sup>st</sup> day of March, [2011]" had been substituted;]

(iv) an [undertaking] which,--

.....

.....

.....

(vi) .....

11. Turning to the facts of the case, we find that joint venture and the consortium was formed only to obtain the contract from the Government body and they in fact did not execute the work awarded to it. In a joint venture agreement or a consortium agreement, it was agreed that the awarded work had to be executed by the joint venturers or parties to the agreement in an agreed manner. The work was awarded by the Andhra Pradesh Government and the KSHIP, a body of the State Government of Karnataka to the J.V. and consortium but the work was executed by the assessee and the other constituents. In case of joint venture agreement, 40% works were executed by the assessee and in case of consortium, the 100% work was executed by the assessee. Whatever bills were raised by the assessee for the work executed on J.V. and consortium, the joint venture and consortium in turn raised the further bill of the same amount to the Government. Whatever payment was received by the joint venture, it was accordingly transferred to their constituents. Therefore, the joint venture or the consortium was only a paper entity and has not executed in contract itself. They have also not offered any income out of the work executed by its constituents, nor did they claim any deductions u/s 80IA(4). Therefore, in all practical purposes, the contract was awarded to the constituents of the joint venturers through joint venture and the work was executed by them. As per provisions of section 80IA(4), the benefit of deduction under this section is to

be given only to the enterprise who carried on the classified business. Therefore, in the light of this legal proposition, we are of the view that the assessee is entitled for the deductions u/s 80IA(4) on the profit earned from the execution of the work awarded to JV and consortium. We accordingly set aside the order of the CIT(A) and direct the A.O. to allow the deductions.

12. In the result, the appeal of the assessee is **allowed**.

Pronounced in the open Court on **14.7.2011**

Sd/-  
(BR BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(SUNIL KUMAR YADAV)  
JUDICIAL MEMBER

VG/SPS  
Visakhapatnam,  
Dated 14<sup>th</sup> July, 2011

Copy to

- 1 M/s. Mahesh, Virender & Sriram, Chartered Accountants, 6-3-788/36 & 37A, Ameerpet, Hyderabad
- 2 ACIT, Circle-2(1), Guntur
- 3 The CIT, Guntur
- 4 The CIT(A), Guntur
- 5 The DR, ITAT, Visakhapatnam.
- 6 Guard file.

By Order

Senior Private Secretary  
Income Tax Appellate Tribunal  
Visakhapatnam