IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER and
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

Sl. No.	ITA No. & A.Y.	Appellant	Respondent
1.	347/Hyd/2008 A.Y. 2004-05	M/s. GVPR Engineers Ltd. Hyderabad PAN: AAACG7614F	ACIT Circle-2(3) Hyderabad
2.	1323/Hyd/2008 A.Y. 2005-06		
3.	1471/Hyd/2011 A.Y. 2006-07	DCIT Central Circle-5 Hyderabad	M/s. GVPR Engineers Ltd. Hyderabad PAN: AAACG7614F
4.	1472/Hyd/2011 A.Y. 2007-08		
5.	1473/Hyd/2011 A.Y. 2009-10		
6.	1481/Hyd/2011 A.Y. 2003-04	M/s. GVPR Engineers Ltd. Hyderabad PAN: AAACG7614F	ACIT Central Circle-5 Hyderabad
7.	1482/Hyd/2011 A.Y. 2004-05		
8.	1483/Hyd/2011 A.Y. 2005-06		
9.	1484/Hyd/2011 A.Y. 2006-07		
10.	1485/Hyd/2011 A.Y. 2007-08		
11.	1486/Hyd/2011 A.Y. 2008-09		
12.	1487/Hyd/2011 A.Y. 2009-10		
13.	1359/Hyd/2011 A.Y. 2008-09	DCIT Central Circle-5 Hyderabad	M/s. GSP Infratech Development, Hyderabad PAN: AABCG5845P
14.	1401/Hyd/2011 A.Y. 2008-09	M/s. GSP Infratech Development, Hyderabad PAN: AABCG5845P	ACIT Central Circle-5 Hyderabad
15.	1488/Hyd/2011 A.Y. 2007-08	Sri G. Siva Shankar Reddy, Hyderabad PAN: AHAPG3919M	
16.	1489/Hyd/2011 A.Y. 2009-10	Sri G. Siva Shankar Reddy, Hyderabad PAN: AHAPG3919M	
17.	1491/Hyd/2011 A.Y. 2007-08	Sri G.S.P. Veera Reddy, Hyderabad PAN: AABCG5845P	
18.	1490/Hyd/2011 A.Y. 2008-09	Sri G. Veera Sekhar Reddy, Hyderabad PAN: AHAPG3918L	

Assessee by: Shi A.V. Sadasiva &
Shi M.V. Anil Kumar
Revenue by: Smt. K. Mythili Rani

Date of hearing: 05.01.2012
Date of pronouncement: 29.02.2012

O R D E R

PER CHANDRA POOJARI, AM:

These are eighteen appeals by the Revenue and different assessees are directed against the different orders of the CIT (A)-III and CIT (A)-VII, Hyderabad, for the above assessment years. Since the issues involved in these appeals are common in nature, all these appeals are clubbed together heard together and are being disposed of by this common order for the sake of convenience.

2. First, we will take up appeals relating to M/s. GVPR Engineers Ltd. Hyderabad in ITA Nos. 1481, 1482, 1483, 1484, 1485, 1486, 1487 of 2011, 347/Hyd/08, 1323/Hyd/08, 1471, 1472 and 1473 of 2011.

3. The first common ground in assessee's appeals namely ITA Nos. 1481/Hyd/2011 to 1487/Hyd/2011 is with regard to the framing the assessment under section 153A of the Act, in spite of absence of valid search and any incriminating material found at the premises of the assessee. According to the assessee, the assessing officer should not have issued notice under section 153 of the Act. We have heard both the parties on this issue. There was a search operation conducted in the case of Sri Venkata Kutumbarao and others on 28-7-2008 and also search was conducted at the business premises of GVPR Engineers Limited and there was seizure of some incriminating documents and the cases were notified with the DCIT, Central Circle-5, Hyderabad. Thereafter, notice under section 153A has been issued consequent to the search action. Being so, we find no merit in the ground. Accordingly, this ground of the assessee is dismissed.

4. This being the sole ground in ITA No.1481/Hyd/2011, this appeal is accordingly dismissed and in other appeals this ground is dismissed.

5. Second common ground in ITA Nos. 1482 to 1485/Hyd/ 2011, 347/Hyd/08 and 1323/Hyd/08 is with regard to non granting of deduction under section 80IA of the Act without proper appreciation of the fact that the assessee is not a contractor but a developer of infrastructure facility and eligible for deduction under section 80IA of the Act.

6. Brief facts of the issue are that the assessee claimed deduction under section 80IA of the Act for these assessment years as the profit and gains is from industrial undertaking engaged in infrastructure development. The same was denied by the lower authorities on the reason that the assessee not developed any new infrastructure facility as required under section 80IA(4)(i)(b) of the Income-tax Act. According to the revenue, the assessee had only taken up the renovation and modernisation of the existing net work/infrastructure facilities. It is also observed that as per agreement, the assessee entered for building or constructing the whole or part of the project for which the entire investments were made by the Government and the assessee was paid 'on running bill to bill' basis. Hence, there was no stipulation in any of the contracts that the facility built would be transferred or handed over back to the owner/employer. Being so, such contracts are not eligible for deduction under section 80IA of the Act. Against this, the assessee is in appeal before us.

7. The learned authorised representative of the assessee drew our attention to the provisions of section 80 IA (4) of the Act. He read before us the said section 80 IA(4)(i) of the Act and submitted

that by the Finance Act, 2001 with effect from 1-4-2002 which was amended as follows:-

> *"(i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a mew infrastructure substituted (i) developing (maintaining or operating or (iii) developing, maintaining and operating."*

8. He also drew our attention to the Circular No.14 of 2001 which reads as under:-

> *Circular No.14/2001 Explanatory Notes*
>
> *Finance Act, 2001 - Explanatory Notes on provisions relating to Direct Taxes*
>
> *Definition of 'Infrastructure facility' in section 10(23G) to be same as that in section BO-IA(4)*
>
> *17.1 Under the existing provisions contained in clause (23G) of section 10, any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividend (other than dividends referred to in section 115-0) and long term capital gains from investment made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating, or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.*
>
> *17.2 Fiscal incentives for development of infrastructure have been provided in the Income-tax Act as a package, so that tax holiday is allowed under section 80-IA to the infrastructure enterprise and income from long-term investment made by the Infrastructure Capital Company or Infrastructure Capital Fund in the approved enterprise is exempt under section 10(23G). Thus, whenever a decision is taken to revise the scope of fiscal incentives to infrastructure by amending section 80-1A, necessary amendments are required to be made in sections 10(23G) as well.*
>
> *17.3 Thus, as a measure of rationalisation, Finance Act, 2001, has amended section 10(23G) so as to provide that income by way of interest, dividend or long term capital gains of an infrastructure capital fund or an infrastructure capital company, from investments in any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or in a housing project referred to in sub-section (10) of section 80-18 will not be included in computing the total income. This will remove the requirement of consequential amendment in section*

10(23G) as a result of any future change in section Bo-IA regarding infrastructure.

17.4 This amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent assessment years.

[Section 5(g)]

Tax holiday for infrastructure rationalised

47.1 Under the provisions of section Bo-IA, roads, highways, bridges, airports, ports and rail systems are regarded as infrastructure facility and the enterprises engaged in developing or operating and maintaining or developing, operating and maintaining such infrastructure are entitled to a tax holiday for five years and a deduction of 30% of profits for the next five years. This benefit is applicable in respect of such specified infrastructural facility becoming operational on or after 1st April, 1995. The enterprise claiming such benefit has to enter into an agreement with the Central or State Government or a local authority or any other statutory authority, by which the enterprise which develops such facility, has to transfer such facility to the Government or public authority after the stipulated period. In other words, the required condition for availing of this benefit is that transfer under BOT (Build, Own, Transfer) or BOOT (Build, Own, Operate and Transfer) schemes has to be met.

47.2 Investments in infrastructure have to compete with investment in other sectors to be attractive. There is, in particular, a need to encourage investment in the area of surface transport, water supply, water treatment system, irrigation project, sanitation and sewerage system or solid waste management systems. With this in view, section Bo-IA has been amended to relax the existing two tier benefit to provide a ten year tax holiday. Keeping in view, their capital intensive nature, the higher allowances of depreciation in the initial years to such enterprises and the need for improved cash flows, an infrastructure facility in the nature of a road (including a toll road), bridge, rail system, highway project, water supply project, sanitation, sewerage and solid waste management system shall be allowed a ten year tax holiday in place of a two-tier tax holiday. Such an enterprise may avail of the tax holiday consecutively for any ten years out of twenty years beginning from the year in which the undertaking begins operating the infrastructure facility.

47.3 In the case of other infrastructure, namely, for airport, port, inland port and inland waterways, section Bo-IA has been further amended to relax the existing two tier fiscal incentive. Instead, an

identical ten year tax holiday may be availed of in a block of initial fifteen years.

47.4 The condition that such infrastructure facility shall be transferred to the Central Government, State Government or local authority has also been removed. However, the agreement with such authorities for creation of such infrastructure will have to be entered into.

47.5 Under sub-section (B) of section Bo-IA, where any goods are transferred for a consideration to any other business of the assessee, the consideration should correspond to the market value of such goods. As in certain cases, the transfer may relate to services, the provision has been accordingly amended to clarify that this would include services. Such services may include marketable services of operation and maintenance (O&M) in case of infrastructure facilities, marketable services for distribution of electricity and specified marketable services in telecom. Instead of the words "industrial undertaking" occurring in section 8O-IA, the word "undertaking" has also been substituted in the provision for the same reason.

47.6 These amendments will take effect from the 1st day of April, 2002, and will, apply in relation to the assessment years 2002-03 and subsequent years.

On reading the above section and the notes on c1auses/CBOT Circular it is very clear ~ that with effect from 1-4-2002 " the enterprises engaged in developing or operating and maintaining or developing, operating and maintaining such infrastructure are entitled to a tax holiday. Earlier to the above substitution there was no 'or' between the word M developing, (ii) maintaining and operating or (iii) developing, maintaining and operating, on entering into an agreement with Government would be eligible for deduction under section 801A."

9. From the above, he submitted that the enterprises engaged in developing or operating and maintaining or developing, operating and maintaining such infrastructure are entitled to a tax hcoliday. Earlier to the above substitution there was no word 'or' between the word developing, (ii) maintaining and operating or (iii) developing, maintaining and operating, on entering into an agreement with Government would be eligible for deduction under section 801A of the Act. He drew our attention to the decision of

the Mumbai ITAT in the case of ACIT vs. Bharat Udyog Limited (118 ITD 336) wherein held that:-

> *"The amendment in section 80-IA was brought about by the Finance Act, 1995, with effect from 1-4-1996. By virtue of this amendment, the deduction under section 80-IA was provided to any enterprise carrying on the business of developing, maintaining and operating the infrastructure facility. Thus, to be eligible for this deduction, an assessee was required to carry out all the three activities, i.e., (i) to develop, (ii) to maintain and (iii) to operate. After the amendment effected in section 80-IA by the Finance Act, 1999 with effect from 1-4-2000, the deduction under section 80-IA(4) became available to any enterprise carrying on the business of (i) developing or (ii) maintaining and operating, or (iii) developing, maintaining and operating any infrastructure facility. [Para 7]*
>
> *Sub-clause (c) of section 80-IA(4) is applicable to an enterprise which is engaged in 'operating and maintaining' the infrastructure facility on or after 1-4-1995. It is not applicable to the case of an enterprise, which is engaged in mere 'development' of infrastructure facility and not its 'operation' and 'maintenance'. Therefore, the question of 'operating and maintaining' of infrastructure facility by such an enterprise before or after any cut off date cannot arise. When the Act provides for deduction under section 80-IA(4), undisputedly for an enterprise, which is only 'developing' the infrastructure facility, unaccompanied by 'operating and maintaining' thereof by such entity, there cannot be any question of providing a condition for such an enterprise to start operating and maintaining the infrastructure facility on or after 1-4-1995. Since the assessee was only a developer of the infrastructure project and it was not maintaining and operating the infrastructure facility, sub-clause (c) of sub-section (4) of section 80-IA was not applicable. [Para8]*
>
> *Further, from the assessment year 2000-01, deduction under section 80-IA(4) is available if the assessee carries on the business of any one of the above-mentioned three types of activities. When an assessee is only developing an infrastructure facility/project and is not maintaining nor operating it, obviously such an*

assessee would be paid for the cost incurred by it; otherwise, how would the person, who develops the infrastructure facility project, realize its cost? If the infrastructure facility, just after its development, is transferred to the Government, naturally the cost would be paid by the Government. If a person who only develops the infrastructure facility is not paid by the Government, the entire cost of development would be a loss in the hands of the developer as he is not operating the infrastructure facility. When the Legislature has provided that the income of the developer of the infrastructure project would be eligible for deduction, it presupposes that there can be income to developer, i.e., to the person who is carrying on the activity of only developing infrastructure facility. Obvious, as it is, a developer would have income only if he is paid for development of infrastructural facility, for the simple reason that he is not having the right/ authorization to operate the infrastructure facility and to collect toll there from and has no other source of recoupment of his cost of development. Therefore, the business activity of the nature of build and transfer also falls within eligible construction activity, that is, activity eligible for deduction under section 80-IA inasmuch as mere 'development' as such and unassociated/ un-accompanied with 'operate' and 'maintenance' also falls within such business activity as is eligible for deduction under section 80-IA. Therefore, merely because the assessee was paid by the Government, for development work, it could not be denied deduction under section 80-IA (4). A person, who enters into a contract with another person, would be a contractor no doubt; and the assessee having entered into an agreement with the Government agencies for development of the infrastructure projects, was obviously a contractor; but that did not derogate the assessee from being a developer as well. The term 'contractor' is not essentially contradictory to the term 'developer'. On the other hand, rather section 80-IA(4) itself provides that the assessee should develop the infrastructure facility as per the agreement with the Central Government, State Government or a local authority. So, entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to the one being a developer. Therefore, merely because, in the agreement for development of infrastructure facility, assessee was referred to as contractor or because some basic specifications were

laid down, it did not detract the assessee from the position of being a developer; nor would it debar the assessee from claiming deduction under section 80-IA(4).[Para9]

Therefore, the assessee, who was only engaged in developing the infrastructural facility, i.e., road, and not engaged in the 'operating and maintaining' the said facility, was entitled to the benefits of the deduction under section 80-IA(4). The provisions of sub-clause (c) of clause (i) of section 80-IA (4) were inapplicable to the instant case. Hence, the order of the Commissioner (Appeals) was correct. [Para 13]"

10. Further, he drew our attention to the decision of Bombay High Court in the case of CIT vs. Glenmark Pharmaceuticals Limited (319 ITR 199), the relevant extract of the head note reads as under:-

"By the Finance Act of 2009, which substituted the provisions of section 194C, the expression 'work' has now been defined in clause (iv) of the substituted Explanation. Clauses (a) to (d) are the same as clause (a) to (d) of the erstwhile Explanation III. However, the Explanation (e) has now been inserted. [Para 26]

What has weighed in the introduction of clause (e) of the Explanation was ongoing litigation on the question as to whether TDS was deductible on outsourcing contracts. Clause (e) was introduced "to bring clarity on this issue" or, in other words, to remove the ambiguity on the question. Clause (e) as introduced contains a positive affirmation that the expression 'work' will cover manufacturing or supplying a product, according to the requirement or specification of a customer, by using material purchased from such a customer. Clause (e) has placed the position beyond doubt by incorporating language to the effect that the expression 'work' shall not include manufacture or supply of a product according to the requirement or specification of a customer by using material which is purchased from a person other than such customer. In other words, the circumstance that the requirements or specifications are provided by the purchaser is not regarded by the statute as being dispositive of the question as to

whether a contract constitutes a contract of work or sale. What is of significance is whether material has been purchased from the customer, who orders the product. When the material is purchased from the customer who orders the products, it constitutes a contract of work, while, on the other hand, where the manufacturer has sourced the material from a person other than the customer, it would constitute a sale. What is significant is that in using the words which clause (e) uses in the Explanation, the Parliament has taken note of the position that was reflected in the circulars issued by the CBDT since 29-5-1972. The judgment of the Supreme Court in Associated Cement Co. Ltd. v. CIT [1993J 201 ITR 435/ 67 Taxman 346 gave an expansive definition to the expression 'work' and rejected the attempt of the assessee in that case to restrict the expression 'work' to works contract. Both before and after the judgment of the Supreme Court, the expansive definition of the expression 'work' co-existed with the revenue's understanding that a contract for sale would not be within the purview of section 194C. The revenue always understood section 194C to mean that, though a product or thing is manufactured to the specifications of a customer, the agreement would constitute a contract for sale, if (i) the property in the article or thing passes to the customer upon the delivery; and (ii) the material that was required was not sourced from the customer/ purchaser, but was independently obtained by the manufacturer from a person other than the customer. The rationale for this was that where a customer provides the material, what the manufacturer does is to convert the material into a product desired by the customer and ownership of the material being that of the customer, the contract essentially involves work of labour and not of a sale. The Parliament recognized the distinction which held the field, both administratively in the form of circulars of the CBDT and judicially in the judgments of the several High Courts. Consequently, the principles underlying the applicability of section 194C as construed administratively and judicially in decided cases, find statutory recognition in the Explanation. The Explanation, therefore, as the Memorandum explaining the clauses of the Finance Bill, 2009 states, was in the nature of a clarification. Where an explanatory provision is brought to remove an ambiguity or to clear a doubt, it is reflective of the law as it has always stood in the past, whereas, in the instant case, an

Explanation is introduced statutorily to adopt an understanding of the law-both in the form of the circulars of the CBDT and in judicial decision. The Parliament must be regarded as having intended to affirm that intent. In the instant case, the intent has held the field for over three decades. [Para 28)

The fact that the specifications were provided by the assessee to the manufacturer/supplier would make no difference to the legal position. The agreement in the instant case was on a principal-to-principal basis. The manufacturer had his own establishment where the product was manufactured. The material required in the manufacture of the article or thing was obtained by the manufacturer from a person other than the assessee. The property in the articles passed upon the delivery of the product manufactured. Until delivery, the assessee had no title to the goods. The goods had an identifiable existence prior to delivery. [Para 31)

The reason that a specification or requirement is enunciated by the assessee constitutes a matter of business expediency. A purchaser who desires to get the product, which he intends to sell under his brand name, or trademark, manufactured from a third party would be interested in ensuring the quality of the product. The trademark has associated with it an assurance of the quality of the goods which are marketed and are traceable to the origin of the goods. Associated with the trademark is the goodwill and reputation which is associated with the mark. This is particularly so in the case of a pharmaceutical product where the ultimate consumer is legitimately entitled to ensure that her health is not prejudiced by the consumption of a product not meeting prescribed standards. The owner of a mark, therefore, introduces specifications to ensure that the product meets the standards justifiably associated with the reputation of the mark. The specification ensures the observance of standards. Similarly, a clause relating to exclusivity is not inconsistent with a transaction of sale. Here again much depends upon the nature of the product. Restrictive covenants of this kind are intended to protect the intellectual and other property rights of a party which markets its goods by requiring a manufacturer to observe norms of specifications and exclusivity.

The law is, therefore, consistent with the transaction being regarded as a transaction of sale, provided that the requirements of a contract of sale are met. They were net in the instant case. The contract entered into by the assessee was not a contract for carrying on any work within the meaning of section 194C. [Para 32]"

11. Further, he submitted that in the case of the assessee irrigation agreements entered with the State Government and not part of the work. The site has been handed over to the assessee for carrying on the work as per the requirements of the Government and also operating system for a certain period mentioned therein and completed the project at the end of the above said period and as such the assessee is a developer and also operating the system for a certain period. Accordingly, the assessee is entitled for deduction under section 80IA of the Act. He submitted that the assessing officer ignored the fact in all the contracts handed over to the assessee for development of the infrastructure facility. In few cases, after operation for certain period, had to re-hand over back the entire site with the infrastructure facility developed to the owner. He drew our attention to the copies of agreement entered with the State Government. He drew our attention to para-5 of the assessment order where the assessing officer noted as follows:-

"5. In view of the aforesaid judicial pronouncements, "it can be held that deduction u/s 80lA cannot be computed in respect those who only built the infrastructure facility but did not began to operate it, since in such cases, the computation provision of sub section (2) of section 8OlA fail. The harmonious construction of section 8OIA(2) and sub-clause (b) of clause (i) of sub-section (4) of section 8OlA with other parts of section 8OlA is that the word 'developer' refer to an enterprise who builds and starts operating the infrastructure facility. The enterprise would be eligible for deduction from the year in which it starts operating the infrastructure facility. Without such operation, he cannot recoup its cost. The other way to recoup its cost is to transfer the facility to another person for certain consideration who in turn will recoup its cost of acquisition by operating it. But in such situation, the deduction will be allowed to the operator only and not to the

mere builder of the facility who never operated it. In case the 'developer' transfers the facility to another enterprise after operating it for few years, the deduction u/s 8OlA will be allowed to the developer till the date of transfer and thereafter it will be availed by the transferee enterprise operating and maintaining such facility for the remaining period out of the period of ten consecutive years. If such interpretation is applied, none of the provisions of section 8OlA would become redundant in any situation."

12. He submitted that the above observation of the assessing officer is factually incorrect as it can be seen from the agreements and contracts the site if handed over back to the employer after development of the entire facility and in few cases after operation and maintenance for a period specified therein. According to the authorised representative of the assessee, the assessee has undertaken the construction of the entire infrastructure facility as envisaged by the respective Central or State Government in the agreements. The assessee has entered into agreement with Central or State Government thereby satisfying the conditions envisaged in section 80IA of the Act. He also submitted that the following observation at paras 7, 7.1 is incorrect which reads as follows:-

"7. The assessee's AR has filed a chart giving the details of all the contracts undertaken during the year in respect of which deduction u/s 8OlA was claimed. It is evident from the chart that some of the agreements have been entered into by the assessee with Government of India undertakings besides state Govt. Departments. 11 cannot therefore be said that the assessee entered into an agreement with a statutory body for development of an infrastructure facility which is a mandatory condition laid down in section 8OlA (4)(i)(b) of the Act. None of the contracts undertaken by the assessee are on BOT/BOOT model. On the perusal of the nature of work done in these contracts, it is evident that none of the projects were conceived, designed and planned by the assessee. In none of the projects, the assessee has undertaken the operation and maintenance of the facilities built. Moreover, the assessee was not given the contract for building the

entire facility. Only construction of part of the project was given to the assessee. These projects were not funded-by the assessee and the entire capital investment-was made by the Government/local authority / statutory body who awarded the contracts to the assessee. Hence it cannot be said that the assessee has entered into these contracts for developing an infrastructure facility in view of my discussion above where I have held that development of an infrastructure facility conceiving, designing, planning, financing, building and operating facility.

7. 1 The Agreements entered by the assessee were for building or constructing the whole or part of the projects in which the entire investment was made by the Government and the assessee was paid on 'running bill to bill' basis. Hence, there was no stipulation in any of the contracts that the facility build will be transferred or handed over back to the owner/employer. Such contracts are not envisaged by the legislature for allowing the benefit of section 8OlA of the Act. Thus, the assessee has, not fulfilled this condition of section 8OlA (4)(i)(b). "

We draw your attention to a sample of the agreement in which the nature of work is "Surveying, design, supply, installation, testing and commissioning lift irrigation system for Ubrani-Amruthapura on turnkey basis consisting of the following: Pumping Machineries, Transformer Sub-Stations, Raising Main, Construction of Delivery Chambers, Jackwell Cum pump House, Transition, Approach Channel, M.S. Manifold Electrical Works, EOT cranes etc., Construction of all C.d. Works, Approach Roads, Deviation Roads, Cleaning and Trimming of Existing Natural Nalla to the required length, Service roads etc., complete. Supply of Spare Parts and/tools including operation of System for two years after the date of completion and commissioning for 2nd stage of Urban-Amruthapura Multipurpose Lift Irrigation Scheme on Turnkey Basis."

13. He drew our attention to all the below mentioned agreements which were carried out by the assessee in these assessment years.

GVPR ENGINEERS LIMITED
STATEMENT SHOWING THE DETAILS FOR CLAIMING DEDUCTION UNDER SECTION 80-IA
F.Y. 2003-04 A.Y. 2004-05 ANDHRA PRADESH STATE

Sl. No.	Name of the Project	Name of the work	Nature of Facility	Agreement entered in connection with work with
1	Electrical Warangal	Distribution System Improvement work under APL-1 Supplementary in Warangal (WC-35)	Power Distribution	Andrew Yule I Co Ltd (A Govt India Undertaking)
2	NTPC Parwad	Construction of Raw Water Reservoir other than live storage area at Simhadri Thermal Power Project for NTPC near Vizag A.P.	Simhadri Thermal Power	Bharat Heavy Electricals Ltd (A Govt. of India Undertaking)
3	SRSP-Huzurabad	Earthwork excavation & forming embankment construction of structures and CC lining from Km. 9.00 to 26-25 (tail-end) of 4F-21IR OF dem. 48 and its minors	Irrigation Project	Superintending Engineer Construction Circle, Huzurabad. A.P.
4	SRSP-FFC 21-22	Earth work excavation and forming embankment from Km. 21.00 to Km 22.00 of FFC from Sri Ram Sagar Project	Irrigation Project	The Executive Engineer, SRSP - FFC Division, No. 2, Mettpally, Karimnagar Dist.
5	KC Canal LCB-01	Earthwork excavation and CC Lining to distributaries of KC Canal including construction of structures from Km. 0.000 to Km. 1`20.190 in Reach - I under LCB - 01	Irrigation Project	Superintending Engineer KCCMP Construction Circle, No. 1, Kurnool A.P.
6	Electrical Nizamabad	Distribution System Improvement works under APL-1 Supplementary in Nizamabad and Adilabad Towns	Electrical Work	
7	Sanga Reddy Road Work	Laying of CC Road over the WBM road in Rajampet locality, Indira Colony, Prashanth Nagar Colony	Road Work	M.C.H. Sanga Reddy, A.P.
8	SRBC-37	Earth work excavation and construction of structures for Micro Network distribution system in Block Nos. XI, XIA, and XII (Package No. XXXVII)	Irrigation Project	The Superintending Engineer, SRBC, Circle, No. 1, Nandyal, Kurnool, A.P.

KARNATAKA STATE

9	Gadag water Supply	Combined Water Supply Scheme to Abadrahalli and 7 Other Villages in Mundargi Taluk of Gadag District	Development of Water Supply System	The Executive Engineer, ZPE Division Gadag, Karnataka.
10	Bhalki Water	Remodelling of Water Supply Distribution System to Gadag Betagiri City	Development of Water Supply System	Engineering Projects (I) Ltd, (A Govt. of India Undertaking)
11	KSCB - Hospet	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Hospet City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore

12	KSCB - Gulbarga	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Gulbarga City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore
13	KSCB - Bidar	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Bidar City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore
14	KSCB - Bellary	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Bellary City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore
15	Karwar	Comprehensive Water supply to Gokarna and 7 other villages in U.K. District in Karnataka	Construction of Sewerage Systems	The Executive Engineer, ZPE Division Karwar, Karnataka.

GVPR ENGINEERS LIMITED
STATEMENT SHOWING THE DETAILS FOR CLAIMING DEDUCTION UNDER SECTION 80-IA
F.Y. 2004-05 A.Y. 2005-06 ANDHRA PRADESH STATE

Sl. .No.	Name of the Project	Name of the work	Nature of Facility	Agreement entered in connection with work with
1	SRSP Huzurabad	Earthwork excavation & forming embankment construction of structures and CC lining from Km. 9.00 to 26-25 (tail-end) of 4F-21IR OF dem. 48 and its minors	Irrigation Project	Superintending Engineer Construction Circle, Huzurabad. A.P.
2	SRSP-FFC 21-22	Earthwork excavation and forming embankment from Km. 21.00 to Km 22.00 of FFC from Sri Ram Sagar Project	Irrigation Project	The Executive Engineer, SRSP - FFC Division, No. 2, Mettpally, Karimnagar Dist.
3	SRBC-38	Earthwork excavation and Construction of Structures for Micro network distribution system for Block 13 & 14 of Packages No. 38	Irrigation Project	The Superintending Engineer SRBC Circle, No. 1, Nandyal, Kurnool, AP
4	KC Canal LCB-01	Earthwork excavation and CC Lining to distributaries of KC Canal including construction of structures from Km. 0.000 to Km. 120.190 in Reach - I under LCB – 01	Irrigation Project	Superintending Engineer KCCMP Construction Circle, No. 1, Kurnool A.P.
5	SRSC FFC 0-7	Construction of CM &D works (8 Nos.) including Earth Work Excavation and forming embankment of canal gaps from Km 0.000 to Km 7.000	Irrigation Project	Superintending Engineer SRSP-Flood Flow Canal Circle, Dharoor Camp, Jagtial
6	Sanga Reddy Road Work	Laying of CC Road over the WBM road in Rajampet locality, Indira Colony, Prashanth Nagar Colony	Road Work	M.C.H. Sanga Reddy, A.P.
7	SRBC-37	Earth work excavation and construction	Irrigation	The Superintending Engineer, SRBC
8	SRBC Pothireddy Padu	Removal of obstruction for the approach at Pothy Reddy Padu Head regulator to receive water	Irrigation Project	The Superintending Engineer, Irrigation Dept., Pothireddypadu, A.P

KARNATAKA STATE

9		Mysore- Bangalore construction of approach road to new road overbridge near Pondavarpura Railway Station	Road Work	The Executive Engineer,, Karnataka
10	Bhalki Water	Construction of connection pipeline jock well cum pump house, Raw Water Raising Mine, Pure water pump house	Development of Water Supply System	The Executive Engineer, Balki, Karnataka
11	KSCB-Hospet	Sum upgradation & development programme under Nirmala Jyothi Scheme in Hospet City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board, Bangalore
12	KSCB-Gulbarga	Sum upgradation & development programme under Nirmala Jyothi Scheme in Gulbarga City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board, Bangalore
13	KSCB-Bidar	Sum upgradation & development programme under Nirmala Jyothi Scheme in Gulbarga City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board, Bangalore
14	KSCB-Bellary	Sum upgradation & development programme under Nirmala Jyothi Scheme in Gulbarga City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board, Bangalore
15	Karwar	Comprehensive water Supply to Gokarna and 7	Development	The Executive Engineer, ZPE Division
16	ROB Yelhanka	Construction of ROB in lieu of at Yelhanka Chickballapur ?Railway station, work for NHAI	Road Work	The Executive Engineer, Yallahanka Karnataka
17	KPCL Bellary	The work of survey design supply testing & fabrication Galvanising erection of commissioning of 33 KV electrical work	Electrical work	Chief General manager, Karnataka Power Corp., Bellary
		Total		

MADHYA PRADESH STATE

18	MP Road Work	Construction/upgradation of rural roads under PMGSY Package NO. MP 2913 District Raison	Road Work	The Project General Manager, M.P.R.D.A., Bhopal

GVPR ENGINEERS LIMITED
STATEMENT SHOWING THE DETAILS FOR CLAIMING DEDUCTION UNDER SECTION 80-IA
F.Y. 2005-06 A.Y. 2006-07 ANDHRA PRADESH STATE

Sl. No.	Name of the Project	Name of the work	Nature of Facility	Agreement entered in connection with work with
1	TGP-EWE&FE of Distributaries in Block No. 20 & 21,22-28 and 29 to 37	Earth Work Excavation of canal and forming banks including construction of structures of the distributor system in Block No-20-21,22-27,28 and 29-37 of T.G.P. Under VBR	Irrigation Project	Superintending Engineer, Telugu Ganga Project Circle, Nandyal
2	Earthwork excavation and forming embankment from Km. 70.00 to Km 86.00 of FFC from Sri Ram Sagar Project	Earth work excavation and forming embankment from Km. 70.00 to Km 86.00 of FFC from Sri Ram Sagar Project	Irrigation Project	Simplex-Subash JV, Kolkata

3	Electrical cable work in Dilsukhnagar & Narayanguda area	Electrical cable work in Dilsukhnagar & Narayanguda area	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)
4	Electrical cable work in Charminar area	Electrical cable work in Charminar area	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)
5	Electrical work in Mahaboob Nagar circle	Electrical cable work in Mahaboob Nagar circle	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)

KARNATAKA STATE

6	Construction of connecting pipe line jack well cum pump house work	Construction of Headworks MS & DI Feeder Line 10-00 Lakhs Litres Capacity RCC OH and Other Allied works Under IWSS to Bhalki Town with the River Karnja as source	Irrigation Project	The Executive Engineer, KUWS & DB, Bidar
7	Electrical work in Bangalore	Shifting of Electrical Utilities including supply of Material / Erection / Testing and commissioning at Bangalore - Mysore state Highway (SH-17)	Electrical Work	The Managing Director, KRDCL, Bangalore
8	Sum up - gradation & development programme under Nirmala Jyothi Scheme in Bidar City	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Bidar City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore
9	Sum up - gradation & development programme under Nirmala Jyothi Scheme in Bellary City	Slum up - gradation & development programme under Nirmala Jyothi Scheme in Gulbarga City	Construction of Sewerage Systems	The Commissioner, Karnataka Slum Clearance Board Bangalore
10	Construction of under drainage work at Bangalore city	Remodelling of Primary Secondary Storm water Drains and Bridges and culverts across storm water drains in Chalgatta Valley	Irrigation Project	The Commissioner, Bangalore Mahanagara Palike, Bangalore
11	Electrical work in Bijapur & Gadag Districts		Electrical Work	The Superintending Engineer, EI, (T & P), Corporate Office, HESCOM, Hubli
12	Electrical work in Bijapur & Gadag Districts	2X5 MC33/11 kv Substation at Chamnal in Shahapur taluk Gulbarga Dist on total turnkey basis supply & Erection & Commissioning	Electrical Work	The Chief Engineer, Elecy., Corporate Office, GESCOM, Gulbarga

GVPR ENGINEERS LIMITED
STATEMENT SHOWING THE DETAILS FOR CLAIMING DEDUCTION UNDER SECTION 80-IA
F.Y. 2006-07 A.Y. 2007-08 ANDHRA PRADESH STATE

Sl. No.	Name of the Project	Name of the work	Nature of Facility	Agreement entered in connection with work with
1	SRSP Huzurabad	Earthwork excavation and forming embankment construction of structures and CC lining from Km. 9.00 to 26-25 (tail -end) of 4f-21IR of DEM.48 and its minors	Irrigation Project	Superintending Engineer Construction Circle., Huzurabad, A.P.
2	SRSC FFC 0-7	Construction of CM & D works (8 Nos.) including Earth Work Excavation and forming embankment of canal gaps from Km 0.000 to Km 7.000	Irrigation Project	Superintending Engineer SRSP-Flood Flow Canal Circle, Dharoor Camp, Jagtial
3	TGP Work	Earthwork excavation of canal and forming banks including construction of structures of the distributor system in Block No-20-21,22-27,28 and 29-37 of T.G.P. Under VBR	Irrigation Project	Superintending Engineer Telugu Ganga Project Circle, Nandyal
4	SRSP FFC21-23	Earthwork excavation and forming embankment from Km 21.00 to Km 23.00 of FFC from Sri Ram Sagar Project minors	Irrigation Project	The Executive Engineer, SRSP-FFC Division, No. 2, Mettpally, Karimnagar Dist
5	SRSP FFC Km 70-86	Earthwork excavation and forming embankment from Km.70.00 to Km. 86.00 of FFC from Sri Ram Sagar Project	Irrigation Project	Simplex-Subash JV, Kolkata
6	Shilparamam	Electrical cable work in Dilsukhnagar & Narayanguda area	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)
7	UG Cable work Charminar	Electrical cable work in Charminar area	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)
8	Electrical work in Mahaboob Nagar	Electrical cable work in Mahaboob Nagar circle	Electrical Work	Chief General Manager (Operations, APCPDCL, Hyderabad)

KARNATAKA STATE

9	Kudupu Work	Construction of Head works MS & DI Feeder Line 10-00 Lakhs Litres Capacity RCC OH and Other Allied works Under IWSS to Bhalki Town with the River Karnaja as source	Irrigation Project	The Executive Engineer, KUWS & DB, Bidar.
10	ROB Yelhanka	Construction of ROB in lieu of at Yallahanka Chickballapur Railway station, work for NHAI	Road Work	The Executive Engineer, Yallahanka, Karnataka

11	BMP Works	Remodelling of Primary Secondary Storm water Drains and Bridges and culverts across storm water drains in Challgatta Valley	Irrigation Project	The Commissioner, Bangalore Mahanagara Palike, Bangalore
12	HESCOM Bijapur & Gadag	2X5 MVA 33/11 KV Substation at Chamnal in Shahapur taluk Hubli Dist on total turnkey basis supply & Erection & Commissioning	Electrical Work	The Superintending Engineer, EI, (T & P) Corporate Office, HESCOM, Hubli
13	GESCOM-Bijapur & Gadag	2X5 MVA 33/11 KV Substation at Chamnal in Shahapur taluk Hubli Dist on total turnkey basis supply & Erection & Commissioning	Electrical Work	The Chief Engineer, Elecy., Corporate Office, GESCOM, Gulbarga

14. He submitted that out of the above agreements the following mentioned contracts are entitled for deduction u/s 80IA:-

AY 2004-05

Sl. No. of Eligible Products	Assessment year 2004-05	Clause under which exemption is claimed	Paper Book Page No.
2	NTPC Parwad-BHEL	22.1.period of maintenance 12 months	12
3			
4	SRSP FFC 21-22KM	Handing over of site and defect liability period of 24 months	47
5	KC Canal	21. position of site g) defects liability period shall be 24 months	80-83
8	SRBC-37	21. possession of site, 58. Operation and maintenance manuals	26, 27
15	KARWAR	14. Maintenance period for contract work	18 & 60

AY 2005-06

Sl. No. of Eligible Products	Assessment year 2004-05	Clause under which exemption is claimed	Paper Book Page No.
1			
2	SRSP FFC-21-23	Handing over of site and defect liability period of 24 months	51
4	KC Canal	21. possession of site g.) defects liability period shall be 24 months	80-83
5	SRSC FFC -07	Handing over of site and defect liability period of 24 months	54
3	SRBC-38	21, Possession of site, 58, operation and maintenance manuals	22
7	SRBC-37	21, Possession of site, 58, operation and maintenance manuals	26,27

AY 2006-07

Sl. No. of Eligible Products	Assessment year 2004-05	Clause under which exemption is claimed	Paper Book Page No.
1	TGP EWE & FE	9.1 The defect liability period shall be 2 years (maintenance period)	29
2	FFC from Sri Ram Sagar Project	(c)Maintenance of the project for 24 months, Appendix CW, OM Scope of service-operation & maintenance of the system	82-86
10	Const. Drainage, BNGL	1.1. Maintenance period shall be 24 months, Article-8 Defects liability period and maintenance period.	34 & 35

AY 2007-08

Sl. No. of Eligible Products	Assessment year 2004-05	Clause under which exemption is claimed	Paper Book Page No.
1	SRSP- Huzurabad	Irrigation project	13
2	SRSC FFC0-7	Handing over of site and defect liability period of 24 months	54
3	TGP Work	9.1 the defect liability period shall be 2 years (maintenance period)	29
4	SRSP FFC 21-23	Handing over of site and defect liability period of 24 months	47
5	FFC from Sri Ram Sagar Project	(c) Maintenance of the project for 24 months, Appendix-CW, OM Scope of service-operation & maintenance of the system	82-86
6	BMP Works	1.1. Maintenance period shall be 24 months, Article 8- Defects liability period and maintenance period	34 & 35
7	HESCOM Bijapur & Gadag	2.1.1 Design, engineering, testing, supply, erection and commissioning. 2.2 complete the work and successful testing & commissioning of the transmission lines.	42
8.	GESCOM Bijap[ur & Gadag	2.1.1. Design, engineering, testing, supply, erection and commissioning. 2.2. Complete the work and successful testing & commissioning of the Transmission lines.	42

15. According to the authorised representative, all the contracts of the site which was handed over by the Government to the assessee for development of the infrastructure facility and on completion, in few cases after operation for certain period, the entire site with the infrastructure facility developed to the owner. He submitted that the lower authorities wrongly relied on the order of the Tribunal in the case of Patel Engineering Limited (94 ITD 411) wherein the Tribunal has not considered the

retrospective amendment by Finance Act, 2007. According to the authorised representative, after amendment to section 80IA(4)(i)(b) which reads as " 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 (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility; the word 'it' means undertaking and 'develop' is independent of operating and maintaining or developing, operating and maintaining. For this purpose, he relied on the order of the ITAT, Mumbai larger third Member Bench in the case of B.T. Patil & Sons Belgaum Construction Pvt. Ltd. (126 TTJ (Mumbai) 577; 35 SOT 171, 32 DTR 1. He submitted that the assessee engaged in development of infrastructure facility by way of constructing irrigation canals and irrigation systems. In this connection, he drew our attention to the order of the Tribunal in the case of B.T. Patil & Sons cited supra specifically to paras 36 to 41 which reads as follows:-

> *"36. Here it is important to mention that the Legislature inserted the word 'or' between (i) and (ii) with effect from 1-4-2002, which is applicable to assessment year 2002-03. So with effect from the assessment year 2002-03, not only the enterprise (i) developing, (ii) operating and maintaining the infrastructure facility shall be entitled to deduction, but also the enterprise which is only (i) developing or (ii) operating and maintaining the infrastructure facility. From such year onwards the enterprise which only develops the infrastructure facility and thereafter transfers it to someone else for operating and maintaining on behalf of transferee shall also be covered for the purposes of granting benefit. The difference in the situation between assessment year 2002-03 onwards and prior two years is that whereas the operation and maintenance of the infrastructure facility on behalf of the enterprise developing is necessary in the former period, but in the later period, the operation and maintenance shall be on behalf of the transferee enterprise itself. Since in the years in question, the transfer of the enterprise for operation and maintenance has necessarily to be on*

behalf of the enterprise developing the infrastructure facility, and for the time being assuming without admitting the contention of the Id. AR that the assessee is developer of infrastructure facility, it does not satisfy the other condition of its transfer for operating and maintaining on its behalf for the obvious reason that there is no transfer at all of any infrastructure facility from the assessee, much less for operating and maintaining on its behalf 37. Be that as it may it remains to be examined as to whether the assessee can be called as 'developer' within the meaning of section 80IA(4). The learned counsel submitted that the work done by the assessee made it a developer entitled to deduction. Shri Vijay Mehta, the learned counsel for the intervener contended that the "works contract" has not been defined in the context of section 8o-IA and, hence, in the absence of assignment of any definition by the statute, its meaning should be understood in the common parlance. According to him, a developer is a person who develops the facility and such person mayor may not be a contractor. On the other hand, a contractor is stated to be a legal term whose rights and duties vis-a-vis contract are determined by way of legal document called the contract. He cited an example that if a contract to construct a highway from Mumbai to Delhi is given to a person he is contractor as well as developer. As against that a person who has been given a contract for painting or beautification is merely a contractor but not a developer. According to him, while developing a project, a developer has to make technological inputs, entrepreneurial inputs, etc. Besides, there is financial involvement in terms of deployment of man and machine as well as bank guarantees. He went on to explain that the developer undertakes the risk and reward of the project and is accountable to the authorities for the development work carried out by him. In his opinion, the assessee in the present case cannot be characterized anything other than a developer. 38. In the circumstance, the learned Departmental Representative submitted that the construction is a minor part of the development. According to him, development includes the works to be done relating to the planning, designing, engineering and financing, etc., of the project. He relied on the judgment of the Hon'ble Supreme Court in the case of Hindustan Aeronautics Ltd. v. State of Orissa [1984) 55 STC 327 in which it has been observed that in a contract for work, the person producing has no property

in the thing produced as a whole, even if part or whole of the material used by him may have been his property earlier. He also relied on another judgment of the Hon'ble Supreme Court in the case of Tamil Nadu v. Anandam Vishwanathan [1989) 1 SCC 613 in which it was held that the nature of contract can be found only when the intention of parties is found out. The fact that in the execution of the works contract some material are used and the property in the goods so used passes to the other party, the contractor undertaking the work will not necessarily be deemed, on that account, to sell the material. It was, therefore, argued that the developer is a person who brings in additional resources by way of investment and technical expertise for developing the infrastructure facilities. Since the assessee had simply done a part of work of civil construction relating to the infrastructure facility, he stated that it is not eligible for deduction.

39. We find it as an undisputed position that the words 'developer' and 'contractor' have not been defined in or for the purposes of section 80-1A. The primary question which arises is that how to find out the meaning of a word or an expression which is not defined in the Act. It is a settled legal position that ordinarily the meaning or definition of a word used in one statute cannot per se be imported into another as has been held by the Hon'ble Supreme Court in the case of Union of India v. R.C. Jain [1981]2 SCC 308. Therefore, the meaning of the words 'developer' and 'contractor', as put forth before us by the rival parties from other legislations, be they State or Central enactments, cannot be automatically applied in the present context. In order to ascertain the meaning of a word not defined in the Act, a useful reference can be made to the General Clauses Act, 1897. If a particular word is not defined in the relevant statute but has been defined in the General Clauses Act, such definition throws ample light for guidance and adoption in the former enactment. According to section 3 of the General Clauses Act, the definitions given in this Act shall have applicability in all the Central Acts unless a contrary definition is provided of a particular word or expression. On scanning section 3 of the General Clauses Act, we observe that neither the word 'contractor' nor 'developer' has been defined therein. Thus, the General Clauses Act is also of no assistance in this regard. Going ahead, when these words are neither defined in the Income-tax

Act, 1961 nor in the General Clauses Act, the next question is that where from to find the meaning of such words. There is no need to wander here and there in search of answer which has been aptly given by the Hon'ble jurisdictional High Court in the case of Abdulgafar A. Nadiadwala v. Asstt. CIT [2004] 267 ITR 4881 (Bom.) wherein the Hon'ble High Court was looking into the meaning of the words 'goods' and 'merchandise', which are not defined under section 80HHC in the context of Income-tax Act, 1961. The Hon'ble High Court held that : "it is well-settled that in the absence of there being anything contrary to the context, the language of a statute should be interpreted according to the plain dictionary meaning of the terms used therein". Similar view has been expressed by the Hon'ble Supreme Court in the case of CWT v. Officer-In-Charge (Court of Wards) [1976]105 ITR 133 in which it was held that the ordinary dictionary meaning of a word cannot be disregarded.

40. Coming back to our point of ascertaining the meaning of the words 'contractor' as well as 'developer', which have neither been defined in the Act nor in the General Clauses Act, we fall upon Oxford Advanced Learner's Dictionary to find out their meaning. According to this dictionary, . "developer" is a person or company that designs and creates new products, whereas "contractor" is a person or a company that has a contract to do work or provides services or goods to another. The New Shorter Oxford Dictionary defines the word "contractor" as : person who enters into a contract or agreement. Now chiefly spec. a person or firm that undertakes work by contract, esp. for building to specified plans". In the light of the meaning ascribed to these words by the dictionaries, it is observed that the developer is a person who designs and creates new products. He is the one who conceives the project. He may execute the entire project himself or assign some parts of it to others. On the contrary, the contractor is the one who is assigned a particular job to be accomplished on the behalf of the developer. His duty is to translate such design into reality. There may, in certain circumstances, be overlapping in the work of developer and contractor, but the line of demarcation between the two is thick and unbreachable. When the person acting as developer, who designs the project, also executes the construction work, he works in the capacity of contractor too. But when he assigns the job

of construction to someone else, he remains the developer simpliciter, whereas the person to whom the job of construction is assigned, becomes the contractor. The role of developer is much larger than that of the contractor. It is no doubt true that in certain circumstances, a developer may also do the work of a contractor but a mere contractor per se can never be called as a developer, who undertakes to do work according to the pre-decided plan.

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41. Further it is relevant to note that the word "developing" used in sub-section (4) is with reference to "infrastructure facility". When we further peruse the meaning of the word "infrastructure facility" as per Explanation, it is found to have been defined exhaustively by referring to a road project, airport, port, etc., a highway project, a water supply project and irrigation project, etc. Therefore, the use of word "developing" in juxta-position to infrastructure facility indicates that what is eligible for deduction under this sub-section is the profits and gains derived from the development of infrastructure facility and not something de hors it. So in order to be eligible for deduction the development should be that of the infrastructure facility as a whole and not a particular part of it, as has been contended by the Id. AR. It may be possible that some part of development work is assigned by the developer to some contractor for doing it on his behalf. That will not put the doer of such work into the shoes of a developer.

16. Further, he relied on the judgment of Bombay High Court in the case of ABG Heavy Industries Limited 322 ITR 323 (Bom) wherein held that:

"Section 80-IA of the Income-tax Act, 1961, was introduced to provide an impetus to the growth of infrastructure in the nation. A sound infrastructure is a sine qua non for economic development. Absence of infrastructure poses significant barriers to growth and development. A model which relied exclusively on the provision of basic infrastructure by the State was found to be deficient. Section 80-lA was an instrument of legislative policy, conceived with a view to provide an impetus to private sector participation in infrastructural projects. Contemporaneously, with the provisions which were made by Parliament in section 80-IA of the Act,

explanatory circulars issued in an administrative capacity by the Central Board of Direct Taxes held the field. These circulars gave expression to the scope and ambit of the concession was provided by section 80-lA. The evolution of section 80-lA would show a progressive liberalisation of the legislative scheme, in the interests of aiding the growth of infrastructure. The administrative circulars issued by the Central Board of Direct Taxes in implementation of section 80-IA similarly liberalised the scheme, consistent with the Act.

The expression "development" has not been artificially defined for the purposes of section 80-lA of the Act and must, therefore, receive its ordinary and natural meaning. An assessee does not have to develop the entire port in order to qualify for a deduction under section 80-lA. Parliament did not legislate a condition impossible of compliance. A port is defined to be an infrastructure facility and the circular of the Board clarified that a structure for loading, unloading, storage, etc., at a port would qualify for deduction under section 80 IA. Parliament amended the provision of section 80 IA of the Act so as to clarify that in order to avail of a deduction, the assessee (i) develop,(ii) operate and maintain or (ii) develop, operate and maintain the facility. The condition as regards development, operation and maintenance of an infrastructure facility was contemporaneously construed by the authorities at all material times, to cover within its purview the development of an infrastructure facility under a scheme by which an enterprise would build, own, lease and eventually transfer the facility. This was perhaps a practical realisation of the fact that a developer may not possess the wherewithal, expertise or resources to operate a facility, once constructed. Parliament eventually stepped in to clarify that it was not invariably necessary for a developer to operate and maintain the facility. In Bajaj Tempo v. CIT [1992]196 ITR188, the Supreme Court emphasized that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. In the present case, the administrative circulars issued Central Board of Direct Taxes proceeded on that basis by adopting a liberal view of the scope and ambit of the provisions of section 80-IA of the Act. Parliamentary intervention endorsed the administrative practice. After section 80-IA was

amended by the Finance Act of 2001, the section applies to an enterprise carrying on the business of (i) developing; or (ii) operating; maintaining; or (iii) developing, operating and maintaining any infrastructure facility which fulfils certain conditions. Those conditions are ownership of the enterprise by a company registered in India or by a consortium (ii) an agreement with the Central or State Government, local authority of statutory body; and (iii) the start of operation and maintenance of infrastructure facility on or after April 1, 1995. The requirement that the operation and maintenance of the infrastructure facility should commence after April 1, 1995 has to be harmoniously construed with the main provision under which a deduction is available to an assessee who develops; or 'operates and maintains; or develops, operates and maintains an infrastructure facility. Unless both the provisions are harmoniously construed, the object intent underlying the amendment of the provision by the Finance Act of 2001 would be defeated. A harmonious reading of the provision in its entirety would lead to the conclusion that the deduction is available to an enterprise which (i) develops; or (ii) operates and maintains; or (iii) develops maintains and operates that infrastructure facility. However, the commencement of the operation and maintenance of the infrastructure facility should be after April 1, 1995.

The assessee, in terms of the policy of the Government of India to encourage private sector participation in the development of infrastructure, bid for and was awarded a contract for leasing of container handling cranes at the Jawaharlal Nehru Port Trust (JNPT). In pursuance of the contract, the assessee deployed rail mounted quay side cranes, rail mounted gantry cranes and rubber tired gantry cranes at the container handling terminal of the JNPT. JNPT had a dedicated container handling terminal. According to the assessee, the only activities of the terminal consisted of loading, unloading and storage of containers. Under contracts dated September 2, 1994 and October 16, 1995, JNPT accepted the bid submitted by the assessee for supply, installation, testing, commissioning and maintenance of the cranes. By the terms of the agreement, JNPT agreed to pay lease charges in a total sum of Rs. 215.50 crores over a period of ten years. The contract envisaged two options. Under the first option, operation and maintenance was to be carried out by the assessee.

Under the second option only maintenance was to be carried out by the assessee. Under the contracts, JNPT reserved the right to exercise the option to request the assessee to carry out both operation and maintenance during the lease period or to carry out only maintenance while operation was done by JNPT. The contracts stipulated, inter alia, the submission of a performance guarantee bond representing 10 per cent of the average annual contract value computed with reference both to maintenance and operation. The assessee assumed the responsibility of making the equipment available for operation for a minimum number of days as stipulated in the contract and became liable to pay liquidated damages for non-availability of the equipment after commissioning. After the expiry of the lease period of ten years, the assessee was liable to hand over the equipment to JNPT free of cost. Under the contract the assessee furnished an indemnity to JNPT towards damages that may be sustained to the equipment or to any property of the port trust or to the lives persons or properties of others. The assessee assumed other contractual obligations including amongst them, the liability to insure the equipment, to indemnify JNPT towards the claims of workers' compensation and for compliance with labour legislation. The assessee claimed special deduction under sec. 80-IA. The Assessing Officer rejected the claim but the Commissioner (A)) and Tribunal allowed it. On appeal to the High Court:

Held, dismissing the appeal, that on May 31, 2004, JNPT issued a certificate confirming the award of contracts to the assessee on September 2, 1994 and October, 16, 1995 for supply, installation, testing, commissioning and maintenance of container handling equipment on lease for a period of ten years for loading and unloading of containers at the port and that the cranes that were to be supplied by the assessee formed an integral part of the port. JNPT clarified that the contracts had been executed under the BOLT scheme and in accordance with its directions; the cranes would be transferred to the port trust at no cost on the expiry of a period of ten years of the commencement of the contract. The obligations which had been assumed by the assessee under the terms of the contract were obligations involving the development of an infrastructure facility. Section 80-IA of the Act essentially contemplated a deduction in a situation

where an enterprise carried on the business of developing, maintaining and operating an infrastructure facility. A port was defined to be included within the purview of the expression "infrastructure facility". The obligations which the assessee assumed under the terms of the contract were not merely for supply and installation of the cranes, but involved a continuous obligation right from the supply of the cranes to installation, testing, commissioning, operation and maintenance of the cranes for a term of ten years after which the cranes were to vest in JNPT free of cost. An assessee did not have to develop the entire port in order to qualify for a deduction under section 80-IA. The condition of a certificate from the port authority was fulfilled and JNPT certified that the facility provided by the assessee was an integral part of the port. The assessee developed the facility on a BOLT basis under the contract with JNPT. On the fulfilment of the lease of ten years, there was a vesting in the JNPT free of cost. The finding that the assessee had developed the infrastructure facility and that it was engaged in operating the cranes was, therefore, based on the material on record. The fact that the assessee was also maintaining the cranes was not disputed. The facility was commenced after April 1, 1995. The assessee was entitled to the special deduction under section 80-IA".

16.1 The learned counsel for the assessee placed reliance on two decisions- Mumbai High Court in the case of CIT vs. ABG Heavy industries Limited 322 ITR 323 and ITAT Pune Bench in the case of Laxmi Civil Engineering Pvt. Ltd., vs. Addl. CIT Kolhapur (unreported/ITA No.766/Pn/09 dated 8-6-2011). It was urged by the learned authorised representative that these decisions supported the proposition that (i) the ITAT's decision in the case of B.T. Patil & Sons, Larger Bench (Mumbai) reported in 126 TTJ 577 is no longer good law, and (ii) the distinction between developer and contractor is no longer relevant in the context of changed law explained by the Mumbai High Court in the case of ABG Heavy Industries (supra) and followed within its jurisdiction by the Pune Bench of the ITAT in the case of Laxmi Civil Engg. (supra).

17. On the other hand, the learned departmental representative submitted that the meaning of the word "developer" and the eligibility of the business to claim deduction meant for 'development of infrastructural facilities' within the meaning of section 80IA has to be seen in the context of the genesis and legislative history of the section as held by the Supreme Court in the case of CIT vs. N.C. Buddhiraja (204 ITR 412,433) the provision as introduced by the Finance Act, 1991 as amended by Finance Act, 1996, Finance Act, 1999, Finance Act, 2001, up to Finance Act 2007 and Finance Act, 2009 and as explained by Circular 794 dated 9-8-2000 Circular 779 dated 14-9-1999 (240 ITR st. 32), Circular 794 dated 9-8-2000, Circular 779 dated 14-98-1999 (240 ITR st. 32), Circular 794 dated 19-8-2000, Circular 14/2001 (252 ITR st. 98) and Circular 3/2008 dated 12-03-2008 (168 Taxman st. 12,54) brings out the objectives of the statute and expectations of the law-makers in bringing the enactment. The statutory provisions as would be apparent from the Circulars and Explanatory Notes referred to herein-above seek to incorporate a quid pro quo between introduction of investment and entrepreneurial resources from the private sector and a tax deduction from the government to enable recoupment of expenditure incurred. The BOT/BOOT models seek to augment infrastructural assets in addition to governmental spending and not simply feed on government expenditure. The deduction under section 80IA is, therefore, available to the former, and not to the latter forms of business. The deduction claimed under section 80IA of the Act as prescribed in sub-section (1) is "in accordance with and subject to the provisions of this section...." in sub section (2), it is stated that the deduction is available for the specified number of years "brining from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication services or..." it is

clear therefore that the deduction is inextricably connected to the commencement of operations of the infrastructure facility. It is immediately apparent that the facility has to be conceived of in its totality because part of the infrastructure facility has not existence independent of the whole. A certain number of kilometres of a highway or irrigation canal has no existence by itself, and is incapable of becoming operational without reference to the rest of the project, of which it is only a part. It is evident from the enclosures that the assessee undertook to execute the work as per agreed specifications, at rates agreed upon, subject to maintenance, within a period of 24 months of commencement.

18. The subsequent parts of the paper book details in the rate analysis, Bill of quantities etc., make it clear that the assessee had no autonomy in matters of design and specification which completely vested with the employer. The only lawful entitlement of the assessee was to be paid for the measurement of work completed at rates agreed upon. The partial and sectional nature of the proposed work is immediately clear from this notice and it is also apparent from this that the section of the road proposed for improvement has no independent existence capable of satisfying the requirement of section 80 IA (2). Therefore, this project is incapable of commencement of operations by itself, or to qualify the larger infrastructure facility of which it is a part.

19. The DR submitted that the contractor was granted mobilisation advance as well as interest-free advance for machinery purchase, should be required them and it would be readily apparent from the agreement that there is no element of entrepreneurial initiative or financial participation of the contractor in this kind of a project The successful bidder merely executes a Government contract and gets paid for it at mutually

agreed rates and the nature of responsibilities assumed under the other contracts as per agreements included in the paper book are similar. It is further stated that during the hearing, the authorised representative of the assessee was at pains to emphasise that the assessee undertook maintenance work and was hence it is to be treated as a developer. However, it is clear from the document as furnished in the paper book that the maintenance function was actually remedying of defects for a prescribed period. No separate charges have been collected and this cannot be seen as a maintenance function.

20. On these facts, having regard to the responsibilities assumed under the agreement, the assessee cannot be seen as a developer, instead he plays the role of an executor/contractor. Be that as it may, it was urged by the departmental representative in the reply that the issue whether the assessee was a developer for the purposes of section 80IA after the changes in law w.e.f. 1-4-2002 is not material for adjudication of the grounds in the impugned appellate orders. This is because in so far as the contracts in question are in the nature of works contracts, the explanation inserted below section 80IA (13) with retrospective effect from 1-4-2000 has over-riding influence and debars the assessee's claim. Further it is contended that the introduction of the explanation below section 80 IA(13) in 2007 with retrospective effect from 1-4-2000 puts matters beyond doubt. The law on the subject of application of a retrospective amendment is clear from the special Bench decision of the Tribunal in the case of Aquarius Travels P Ltd. Vs. ITO (111 ITD 53). Such provisions should be applied in pending proceedings, even when they have not been involved earlier. As matters stand, therefore, the most important question for examination on facts is whether the business agreement in question can be termed a works contract or not. If the answer is in affirmative, nothing else matters because the

Explanation takes over. If not, the other nuances such a development/operation etc., and other specified conditions become relevant. Reliance was placed in this regard on the decision of the Mumbai High Court in the case of Glenmark Pharma (324 ITR 199, 207) which digests the case law for ascertainment of whether facts of the agreement would amount to a contract for work or for sale.

21. The ld. DR placed reliance on the decision of jurisdictional High Court in the case of Dr. Mrs. Renuka Datla vs. CIT (240 ITR 463) (AP), that provisions granting exemptions have to be strictly construed. It was held by the Supreme Court in the case of IPCA Laboratory Limited vs. DCIT (SC) 266 ITR 521 that when there is no ambiguity, provisions cannot be interpreted to confer a benefit upon the assessee. The provision is incapable of application to the facts of the assessee's case because the assessee is only an executor of a contract, which is in turn, part of a larger project undertaken by the Government, or its agency. It has been argued in rejoinder by the departmental representative that such reliance is neither correct nor relevant in deciding the issues on hand. In the case of Laxmi Civil Engg. Pvt. Ltd., the argument of the assessee that was accepted by the ITAT, Pune Bench is broadly- the assessee is a contractor, every contractor is a developer as per the Mumbai High Court decision in the case of ABG Heavy Industries and a developer need not operate and maintain the infrastructure facility, as held by the Mumbai High Court in the case of ABG Heavy Industries.

22. The DR submitted that the decision of the Pune Bench of the ITAT in the case of Laxmi Civil Engg. (supra) is of no help in deciding the issues in the impugned appeals for the reason that the terms and conditions of the contracts and the nature of obligations assumed there-under, by the business are not

discussed in the said order. This is the factual fulcrum on which the decision of the ITAT (larger Bench) in B.T. Patil as well as the Mumbai High Court in ABG case was decided. Without such detail, there is no point of comparability between the Pune Bench decision and the other cases. The unanswered questions emerging there-from are –

i) Can we assume that there was a BOLT contract or was it a works contract?

ii) Can we assume that the assessee took ownership control of the asset created?

iii) The circumstances under which the enterprise in ABG Heavy Industries became akin to a developer, and do they obtain in the case of LCE? Such as 10 year ownership; retransfer; assumption of assured responsibility regarding operational readiness, etc., noticed in ABG Heavy Industries are not noticed in the facts of the case as digested by the afore mentioned decision of the Pune Bench of the ITAT in the case of LCE.

iv) The unbundling of conditions of development, operation & maintenance, and development operation and maintenance, in the sense of making them non cumulative by amendment of law effective from 1-4-2002 is not the only relevant issue. The larger issue is whether the assessee is a developer in the first place.

v) In the case of B.T. Patil, the cumulative or non cumulative satisfaction of conditions in section 80IA(4)(i) was never a material fact. This was so not only because the impugned appeals related to pre 1-4-2002 period, but also because the matter was deci9ded on the preliminary issue of whether the assessee was a developer or not in the first place.

vi) Some of the attributes of a developer were discussed in the case of B.T. Patil, none of whom were absent in the case of ABG Heavy Industries.

23. According to the DR, the decision of the Mumbai High Court, though later in time was different in facts that there was no occasion even to refer to the ITAT's decision in the case of B.T. Patil. Therefore, it can be said that the decision of the Mumbai

High Court in the case of ABG Heavy Industries will be binding in its jurisdiction for infrastructure contract cases, only in so far as the facts of the case are compatible. For the same reason, there can be no adverse implication for the precedent value of the B T Patil case. As submitted hereinabove, on immediate and necessary consequence of the retrospective amendment introduced by the Finance Act, 2009 inserting Explanation below section 80 IA(13), is that any business transacted in terms of a works contract stands disqualified from seeking deduction under section 80I(A(4). The decision of the Mumbai High Court in the case of ABG would have no application from this point of view also. Since the agreement in ABG was a BOLT agreement and not a works contract their Lordships had no occasion to consider the Explanation introduced in Finance Act, 2009 with effect from 1-4-2001. Even if it is assumed, hypothetically, that the agreement in ABG was in the nature of a works contract, or that every contractor was a developer, the decision of the Mumbai High Court without considering the Explanation cannot operate to overrule the ITAT's decision in the case of B.T. Patil where the Bench of the Tribunal considered the effect of the explanation and it was explained by the Hyderabad Bench of the Tribunal in the case of Hyderabad Chemicals Supplies Limited (ITA No.352/Hyd/2005 and 6 others appeals dated 21-1-2011, in the context of an apparent conflict between a Special Bench (Ahmedabad) decision of the ITAT and Madras High Court at para-15 on page-8 as follows:-

> *"Further, judgment of High Court though not of the jurisdictional High Court, prevails over an order of the Special Bench even though it is from the jurisdictional Bench of the Tribunal, however, where the judgment of the non jurisdictional High Court, though the only judgment on the point, has been rendered without having been informed about certain statutory provisions that are directly relevant, it is not to be followed."*

24. Without prejudice to the argument that the stand that the Mumbai High Court's order in ABG runs on completely different facts, it is respectfully pointed out that this decision cannot be a binding precedent, in any case, for the above-cited reason also and this issue can be seen in another perspective. There is nothing in the case of ABG Heavy Industries that supports the view that the 'developer' has to e seen de hors the contract and its stipulations. In the case of ABG Heavy Industries the Revenue took the stand that the assessee was not a developer because it was only a supplier of the equipment. This did not find favour because it was held that the nature of the business had to be seen in terms of the obligations assumed under the contract which included not only supply and installation of the cranes but also testing, commitment of operational readiness for a period of ten years on the pain of liquidated damages and eventual re-transfer after such period. In the case of ABG Heavy Industries, the creation of certain standalone parts of the part complex qualified for being termed on infrastructure project because the Board Circular 793 dated 23-6-2000 clarified that part of the project would qualify if so certified by the Port Authorities. The container handling cranes assembly was certified to be an integral part of the Port Complex by the Port Authority. This is contextually very different from parts of the running length of a highway or irrigation canal being executed on a rate contract. The Department's argument that the assessee did not actually operate or maintain the facility in question was not upheld because the benefits of the section were held to be available to BOT/BOLT contracts by CBDT Circulars, which were any way binding on the IT authorities. In the case of the present case, it is not even claimed by the assessee that the work was carried out under a BOT/BOLT contract, or that it was not a works contract. It is further submitted that the distinction

between business of development operation/maintenance and development/operation/maintenance was removed with the change in law effective from 1-4-2002, and that this was explained by the decision of the Mumbai High Court in the case of ABG Heavy Industries is fallacious for the following reasons:

> *"The Mumbai High Court decision was rendered in the context of a BOLT contract, which was in any case clarified by the Board Circular to qualify for the deduction under section 80IA. It was noticed by their Lordships that the subsequent changes in the law effective from 1-4-2002 merely mirrored this liberalised outlook. That is not the same thing as saying that a business in the nature of a works contract qualified for the deduction in spite of not operating/maintaining the facility. The decision of the larger Bench in the case of B.T. Patel was not un-ware of the change in law effective from 1-45-2002 as would be evident from para 36 of the order. The change making the conditions of development/operation/maintenance non cumulative was not relevant since the case related to pre 1-4-2002 period. In the case of B.T. Patel the larger Bench enunciated certain tests to determine whether the business was one of a 'developer' or a mere 'contractor'. The briefly stated facts are as follows:*
>
> *"The distinction between creation of product vs. Rendering of service (para -40), owner vs. Executor of owner's plan with reference to project specification (para-42), vesting of property, subject to retransfer if need be (para 46) and need for interpretation to avoid absurd results (para 50)".*

25. The DR submitted that in view of the terms of the relevant contract, it was possible to give a finding that the business was not one of 'development' per se. Therefore, the changes in law after 1-4-2002 were not even called into play in the case of B.T. Patil. It is further submitted that the Mumbai High Court's decision in the case of ABG Heavy Industries not only runs on different facts, it does not even refer to the case of B T Patil. Furthermore, the Mumbai High Court's stand that the nature of

the business should be seen in the context of the obligations assumed under the contract only complements, not contradicts the larger Bench's distinction between a developer and contractor simpliciter, as noted hereinabove. It would be wrong and therefore to suggest that the case of B.T. Patil has been impliedly over-ruled by the High Court's decision. The departmental representative also places reliance on another decision of the Mumbai Bench of the Tribunal in the case of Indian Hume Pipe Co. Ltd., vs. DCIT ITA No.5172/Mum/2008, dated 29-7-2011 for assessment year 2004-05. This decision pronounced after the Pune Bench decision in the case of Laxmi Civil Engg.. considers the Tribunal decision of B.T. Patil as well as its jurisdictional High Court decision in the case of ABG and goes on to hold that the assessee is not entitled to the deduction under section 80IA (4) in view of the Explanation introduced with retrospective effect.

26. We have considered the elaborate submissions made by both the parties and also perused the materials available on record. We have also gone through all the case laws cited by both the parties. We find that the provisions of Section 80IA (4) of the Act when introduced afresh by the Finance Act, 1999, the provisions under section 80IA (4A) of the Act were deleted from the Act. The deduction available for any enterprise earlier under section 80IA (4A) are also made available under Section 80IA (4) itself. Further, the very fact that the legislature mentioned the words (i) "developing" or (ii) "operating and maintaining" or (iii) "developing, operating and maintaining" clearly indicates that any enterprise which carried on any of these three activities would become eligible for deduction. Therefore, there is no ambiguity in the Income-Tax Act. We find that where an assessee incurred expenditure for purchase of materials himself and executes the development work i.e., carries out the civil construction work, he

will be eligible for tax benefit under section 80 IA of the Act. In contrast to this, a assessee, who enters into a contract with another person including Government or an undertaking or enterprise referred to in Section 80 IA of the Act, for executing works contract, will not be eligible for the tax benefit under section 80 IA of the Act. We find that the word "owned" in sub-clause (a) of clause (1) of sub section (4) of Section 80IA of the Act refer to the enterprise. By reading of the section, it is clears that the enterprises carrying on development of infrastructure development should be owned by the company and not that the infrastructure facility should be owned by a company. The provisions are made applicable to the person to whom such enterprise belongs to is explained in sub-clause (a). Therefore, the word "ownership" is attributable only to the enterprise carrying on the business which would mean that only companies are eligible for deduction under section 80IA (4) and not any other person like individual, HUF, Firm etc.

27. We also find that according to sub-clause (a), clause (i) of sub section (4) of Section 80-IA the word "it" denotes the enterprise carrying on the business. The word "it" cannot be related to the infrastructure facility, particularly in view of the fact that infrastructure facility includes Rail system, Highway project, Water treatment system, Irrigation project, a Port, an Airport or an Inland port which cannot be owned by any one. Even otherwise, the word "it" is used to denote an enterprise. Therefore, there is no requirement that the assessee should have been the owner of the infrastructure facility.

28. The next question is to be answered is whether the assessee is a developer or mere works contractor. The Revenue relied on the amendments brought in by the Finance Act 2007 and 2009 to

mention that the activity undertaken by the assessee is akin to works contract and he is not eligible for deduction under section 80IA (4) of the Act. Whether the assessee is a developer or works contractor is purely depends on the nature of the work undertaken by the assessee. Each of the work undertaken has to be analyzed and a conclusion has to be drawn about the nature of the work undertaken by the assessee. The agreement entered into with the Government or the Government body may be a mere works contract or for development of infrastructure. It is to be seen from the agreements entered into by the assessee with the Government. We find that the Government handed over the possession of the premises of projects to the assessee for the development of infrastructure facility. It is the assessee's responsibility to do all acts till the possession of property is handed over to the Government. The first phase is to take over the existing premises of the projects and thereafter developing the same into infrastructure facility. Secondly, the assessee shall facilitate the people to use the available existing facility even while the process of development is in progress. Any loss to the public caused in the process would be the responsibility of the assessee. The assessee has to develop the infrastructure facility. In the process, all the works are to be executed by the assessee. It may be laying of a drainage system; may be construction of a project; provision of way for the cattle and bullock carts in the village; provision for traffic without any hindrance, the assessee's duty is to develop infrastructure whether it involves construction of a particular item as agreed to in the agreement or not. The agreement is not for a specific work, it is for development of facility as a whole. The assessee is not entrusted with any specific work to be done by the assessee. The material required is to be brought in by the assessee by sticking to the quality and quantity irrespective of the cost of such material. The Government does not provide any

material to the assessee. It provides the works in packages and not as a works contract. The assessee utilizes its funds, its expertise, its employees and takes the responsibility of developing the infrastructure facility. The losses suffered either by the Govt. or the people in the process of such development would be that of the assessee. The assessee hands over the developed infrastructure facility to the Government on completion of the development. Thereafter, the assessee has to undertake maintenance of the said infrastructure for a period of 12 to 24 months. During this period, if any damages are occurred it shall be the responsibility of the assessee. Further, during this period, the entire infrastructure shall have to be maintained by the assessee alone without hindrance to the regular traffic. Therefore, it is clear that from an un-developed area, infrastructure is developed and handed over to the Government and as explained by the CBDT vide its Circular dated 18-05-2010, such activity is eligible for deduction under section 80IA (4) of the Act. This cannot be considered as a mere works contract but has to be considered as a development of infrastructure facility. Therefore, the assessee is a developer and not a works contractor as presumed by the Revenue. The circular issued by the Board, relied on by learned counsel for the assessee, clearly indicate that the assessee is eligible for deduction under section 80IA (4) of the Act. The department is not correct in holding that the assessee is a mere contractor of the work and not a developer.

29. We also find that as per the provisions of the section 80IA of the Act, a person being a company has to enter into an agreement with the Government or Government undertakings. Such an agreement is a contract and for the purpose of the agreement a person may be called as a contractor as he entered into a contract. But the word “contractor” is used to denote a person entering into an agreement for undertaking the development of infrastructure

facility. Every agreement entered into is a contract. The word "contractor" is used to denote the person who enters into such contract. Even a person who enters into a contract for development of infrastructure facility is a contractor. Therefore, the contractor and the developer cannot be viewed differently. Every contractor may not be a developer but every developer developing infrastructure facility on behalf of the Government is a contractor.

30. We find that the decision relied on by the learned counsel for the assessee in the case of CIT vs. Laxmi civil Engineering works [supra] squarely applicable to the issue under dispute which is in favour of the assessee wherein it was held that mere development of a infrastructure facility is an eligible activity for claiming deduction under section 80IA of the Act after considering the Judgement of the Mumbai High Court in the case of ABG Heavy Engineering [supra]. The case of ABG is not the pure developer whereas, in the present case, the assessee is the pure developer. We also find that Section 80IA of the Act, intended to cover the entities carrying out developing, operating and maintaining the infrastructure facility keeping in mind the present business models and intend to grant the incentives to such entities. The CBDT, on several occasions, clarified that pure developer should also be eligible to claim deduction under section 80IA of the Act, which ultimately culminated into Amendment under section 80IA of the Act, in the Finance Act 2001, to give effect to the aforesaid circulars issued by the CBDT. We also find that, to avoid misuse of the aforesaid amendment, an Explanation was inserted in Section 80IA of the Act, in the Finance Act-2007 and 2009, to clarify that mere works contract would not be eligible for deductions under section 80IA of the Act. But, certainly, the Explanation cannot be read to do away with the eligibility of the

developer; otherwise, the parliament would have simply reversed the Amendment made in the Finance Act, 2001. Thus, the aforesaid Explanation was inserted, certainly, to deny the tax holiday to the entities who does only mere works contact or sub-contract as distinct from the developer. This is clear from the express intension of the parliament while introducing the Explanation. The explanatory memorandum to Finance Act 2007 states that the purpose of the tax benefit has all along been to encourage investment in development of infrastructure sector and not for the persons who merely execute the civil construction work. It categorically states that the deduction under section 80IA of the Act is available to developers who undertakes entrepreneurial and investment risk and not for the contractors, who undertakes only business risk. Without any doubt, the learned counsel for the assessee clearly demonstrated before us that the assessee at present has undertaken huge risks in terms of deployment of technical personnel, plant and machinery, technical know-how, expertise and financial resources. Further, the order of Tribunal in the case of B.T.Patil cited supra is prior to amendment to sec 80IA(4), after the amendment the section 80IA(4) read as (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility, prior to amendment the “or” between three activities was not there, after the amendment “or” has been inserted w.e.f. 1-4-2002 by Finance Act 2001. Therefore, in our considered view, the assessee should not be denied the deduction under section 80IA of the Act if the contracts involves design, development, operating & maintenance, financial involvement, and defect correction and liability period, then such contracts cannot be called as simple works contract to deny the deduction u/s 80IA of Act. In our opinion the contracts which contain above features to be segregated on this deduction u/s. 80-IA has to be granted and the other agreements which are

pure works contracts hit by the explanation section 80IA(13), those work are not entitle for deduction u/s 80IA of the Act. The profit from the contracts which involves design, development, operating & maintenance, financial involvement, and defect correction and liability period is to be computed by assessing officer on pro-rata basis of turnover. The assessing officer is directed to examine the records accordingly and grant deduction on eligible turnover as directed above. It is needless to say that similar view has been taken by the Chennai Bench of the Tribunal and deduction u/s. 80IA was granted in the case of M/s. Chettinad Lignite Transport Services (P) Ltd., in ITA No. 2287/Mds/06 order dated 27th July, 2007 for the assessment year 2004-05. Later in ITA No. 1179/Mds/08 vide order dated 26th February, 2010 the Tribunal has taken the same view by *inter-alia* holding as follows:

> *"7. Moreover, the reasons for introducing the Explanation were clarified as providing a tax benefit because modernisation requires a massive expansion and qualitative improvement in infrastructures like expressways, highways, airports, ports and rapid urban rail transport systems. For that purpose, private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other work contract has been encouraged by giving tax benefits. Thus the provisions of section 80IA shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the section but where a person makes the investment and himself executes the development work, he carries out the civil construction work, he will be eligible for the tax benefit under section 80IA."*

31. The above order was followed in subsequent assessment years 2007-2008 & 2008-09 in ITA Nos. 1312 & 1313/Mds/2011 vide order dated 18.11.2011 in the case of the same assessee. Being so, we are inclined to partly allow the ground relating to claiming of deduction u/s. 80IA.

32. The next ground in ITA Nos. 1484, 1485 and 1487/Hyd/ 2011 (assessee's appeals) and revenue appeals viz., 1471 to 1473/ Hyd/2011 is with regard to the sustaining/deleting of the expenses in the absence of bills and vouchers.

33. The assessing officer for assessment year 2006-07(ITA No.1484/Hyd/2011) disallowed 15% of the amount of Rs.4,06,91,006/- on the reason that the vouchers are not supported by any evidence as to the identity of persons, quantum of work and nature of work done by the assessee. The assessing officer also observed that the assessee has claimed huge expenses towards work done and in the absence of the detailed vouchers, and some of the vouchers not supported by any evidence, as to the identity of payee, he disallowed 15% of the expenditure. On appeal, the CIT (A) sustained 7% of the above expenses. Against this, both are in appeal before us.

34. For assessment year 2007-08 (ITA No.1485/Hyd/11), the assessing officer disallowed 20% of the transportation and hire charges of Rs.3,58,88,209/- which works out to Rs.70,77,643/- that the evidence adduced not enough to prove the identity of the payee, nature of payment and quantum of work done. On appeal, the CIT (A) sustained 10% of the disallowance. Against this, both are in appeal before us.

35. For assessment year 2009-10 (ITA No.1487/Hyd/11), the assessing officer disallowed 15% of the work expenses which worked out to Rs.1,39,75,073/-. The CIT (A) confirmed the disallowance at 7%. Against this, both are in appeal before us.

36. We have heard both the parties and perused the material available on record. We find that the issue involved for consideration in this appeal has already been dealt with by us in the case of M/s GSP Infratech Development Ltd., Hyderabad in

ITA Nos. 1396/Hyd/2011 and others vide order dated 27th December, 2011 wherein we have confirmed the disallowance at 5% of such expenses by holding as follows in para-9 :-

> *"We have heard the parties and perused the material on record. The assessee is a subcontractor. Assessee is engaging labour at site at far flung places. In such circumstances, it is difficult to have documents for such expenditure, to the satisfaction of the assessing officer. It is also difficult to verify the identity of the labour, after lapse of many years. The accounts of the assessee have been audited and auditor's certificate under section 44AB has also been furnished. The assessing officer has not analysed the expenses compared to the turnover for the earlier years. A search has been made in the premises of the assessee and no incriminating evidence in this regard has been found. Only an ad hoc disallowance of expenditure claimed by the assessee has been made. However, from the observations of the lower authorities it can be inferred that full details of expenditure have not been properly documented. Hence, the possibility of some inflation of such expenses cannot be ruled out. Considering totality of facts and circumstances of the case, we are of the opinion that disallowance of 5% of labour and site expenses are reasonable."*

37. In view of this, we confirm the disallowance of expenses in these years also at 5%. This ground in assessee appeals i.e., ITA Nos. 1484/Hyd/11 1485/Hyd/11 and 1487/Hyd/2011 is partly allowed and revenue's appeals in 1471/Hyd/11, 1472/Hyd/11 and 1473/Hyd/11 is dismissed.

38. The next common ground in assessee appeal ITA No.1485/Hyd/2011 and Revenue appeal 1472/Hyd/2011 for assessment year 2007-2008 is with regard to sustaining the disallowance of Rs.75 lakhs out of Rs.2.5 crores disallowed by the assessing officer. Against this issue, both are in appeal before us.

39. Brief facts of this issue are that the assessee had produced only self made vouchers and bills in respect of purchase of sand. Therefore, he has disallowed Rs.2.50 crores out of Rs.54,66,15,221/-. On appeal, the CIT (A) sustained Rs.75 lakhs out of Rs.2.50 crores. Against this, both are in appeal before us.

40. We have heard both the parties and perused the material on record. It is admitted fact that the expenditure relating to purchase of sand at Kadapa is supported by self-made vouchers. As such, there are chances of inflating the expenditure. In this case, reasonable disallowance could be made, if the assessee has not produced any details of payee and quantum of work done. Being so, we direct the assessing officer to disallow Rs.50 lakhs of the expenditure incurred by the assessee as it is not substantiated. Ground in assessee appeal partly allowed and ground by Revenue is dismissed.

41. In assessee appeal in ITA No.1487/Hyd/2011 and Revenue in ITA No. 1473/Hyd/201, ground is with regard to sustaining an amount of Rs.15 lakhs out of Rs. 25 lakhs disallowed by the assessing officer towards repair expenses. Brief facts of the issue are that the assessee incurred expenditure of Rs.39,18,702/- towards repairs of machinery. The assessing officer disallowed Rs. 25 lakhs as the assessee has not produced authentic vouchers and bills during the assessment proceedings. On appeal, the CIT (A) disallowed Rs.15 lakhs out of the amount of Rs.25 lakhs disallowed by the assessing officer. Against this, both the assessee as well as the revenue is in appeal before us.

42. We have heard both the parties and perused the material available on record. In our opinion, disallowance of Rs.15 lakhs out of Rs.39,18,708/- is at higher side. There is no allegation that the expenditure is not incurred for the purpose of business. In our opinion, the assessing officer doubted only the volume of expenditure. He has not doubted the capacity of the payee also. Being so, this expenditure of the disallowance is not warranted. Accordingly, we delete the disallowance. This ground raised in the assessee's appeal is allowed and in the revenue's appeal is dismissed.

43. The next ground raised in ITA No.1486/Hyd/ 2011assessment year 2008-2009 is with regard to an addition of Rs.3,26,15,537/- being the difference in profit as per the unsigned or not audited projected statements and the audited statements as on 31-3-2008, in the absence of any seized material to say that income has not been accounted in the books of accounts. Brief facts of the case are that certain loose sheets and other incriminating material were found. As per the pages No.1 to 16 of the seized annexure AAA/GVPR/02, page Nos. 39 and 44 of the seized annexure No.AAA/GVPR/03, the assessee had prepared the provisional financial statements. According to which, the assessee's income is shown as Rs.13,05,81,000 as per annexure AAA/GVPR/02. As per annexure AAA/GVPR/03, the profits admitted are Rs.13,85,81,000/-. It was also noticed that page Nos. 39 to 44 of the seized material annexure No. AAA/GVPR/03 is also financial statements of the company for the financial year 2007-08. In the Annexure AAA/GVPR/01 to AAA/GVPR/03 were also seized which represent the expenditure of Rs.22.60 lakhs for the year under consideration was not recorded in the books of account. According to the assessing officer, the difference between provisional balance sheet and final financial statement works out to Rs.3,26,15,537 and the same was added to the income of the assessee and this was confirmed by the CIT (A). Against this, the assessee is in appeal before us.

44. We have heard both the parties and perused the material available on record. In this case, the addition is made towards the difference between projected/provisional balance-sheet and the final balance-sheet. The assessee has given explanation before the lower authorities that it has prepared the balance-sheet showing higher profit which is on account of showing higher work in progress with a view to obtain higher financial assistance from

banks. It was also agreed by the Managing Director in his deposition dated 12-9-2008 that he is having no knowledge of impact of his statement. The actual fact is that the department has not come across any seized material reflecting the inflation of stock/work in progress. In this commercial world, it is not uncommon to furnish balance-sheet and profit and loss account reflecting higher profit or closing stock with a view to avail higher financial assistance or to show attractive net profit ratio, debt equity ratio or return on the investment. The provisional balance-sheet cannot be considered for determining the undisclosed income. However, as per disposition an amount of Rs.80 lakhs was agreed to be admitted as income, the same be considered as income on this count and no set off could be given towards work-in-progress in any subsequent assessment year. This ground of assessee partly allowed.

45. The next ground in ITA No. 1487/Hyd/2011 is with regard to addition of Rs.2.01 crores being cash seized from Sri K. Venkata Kutumba Rao, even though the assessee had offered satisfactory explanation for the sources and the circumstances under which the cash was handed over to Shri K.V. Kutumba Rao where there was no incriminating material found in the premises of the assessee and search operation was only consequential and seized operations conducted in the premises of Sri K.V Kutumba Rao and material found there. Similar issue was also for consideration in ITA No.1489/Hyd/2010 in the case of GSP Veera Reddy where the addition was on protective basis. Brief facts of this issue are that the assessing officer added the above said amount in the assessee's hands as unexplained cash and also made similar addition in the hands of Sri G. Shiva Shanker Reddy one of the Directors of the assessee-company. The assessing officer has not appreciated the facts that the assessee had withdrawn the amount from its bank account and the same money

was pooled and was to be transferred to Bangalore to meet the expenses at work spots. However, in view of the fact that there was a search in the case of Sri K. Venkata Kutumba Rao who was found with the above said amount and who also claimed that the said money as handed over to him by Sri Siva Shanker Reddy, one of the Directors of the assessee-company. The assessing officer was of the opinion that the assessee has not conclusively proved that the said amount was withdrawn from the bank account of the assessee company. The assessee also not explained the said money as withdrawn from bank account of the assessee company. The assessing officer was of the opinion that the said money belonged to Sri G. Siva Shanker Reddy who handed over the said amount to Sri K. Venkata Kutumba Rao. Therefore, the addition was made in the hands of the assessee company on protective basis and on substantive basis in the case of Sri Siva Shanker Reddy.

46. We have heard both the parties and perused the material on record. In this case, it is admitted fact that the cash was found in the hands of Sri K. Venkata Kutumba Rao. It was admitted fact that the cash was given by Sri Siva Shanker Reddy to Sri K. Venkata Kutumba Rao. There is no dispute that the said cash was found with K. Venkata Kutumba Rao and the bank accounts of the assessee company reflected the huge withdrawal on various dates prior to search action. It is not disputed that M/s. GVPR Engineers Limited owned this cash and confirmed that it is belonged to them which is meant to be sent to various project sites where the work was going on. The department is not ready to accept this explanation, instead they are of the opinion that the cash actually belonged to Sri Siva Shanker Reddy only. In our opinion, this view of the department is not correct. If Sri K. Venkata Kutumba Rao is not explained the sources of the cash, at the best it can be treated as unexplained income of Sri K. Venkata

Kutumba Rao only and not in the hands of any other person. The department in this case, accepting the explanation of the assessee in part, has it is not belonging to Sri K. Venkata Kutumba Rao. On the hand, it is not accepted the other part of the explanation of the assessee that it is belonged to the assessee. Either the assessee's explanation is to be accepted as a whole or rejected as a whole. They cannot pick and chose according to their convenience and make addition. In our o opinion, the addition made towards cash found at the premises of Sri K. Venkata Kutumba Rao, cannot be made either in the hands of the assessee's company i.e. M/s GVPR Engineers Limited or in the hands of Sri Siva Shanker Reddy. Accordingly, this ground of assessee is allowed.

47. Now, we will take up ITA No.1401/Hyd/11 and ITA No.1359/Hyd/2011. These cross appeals are directed against the order of the CIT (A) dated 10-5-2011.

48. The first ground in assessee's appeal is with regard to confirmation of the assessment order passed under section 153A of the Act**.** The ld. Counsel for assessee submitted that there was no valid search and no incriminating material found at the premises of the assessee, the issue of notice under section 153A of the Act is bad in law.

49. We have heard both the parties on this issue. There was a search operation conducted in the case of Sri Venkata Kutumbarao and others on 28-7-2008 and also search was conducted at the business premises of GVPR Engineers Limited and there was seizure of some incriminating documents and the cases were notified with the DCIT, Central Circle-5, Hyderabad. Thereafter, notice under section 153A has been issued consequent

to the search action. Being so, we find no merit in the ground. Accordingly, this ground of the assessee is dismissed.

50. The next common ground in both these appeals is with reference to the disallowance of expenses. The assessing officer disallowed 10% of other expenses claimed by the assessee at Rs.10,27,85,383/- worked out at Rs.1,02,78,538. The CIT (A) sustained the disallowance at 7% of this expenditure as against 10% disallowed by the assessing officer. On similar issue, we have given findings in ITA Nos. 1484/Hyd/2011, 1485/Hyd/2011 and 1486/Hyd/2011 wherein we have sustained the disallowance at 5% of the expenditure by following the order of the Tribunal in the case of M/s GSP Infratech Development Ltd., Hyderabad in ITA Nos. 1396/Hyd/2011 and others vide order dated 27th December, 2011 wherein we have confirmed the disallowance at 5% of such expenses . Accordingly, this ground is partly allowed.

51. The next ground in ITA No.1401/Hyd/11 is with regard to confirmation of addition of Rs.1,31,07,090/- being the difference in profit as per the projected statement and audited statement as on 31-3-2006 and in the absence of any seized material to say that the income has not been accounted for in the books of accounts. We have decided this issue in the case of GVPR Engineers in ITA No.1486/Hyd/2011 for assessment year 2008-09 in earlier paragraph Nos. 41 to 42 of this order. Therefore, on similar lines, we decide this issue also in favour of the assessee subject to sustaining of addition of Rs.50 lakhs admitted by the assessee as income towards work in progress. Hence, this ground of the assessee is partly allowed.

52. The next ground in revenue's appeal No.1359/Hyd/08 in the case of GSP Infra Tech is with regard to the deletion of addition made on protective basis on account of purchases of land by the

assessee company in its name. Similar issue for consideration in assessee appeal in ITA No.1490/Hyd/2011 in the case of G. Veera Shaker Reddy for assessment year 2008-09 in the case of Veera Sekhar Reddy where the substantive addition was confirmed by the CIT(A).

51.1 Brief facts of this issue are that during the course of survey operation conducted at the premises of S.K. Builders, Abids, Hyderabad certain papers/documents were found and seized vide Annexure No.A/MKN/1 and A/SKB/01 were found and impounded. In these material vide page Nos.48 to 51 of annexure A/SKB/01, there is an agreement of sale executed on 22-11-2007, jointly by Aziz Mohd. Khan, Zameel Mohd. Khan, Matin Sarif and Usman Salmad in favour of GSP Infratch Development Limited i.e., the assessee company. Similarly, a copy of receipt forming part of this agreement was found and impounded as part of the same agreement vide page No.47. This was in connection with purchase of land for Rs.3,37,77,500 and paid an amount of Rs.14,00,000 by way of cheques and an amount of Rs.53,98,750/- by way of cash to the vendors. The balance amount of Rs.2,69,78,750/- was to be paid to the vendors by 22.12008. The assessing officer asked to verify whether it has paid the balance consideration to the vendors and got registered if so, explain the source for the same. However, on enquiry, it was stated by Sri Zameel Ahmed Khan, partner of M/s S K Builders vide letter dated 8-11-2010 that his firm had entered into sale agreement with M/s GSP Infotech Limited on 22-11-2007 for a consideration of Rs.3,37,77,500 towards 11.18 acres of agricultural lands in survey Nos. 309, 310 and 311 at Narkoda village, Shamshabad Mandal, Ranga Reddy District and the total land of 11.18 acres of agricultural land was subsequently sold to Smt G. Vijayalaxmi w/o Sri GSP Veera Reddy admeasuring 4 acres for a consideration of Rs.4,68,000 through cheques and balance in cash and to Sri G. Veera Shekar Reddy, s/o Sri GSP Veera Reddy

admeasuring 3.18 acres of agricultural land for a consideration of Rs.6,04,000 through cheques and balance in cash. The partner of M/s SK Builders submitted the registered documents in favour of sale affected on the Directors of the assessee company subsequent to the agreement of sale entered into by GSP Infratech Development Limited on 22-11-2007. As the partner of M/s SK Builders has categorically stated that the sale agreement is entered into with GSP Infratech Limited for a consideration of Rs.3,37,77,500/- and also taking into the fact of the assessee company's rejection of the same stating that the transaction has been cancelled, the sum of Rs.3,37,77,500/- is added towards returned income of the assessee company on protective basis in the hands of Veera Shekar Reddy. On appeal, the CIT (A) gave direction to the assessing officer not to make addition in the case of the assessee if there is addition in the hands of Smt Vijayalakshmi w/o Sri GSP Veera Reddy.

53. In the case of Sri Veera Shekar Reddy in ITA No.1490/Hyd/2011, the CIT (A) confirmed the addition of Rs.95,73,500/- made by the assessing officer. Against this, the assessee is in appeal before us.

54. We have heard both the parties on this issue. The department cannot have any grievance in deletion of this amount in the hands of GSP Infratech made on protective basis because the CIT (A) confirmed the addition in the hands of Sri Veera Shekar Reddy. The learned authorised representative submitted before us with regard to the addition in the hands of Veera Shekar Reddy, (ITA 1490/11) that the assessee Sri Veera Shekar Reddy has disclosed an amount of Rs.88,82,800/- and the only difference could be added as undisclosed income of the assessee. According to him, total investment in this property was Rs.1,01,75,500/- and as such Rs.12,94,700/- could be the undisclosed income of the

assessee. On the other hand, the learned departmental representative submitted that the amount accounted for in the books of accounts of the assessee is with regard to the development charges not relating to the purchase consideration and has relied on the order of the CIT (A). In our opinion, these facts requires re-examination of the books of accounts of the assessee and the assessee is required to substantiate whether the entries found in the books of accounts relate to the development charges or towards the payment of purchase consideration. Accordingly, we set aside this issue to the file of the assessing officer for fresh consideration.

55. Next we will take up ITA Nos. 1491 and 1488/Hyd/2011. The common ground in these two appeals is with regard to the issue of notice under section153A of the Act claiming that it is bad in law though there were no incriminating material found. This ground is dismissed as decided in para 3 of this order.

56. The next common ground is with regard to the disclosing of income by the assessee lesser than the admitted in the deposition made u/s 132(4) of the Act. In the case of Sri GSP Veera Reddy, the assessee admitted under section 132(4) of the Act declaring income at Rs. 60 lakhs. However, it filed the return of income at Rs.45.60 lakhs claiming deduction of Rs.14.40 lakhs claiming deduction u/s. 80C of the Act. Similarly, in the case of Sri G. Siva Shanker Reddy, the assessee offered income under section 132(4) at Rs.40 lakhs. However, it filed return of income at Rs.37,72,760/- after claiming deduction under section 80C of the Act at Rs.2,27,240/-. The assessing officer in these cases disallowed the deduction claimed by the assessee and the assessee herein had considered this amount as disclosed by the assessee under section 132(4) of the Act at Rs. 60 lakhs and Rs.40 lakhs in

the cases of GSP Veera Reddy and Sri G. Shiva Shanker Reddy respectively. Against this, both are in appeal before us.

57. We have considered the rival submissions of the parties and perused the material available on record. Even in the block assessment, the income of the assessee has to be computed in accordance with the provisions of the Act. When we say that the undisclosed income of the block assessment is to be computed in accordance with the provisions of the Act then the provisions of Chapter VI-A also to be taken into consideration. For this purpose, we place reliance on the judgment of Madras High Court in the case of Anbu Textiles Vs. ACIT (262 ITR 684) wherein held that in view of retrospective amendment of s. 158BB providing that undisclosed income of block period shall be computed in accordance with the provisions of the Act, provisions of Chapter VI of the Act should also be taken into consideration.

58. In view of the above, this ground of the assessee is allowed.

59. In the result, assesee appeal in ITA No.1481/Hyd/11 is dismissed. Assessee appeals in ITA 1488 and 1491/Hyd/2011 (2 appeals) are allowed. Assessee appeals in ITA Nos. 1482 to 1487/ Hyd/2011 and 1489/Hyd/11 and 1490/Hyd/11, 1401/hyd/11, 347/Hyd/08 & 1323/Hyd/08 (11 appeals) are partly allowed. Revenue appeals in 1359/11, 1471 to 1473/Hyd/11 and 1359/Hyd/11 (4 appeals) are dismissed.

Order pronounced in the open court on 29th February, 2012

Sd/-	Sd/-
(ASHA VIJAYARAGHAVAN)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, dated the 29th February, 2012

Copy forwarded to:

1. Sri G.S.P. Veera Reddy, c/o. M/s. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad-500 003.
2. Sri G. Veera Sekhar Reddy, c/o. M/s. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad-500 003.
3. Sri G. Siva Shankar Reddy, c/o. M/s. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad-500 003.
4. M/s. GVPR Engineers Ltd., c/o. M/s. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad-500 003.
5. M/s. GSP Infratech Development Ltd., Siva Sai Sannidhi, Plot No. 32, Hindi Nagar, Punjagutta, Hyderabad.
6. M/s. GSP Infratech Development Ltd., c/o. M/s. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad-500 003.
7. The Asst. Commissioner of Income-tax, Central Circle-5, Hyderabad.
8. The Asst. Commissioner of Income-tax, Central Circle-2(3), Hyderabad.
9. The Deputy Commissioner of Income-tax, Central Circle-5, 8th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.
10. The CIT(A)-VII, Hyderabad.
11. The CIT(A)-III, Hyderabad.
12. The CIT-II, Hyderabad
13. The CIT (Central), Hyderabad
14. The DR – B Bench, ITAT, Hyderabad

Jmr*/tprao