IN THE INCOME TAX APPELLATE TRIBUNAL
SPECIAL BENCH "A", HYDERABAD

BEFORE JUSTICE (Retd.) C.V. BHADANG, PRESIDENT, SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA Nos.1717 to 1720 & 1722/Hyd/2017		
Assessment Years: 2009-10 to 2012-13 and 2014-15		
Deputy Commissioner of Income Tax, Central Circle – 2(2), Hyderabad.	Vs.	M/s. SEW Infrastructure Limited, 6-3-871, Snehlata, Greenland Roads, Begumpet, Hyderabad. PAN : AADCS4061P
(Appellant)		(Respondent)
Assessee by:	Shri K.K. Chaitanya, Senior Advocate and Shri S. Ramarao, Advocate.	
Revenue by:	Smt. Mamata Choudhary, Senior Standing Counsel and Ms. TH Vijaya Lakshmi, CIT-DR	
Date of hearing:	06.08.2024	
Date of pronouncement:	07.10.2024	

O R D E R

PER MANJUNATHA G., ACCOUNTANT MEMBER:

This Special Bench is constituted by the President by posing the following questions for our consideration and decision:

> *"(i) Whether an assessee can make a claim for deduction under Chapter VIA of Income Tax Act,*

1961, for the first time, in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act ?

(ii) If yes, under which circumstances ?

2. The brief facts of the case are that the appellant being engaged in the business of development of infrastructure projects, filed its original return of income for the assessment year 2009-10 on 21-09-2009, admitting a total income of Rs.113,58,17,240/-. The assessment has been completed under Section 143(3) of the Income Tax Act, 1961 on 27.12.2011 accepting the returned income. A search and seizure operation under section 132 of the Income Tax Act, 1961 was conducted on 18-12-2014. Consequent to the search, a notice under Section 153A of the Income Tax Act, 1961 dated 07-09-2015 was issued and served on the assessee, requiring the assessee to file a return of income within 15 days from the date of receipt of the notice. In response to the notice under Section 153A of the Act, the appellant filed a return of income on 16-09-2015, admitting total income of Rs. 68,67,13,660/-, after claiming a deduction under Section 80IA (4) of the Act for an amount of

Rs.44,91,03,357/-, for the first time, in respect of profits and gains derived from the development of infrastructure projects. The case was taken up for scrutiny, and during the course of assessment proceedings, the AO called upon the assessee to show cause as to why the fresh claim of deduction under Section 80IA(4) of the Act, should not be disallowed in light of the decision of the Hon'ble Rajasthan High Court in the case of Jai Steel

(India) Vs. ACIT (2013) 259 CTR 281 (Raj). The assessee filed the relevant details called for by the AO, stating that it has executed various infrastructure projects in terms of agreements with the Central or State Governments, and the profits derived from such infrastructure projects are eligible for deduction under Section 80IA(4) of the Income Tax Act, 1961.

3. The AO, after considering the relevant submissions of the assessee and taking note of certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. reported in (1992) 198 ITR 297 (SC), and the decision of the Hon'ble High Court of Rajasthan in the case of Jai Steel (India) Vs. ACIT (supra), rejected the fresh claim of deduction under Section 80IA(4) of the Act, for the reason that the said deduction cannot be claimed during the proceedings under Section 153A of the Act, as no such claim was made in the return of

income originally filed by the appellant u/s 139(1) of the Act. Further, the appellant cannot take advantage of the search and seizure operation conducted under Section 132 of the Act and the consequent assessment proceedings under Section 153A of the Act, because the provisions of Section 153A of the Act are akin to the provisions of Section 147 of the Act and thus, as held by the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra), reassessment proceedings under Section 147 of the Act are for the benefit of the Revenue, and hence, no new claim can be raised towards any deduction or expenditure in the

return of income filed in response to Section 153A of the Act. The AO further held that the appellant is not entitled to a deduction under Section 80IA(4) of the Act for all the projects, and if at all such deduction is allowable, it is only to the extent of Rs.8,03,26,819/- in respect of the projects referred to in Serial Numbers 1 to 4 on Page No. 8 of the assessment order. Therefore, the AO rejected the fresh claim of deduction under Section 80IA(4) of the Act, amounting to Rs. 44,91,03,357 and assessed the taxable income at Rs. 113,58,58,470/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee filed detailed written

submissions on the issue along with certain judicial precedents and argued that the provisions of Section 153A of the Act, are very clear in as much as, the AO shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Furthermore, as per clause (a) of Section 153A(1) of the Act, the provisions of this Act shall apply as if it were a return required to be furnished under Section 139 of the Income Tax Act, 1961. The appellant further submitted that since the profits derived from infrastructure projects executed by the assessee in terms of agreements with the Central or State Governments are eligible for deduction under Section 80IA(4) of the Act, the appellant claimed the deduction in the return of

income filed in response to the notice under Section 153A of the Act.

5. The Ld.CIT(A), after considering the submissions of the assessee and taking note of certain judicial precedents, including the decision of the Coordinate Bench of the ITAT Hyderabad in the case of M/s KNR Constructions Ltd in ITA No. 946/Hyd/2015, held that in an assessment pursuant to notice under Section 153A, a statutory deduction not hither to claimed u/s 139(1) of the Act can also be claimed. Therefore, by taking note of projects executed by the assessee in light of the agreements between the appellant and the relevant State or Central Governments, the Ld.CIT(A), held that the appellant is eligible for claiming deduction under Section 80IA(4) of the Act. The Ld.CIT(A) had also, observed that the appellant, being a constituent of a Joint Venture (JV), is also eligible for a deduction under Section 80IA(4) of the Act, on profits attributable to the projects executed as a constituent of the JV, but such deduction can be claimed either by the JV itself or by a constituent partner of the JV. Therefore, after examining the relevant agreements, the Ld.CIT(A) observed that out of the total deductions claimed by the assessee amounting to Rs.44,91,03,577/-, directed the Assessing Officer to disallow the deduction to the tune of Rs.20,13,05,074/-, on the ground that the JV, in which the appellant as one of the constituents has already claimed a deduction in respect of those projects and thus, the appellant once again cannot claim deduction on very same profits.

6. Aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

7. The learned Senior Standing Counsel for the Revenue, Smt. Mamata Choudhury, referring to the issue for consideration before the Special Bench, submitted that the present reference to the Special Bench is only on the

issue of whether a claim of deduction under Section 80IA(4) of the Act could be maintained for the first time in the return filed pursuant to a notice under Section 153A of the Act and not on merits as to whether the assessee is eligible for such a claim and the submissions before the Special Bench are limited only to the questions referred for its consideration.

8. The learned counsel for the Revenue further submitted that the respondent assessee did not claim any deduction under Section 80IA in its return filed under Section 139(1) of the Act but sought to raise such claim for the first time in the return filed in response to the notice under Section 153A of the Act. The AO disallowed the claim of deduction, inter-alia, on the ground that a claim not made in the original return filed under Section 139(1) and sought to be made for the first time in a return filed pursuant to a notice under Section 153A of the Act would not be maintainable. Further, the assessee was also found to be ineligible for such a deduction on merits, as well. The learned counsel for the Revenue, referring to the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra) submitted that

proceedings under Section 153A are analogous to the provisions u/s 147 of the Act. The assessment under section 153A of the Act is in consequence to a search under Section 132 or a requisition under Section 132A and the proceedings are undertaken for the purpose of bringing the undisclosed and escaped income to tax, and are therefore, for the benefit of the Revenue. Therefore, the appellant cannot take advantage of such consequential assessment for its benefit. In this regard, she has relied upon the decision of the Hon'ble Bombay High Court in the case of K. Sudhakar S. Shanbhag Vs. ITO reported in (2003) 126 taxman.com 476. The learned Senior Standing counsel further explained the provisions of section 153A and the second proviso provided therein and submitted that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred in sub- section(1) pending on the date of initiation of such search u/s 132 of the Act or making of requisition under Section 132A, as the case may be, shall abate. The provisions of Section 153A and the second proviso provided therein have been the subject matter of discussion by various Courts, including the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd. reported in (2023) 454 ITR 212 (SC), wherein the Hon'ble Supreme Court, after considering the decisions of various High Courts on the issue, including those decisions which are in favour of the Revenue and the assessee, held that any pending assessments falling within the six assessment years are abated as on the date of search, then the AO shall have the power to assess the total income of such assessment years, including any undisclosed income unearthed

during the course of search based on any material, but in respect of unabated / concluded assessments, as on the date of search, the Assessing Officer shall reassess only the undisclosed income unearthed as a result of search on the basis of material found during the course of search. The Hon'ble Supreme Court further held that even in the case of unabated/concluded assessments, the AO shall have jurisdiction to assess the total income, but such assessments should be based on any incriminating material found as a result of search. This legal proposition has been further examined by various High Courts, including the Hon'ble Rajasthan High Court in the case of Jai Steel (India) Vs. ACIT (supra), wherein the Hon'ble High Court has dealt with the issue of a fresh claim made by the appellant in unabated/concluded assessments and, after examining relevant facts and law, held that in unabated/concluded assessments, the appellant is not entitled to make any fresh claim for the first time in the return of income filed in response to notice u/s 153A / 153C of the Act.

9. The learned counsel for the Revenue further submitted that the Ld.CIT(A) relied on the decision of Co-ordinate Bench of the Tribunal, Hyderabad in the case of M/s.KNR Constructions Ltd. (supra) to allow the claim of the assessee, but the fact remains that the order in the case of M/s. KNR Constructions Ltd (supra)

is per incuriam as it has not noticed the explicit provisions of the statue prescribed under Section 80A(5) and 80AC for making a claim under Section 80IA(4) of the Act. She further referring to the

provisions of Section 80A(5) and Section 80AC, submitted that any claim under Section 80IA would be maintainable and entertainable only if it is made in a return within the due date prescribed under Section 139(1) of the Act. The conditions prescribed under section 80A(5) and 80AC are not a limitation on the power of the Assessing Officer or the Appellate Authorities, but in fact, attach to the claim itself and are required to be implemented by the respective Assessing Officer and appellate authorities and in this regard, she has referred to the decision of Hon'ble Gujarat High Court in the case of Rachna Infrastructure Pvt. Ltd. Vs. PCIT, reported in (2022) 138 taxman.com 416 (Guj). She further submitted that a claim for deduction under Section 80IA, in the original return filed under Section 139(1) is also mandatorily required to be supported by an audit report as prescribed under Rule 18BBB and in Form 10CCB and such audit report should be filed along with the return of income in order to claim any deduction under Section 80IA(4) of the Act. The legislative intent is clear in the manner in which any claim is required to be made and the time within which it has to be done. The provisions of Section 80IA,

read with Section 80A(5) and Section 80AC, are beneficial provisions and are required to be strictly interpreted and any perceived ambiguity would necessarily enure to the benefit of the Revenue. Therefore, in order to make a claim of deduction under Section 80IA(4), the assessee is required to file its return of income on or before the due date prescribed under Section 139(1) and further, the audit report, as required under Section

80IA(7), should be submitted along with the return of income. In this regard, she relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Imports), Mumbai Vs. Dilip Kumar and Company, reported in (2018) 95 taxmann.com 327 (SC). She, therefore, submitted that the assessee cannot make any fresh claim in the return of income filed in response to notice under Section 153A or Section 153C, and thus, the questions referred for the consideration of this Bench, should be answered in favour of the Revenue.

10. The learned counsel for the assessee, Shri K.K. Chaitanya, Senior Advocate, referring to the point of consideration for the Special Bench, submitted that the language and scheme of section 153A clearly permit claims to be made in the return filed under Section 153A of the Act. Therefore, once notice was issued under Section 153A(1)(a) of the Act, then the assessee is required to file a return of income in respect of each

assessment year falling within six assessment years. The language of this provision is similar to that of Section 139(1) of the Act, and hence, when a claim under Chapter VI-A is permitted to be made in a return filed under Section 139(1), there is no reason why such claim cannot be permitted in the return filed under Section 153A of the Act. The learned counsel for the assessee referring to provisions of Section 153A submitted that Section 153A of the Act only overrides Section 139, Section 147, Section 148, Section 149, Section 151, and Section 153, but not Chapter VI-A. Further, Section 153A(1)(a) states that the provisions of the Act shall apply as if it were a return

required to be furnished under Section 139, and therefore, fresh claims can be made in such return in a manner similar to making claims in the return under Section 139(1) of the Act. The learned counsel for the assessee further referring to Form ITR – 6 submitted that there is a separate Schedule (Schedule 80IA) for claiming deduction under Section 80IA, in which the assessee has rightly claimed deduction under the said provision. If the intention of the Legislature was to bar such claim of deduction, there is no reason why a separate Schedule has been provided for in the returns of income to be filed in response to notice under section 153A of the Act. The fact that such a Schedule has been provided for would indicate that there is no bar in making a claim under section 80-IA for the first time in the return filed in

response to notice under section 153A. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of V.D. M.Rm.M.Rm. Muthaiah Chettiar Vs. CIT reported in (1969) 74 ITR 183 (SC) and CIT Vs. P.K. Kochammu Amma Peroke reported in (1980) 125 ITR 624 (SC).

11. The learned Counsel for the assessee further referred to the provisions of Section 153A(1)(b) and submitted that, as per the said provisions, the AO is required to assess or reassess the total income. Hence, the assessment or reassessment of the entire total income is before the Assessing Officer. Such being the case, there is no reason why a fresh deduction cannot be made. He further referring to provisions of Section 2(45) of the Act submitted that *the total income means*

the total amount of income referred to in Section 5, computed in the manner laid down in this Act. Section 5 is clearly made subject to other provisions of this Act. Therefore, once the Assessing Officer is assessing the total income of the assessee for the relevant assessment year as defined under Section 2(45), the total income of an assessee should be assessed and while assessing total income, all permissible deductions, including deduction under Section 80IA, must be allowed. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT reported in (2006) 284 ITR 323 (SC). The learned counsel for the assessee further referred to Explanation (i) at the end of Section 153A and submitted that the said explanation provides that save as otherwise provided in the section 153B and section 153C, all other provisions of the Act shall apply to the assessment made under section 153A. Hence, provisions of Chapter VI-A are applicable to proceedings under section 153A and in this regard, he relied upon the decision of ITAT Pune Bench in the case of Malpani Estates Vs. ACIT reported in (2014) 64 SOT 105 (Pune). Further, Explanation (i) at the end of section 153A is like Section 158BH. In the context of section 158BH, the Hon'ble Supreme Court in the case ACIT Vs. Hotel Blue Moon reported in (2010), 321 ITR 362 (SC) noted that due to the operation of this Section, all the provisions of the Act would apply except where saving is expressly made. Section 158BH also makes provisions relating to the computation of income applicable to the undisclosed income for the block period as held in the following decisions :

- CIT v. S. Ajit Kumar [2018] 404 ITR 526
- Fenoplast Ltd. Vs. ACIT [2014] 367 ITR 761 (Andhra Pradesh and Telangana)
- S. Badrinarayan Kala Vs. ACIT [2005] 96 TTJ 642 (Chennai)

12. The learned counsel for the assessee further referred to the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P) Ltd. (supra). He, drew our attention to para. 11 of the judgment where it was observed that even in the case of a completed / unabated assessment, the AO would have the jurisdiction to assess or reassess the total income taking into consideration the incriminating material collected during the course of search and other material which would include income declared in the returns, if any, furnished by the assessee. Thus, even in the case of an unabated assessments, the AO is duty-bound to consider other materials which would include income declared in the returns. Therefore, a claim made in the return filed under Section 153A has to be mandatorily considered by the AO. He further referred to the decision of the Hon'ble Rajasthan High Court in the case of Jai Steel (India) Vs. ACIT (supra) and submitted that the reliance placed by the revenue on this judgment is no more good law after the decision in the case of Abhisar Buildwell (P) Ltd., (supra). Therefore, he submitted that when the law provides for the assessment of total income, then the AO should take into consideration material other than what was available during search and seizure operation for making assessment of total income of the assessee and if we go by the law, there is no bar in

making fresh claim under Chapter VI-A, for the first time, in a return filed in response to notice under Section 153A of the Act. In this regard, he relied upon the following judicial precedents :

- Asst. CIT Vs. V.N. Devadoss [2013] 32 taxmann.com 133 (Chennai - Trib.)
- Malpani Estates Vs. Asst. CIT [2014] 64 SOT 105 (Pune)
- Naresh T. Wadhwani Vs. DCIT [2015] 37 ITR(T) 179 (Pune - Trib.)
- Shrikant Mohta Vs. CIT [20191 414 ITR 270 (Calcutta)
- PCIT Vs. JSW Steel Ltd. [20201 422 ITR 71 (Bombay)]
- CIT v. B. G. Shirke Construction Technology (P.) Ltd. [2017] 79 taxmann.com 306 (Bombay)
- Patanjali Foods Ltd (Formerly known as Ruchi soya Industries Ltd) [TS-279-lTAT2024(Mum)]
- CIT Vs. Mandavi Builders, Mangalore [2020] 121 taxmann.com 36 (Kamataka)
- SLP dismissed in CIT v. MandaviBuilders, Mangalore [2022] 443 ITR 235 (SC)
- Gopal Lai Bhadruka v. DCIT [2012] 346 ITR 106 (AP)

13. The learned Senior Advocate Shri K.K. Chaitanya, further distinguishing the decision in CIT Vs. Sun Engineering Works (P) Ltd. (supra) submitted that the AO by relying on the judgment of the Hon'ble Supreme Court in the above case, held that the provisions of Section 153A are for the benefit of the revenue and hence, no new claim can be raised in a return filed in response to a notice under Section 153A of the Act. But going by the provisions of Section 147 and 153A, the Assessing Officer is not justified in relying on the judgment of CIT Vs. Sun Engineering Works (P) Ltd (supra), because the same was rendered in the context of reassessment proceedings u/s 147 of the Act, whereas, Section 153A deals with the assessment or reassessment of total income as against assessment or reassessment of 'such income' i.e., income escaping assessment u/s 147 of the Act. The fact that Section 147 only deals with assessment or reassessment of income escaping assessment is clear from the use of the words *'and also any other incomes chargeable to tax.... '* in section 147 and Explanation 3 thereto as it stood prior to substitution vide Finance Act, 2021. Similar provision to Explanation 3 is contained in Explanation to section 147 as it stood substituted vide Finance Act, 2021, with effect from 01.04.2021. If the scope under Section 147 was assessment or reassessment as in Section 153A, there was no need for such words in Section 147 and Explanation 3 thereto. Therefore, he submitted that Section 153A differs from Section 147, which clearly indicates that the scheme of provision of Section 153A is different from that of Section 147. In

this regard, he relied upon the following judicial precedents :

- DCIT Vs. Eversmile Construction Co. (P.) Ltd. [2012] 143 TTJ 322 (Mumbai)
- KNR Constructions Vs. DIT IT Appeal Nos.946 to 948 and 983 to 986/Hyd/2015, dated 16-102015
- Malpani Estates Vs. Asst. CIT [2014] 64SOT 105 (Pune)
- Goodyear India Ltd.Vs. State of Haryana [19891 188 ITR 402 (SC)
- Mavilayi Service Co-operative Bank Ltd. Vs. CIT [2021] 431 ITR 1 (SC)
- Government of Kerala Vs. Mother Superior Adoration Convent [2021] 126 taxmann.com 68 (SC)
- V Jaganmohan Rao Vs. CIT/EPT (1970) 75 ITR 373 (SC)
- ITO Vs. Mewalal Dwarka Prasad [1989] 176 ITR 529 (SC)

14. The learned Counsel for the assessee further referring to the decision of the Hon'ble Supreme Court in the case of V Jaganmohan Rao Vs. CIT reported in (1970) 75 ITR 373 (SC), and ITO Vs. Mewalal Dwaraka Prasad reported in (1989) 176 ITR 529 (SC), submitted that considering the difference in the views taken in ITO Vs. Mewalal Dwaraka Prasad (supra) and Sun Engineering Works (P) Ltd (supra), the matter came up for consideration before a larger Bench of the Hon'ble Supreme

Court in the case of ITO Vs. K.L. Srihari (HUF) reported in (2001) 250 ITR 193 (SC) wherein the Hon'ble Court held that upon perusal of the original order of assessment and the order of reassessment under section 147, it was clear that the later makes a fresh assessment of the entire income of the respondent/ assessee and hence, the Hon'ble High Court was right in proceeding on the basis that the earlier assessment order had been effaced by the subsequent order. Thus, it is submitted that the ratio laid down in Sun Engineering's case (supra) has no applicability in the facts of the case as held by the Karnataka High Court in Karnataka State Co-Operative Apex Bank Ltd Vs. DCIT reported in (2021) 130 taxmann.com 114 (Kar).

15. The learned Senior Counsel for the assessee further submitted that Section 80A(5) provides that if the assessee fails to make a claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or Section 10BA, or under any provisions of this Chapter under the heading “C- Deductions in respect of certain incomes”, no deduction shall be allowed to him thereunder. However, the said sections do not specify under which provision return has to be filed. Therefore, the return of income would include a return filed in response to Section 153A of the Act as well. Even otherwise, if you go by the objective behind the insertion of provisions of Section 80A(5) of the Act as explained from the Memorandum to the Finance Bill, 2009, it is for avoidance of the practice of claiming multiple deductions from the same profits. In the instant case, the

appellant has not made any multiple claims, and thus, where the return of income has been filed within the due date prescribed in notice u/s 153A of the Act then it is concluded that the assessee has complied with the provisions of Section 80A(5) of the Act and fresh claim can be made towards deduction under Section 80IA(4) of the Act. He further referring to the provisions of Section 80AC submitted that as per the said provision, no deduction under Section 80IA shall be allowed to assessee unless he furnishes a return of income for such assessment year on or before the due date specified under Section 139(1) of the Act. If we go by the said provision, it requires only the filing of a return of income on or before the due date under section 139(1) of the Act. It does not require a claim of deduction in the said return. In this regard, he relied upon the decision of ITAT Hyderabad in the case of ASR Engg. & Projects Ltd. Vs. DCIT reported in (2019) 111 taxmann.com 49 (Hyderabad - Trib.). Therefore, he submitted that the assessee has complied with the provisions of Section 80AC, and a fresh claim of deduction should be allowed.

16. The learned counsel for the assessee referring to various provisions of law, including Section 115BBE, Clause 4 of Section 92C, Clause (2) of Section 152, and Section 115A of the Act, submitted that wherever intended, the legislature has provided express provisions for barring a claim under Chapter VI-A, therefore, when there is no such express bar, the same cannot be read into the statute. He further referring to the argument of the learned senior counsel in respect of filing of audit report

and Form 10CCB in light of Rule 18BBB submitted that Section 80IA(7) as it stood prior to substitution vide Finance Act, 2020 with effect from 01.04.2020 required filing of audit report in Form 10CCB along with the return of income, but the said section does not state that assessee is required to file audit report along with return under section 139(1) of the Act. The learned counsel for the assessee further referring to assessment order submitted that the AO relied upon the decision of ITAT, Hyderabad Bench in the case of DCIT Vs. HES Infra Pvt. Ltd in ITA Nos.603 to 606/Hyd/2016 for denying the fresh claim of deduction under Chapter VI-A made in the return of income filed under section 153A of the Act, but such reasoning is incorrect, as there is no such condition in section 80-IA(7) as it then existed. It only requires furnishing of audit report. Even otherwise, the requirement of furnishing of such report along with return of income is only directory and not mandatory. Therefore, he submitted that the assessee has duly complied with the requirements of Section 80IA. Hence, the claim made by the assessee should be allowed. In this regard, he relied upon the following judicial precedents :

- CIT Vs. G.M. Knitting Industries (P.) Ltd. [2015] 376 ITR 456 (SC)
- CIT v. Hemsons Industries [2001] 251 ITR 693 (AP)
- CIT v. Andhra Pradesh State Road Transport Corporation [2006] 285 ITR 147.

17. The Learned Counsel for the assessee further referring to the decision in PCIT Vs. Wipro Ltd. reported in (2022) 446 ITR 1 (SC), submitted that although in the said decision, the Hon'ble Supreme Court held that the requirement of filing of declaration under Section 10B(8) for withdrawal of exemption under Section 10B before the due date for filing the return is mandatory and not directory, the said decision is inapplicable for the reason that the language of Section 10B(8) requires the option to be exercised before the due date, under Section 139(1) by filing a declaration. However, there is no such due date provided under Section 80IA(7) of the Act. Further, Section 10B deals with the exercise of an option by way of a declaration in writing for the withdrawal of a claim for deduction. Hence, the Court held that the same is by way of an essential condition for the withdrawal of a claim. Therefore, the same cannot be equated with for furnishing of audit report under Section 80IA(7) because the said provision is a compliance condition and not condition precedent for claiming a deduction. In this regard, reliance is placed on the decision in the case of Ajanta Pharma Ltd Vs. CIT reported in (2010) 327 ITR 305 (SC). He further referring to the decision in the case of Wipro Ltd (supra) submitted that the Court has made a clear distinction between exemption provisions and deduction provisions contained in Chapter VI-A. In Para 11, the Court has also not doubted or upset the ratio of GM Knitting's case (supra), but has only distinguished it on the count that it cannot be used in exemption provisions. Therefore, the ratio in GM Knitting's case (supra) has not been disturbed and continues to hold the field and if, we go by the said decision, there is no bar in making a fresh claim in the return of income filed under Section 153A of the Act. In this

regard, he relied upon the following judicial precedents :

- Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha Maryadit v. ITO [2023] 147 taxmann.com 449 (Nagpur - Trib.)
- Wanka Vividh Karyakari Seva Sahkari Mandali Ltd. v. ITO [2023] 203 ITD 779 (Surat-Trib)
- ITO v. Ramji Mandir Religious and Charitable Trust [2024] 205 ITD 150 (Ahmedabad - Trib.)

17. We have heard both the parties, perused the material available on record, and gone through the orders of the authorities below. We have also carefully considered various case laws cited by both parties. The solitary issue for our consideration is whether an assessee can make a claim for deduction under Chapter VI-A of the Income Tax Act, 1961, for the first time in the return of income filed in response to the notice issued under Section 153A of the Act, pursuant to a search conducted under Section 132 of the Income Tax Act, 1961. It is an admitted fact that the assessee is carrying on the business of developing infrastructure projects and is otherwise eligible for deduction under Section 80IA(4) of the Act, provided all other conditions are satisfied. However, the fact remains that the assessee did not make any claim towards deduction under Section 80IA(4) of the Act in the return of income filed under Section 139(1) of the Income Tax Act, 1961, for all five assessment years. Further, the appellant has made a claim for deduction under Section 80IA(4) of the Act, for the first time, in the return of income filed in response to the notice issued under Section 153A of the Act, in pursuant to search and

seizure operation conducted under Section 132 of the Income Tax Act, 1961. Therefore, to answer the questions referred to, this Special Bench, it is necessary to understand the provisions of Section 132 and the consequent procedure of assessment under Section 153A of the Act etc.

18. The provisions relating to assessment in the case of a search under Section 153A, etc., were inserted by the Finance Act 2003, effective from 01-06-2003. These provisions are successor to the special procedure for the assessment of search cases under Chapter XIVB, starting with the provisions of Section 158B of the Income Tax Act, 1961. The special procedure for the assessment of search cases under Chapter XIVB required the assessment of undisclosed income as a result of search, which has been defined in Section 158B(b) of the Act. The new provisions of assessment in the case of a search under Section 153A came into force w.e.f 01-06-2003 and the said provisions require the AO to determine the total income and not the undisclosed income. Therefore, before going deeper into the issue, it is necessary to consider the provisions of Section 153A of the Act, which are reproduced below:

> ***"153A. Assessment in case of search or requisition.***
>
> *(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—*
>
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six*

assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and

verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub- section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

19. A plain reading of Section 153A of the Act shows that, it starts with a non obstante clause, which states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated under Section 132, or books of accounts or other documents, or any assets are requisitioned under Section 132A, after 31st day of May 2003, the AO shall issue notice to such person requiring him to furnish, within such period, as may be specified in the notice, the return of income in respect of each

assessment year falling within six assessment years referred to in Clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly, as if such return were a return required to be furnished under Section 139. The AO shall further assess or reassess the 'total income' of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted, or requisition is made. Further, as per the second proviso to Section 153A, assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of such search under Section 132 or making of a requisition under Section 132A, as the case may be, shall abate. The scope and effect of insertion of the new Section 153A of the Act by the Finance Act, 2003 has been explained by the CBDT in the Department's Circular No. 7 of 2003, dated 5-9-2003, reported in (2003) 184 CTR (ST) 33. On a combined reading of the provisions of Section 153A of the Act coupled with Circular No.7 of 2003, it is undisputedly clear that when a search is initiated under Section 132 of the Act, the AO shall issue a notice to such person for six assessment years and assess or reassess the total income for those six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso is nothing but a reiteration of the provisions contained in Clause (b) of Section 153A(1) wherein it is

provided that the AO shall assess or reassess the total income for each of the six assessment years as mentioned above. The second proviso contemplates that if any assessment relating to any assessment year falling within the period of six assessment years is pending on the date of initiation of the search, the same shall abate. However, there is no provision stating that even the completed assessments for the six assessment years shall abate. Therefore, a distinction has been made between completed assessments and pending assessments. Further, under the proviso contained in Sub- section (2), the assessment or reassessment relating to any assessment year which has been abated under the second proviso, and if such an assessment is annulled in appeal or any other legal proceedings, it shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Further, such revival ceases to have effect if such order of annulment is set aside. Therefore, insofar as the completed assessments are concerned, they do not abate, and the pending assessments, abate. Thus, the completed assessments become final unless some incriminating material is found during the course of the search. If we go by the provisions contained in Section 153A of the Act, the intention of the legislature is to restrain the Assessing Officer to undo what has already been completed and has become final. Therefore, no reassessment in respect of completed assessment is contemplated under this provision in case no incriminating material is found as a result of the search. Insofar as the pending assessments are concerned, the

jurisdiction to make an original assessment and the assessment under Section 153A merge into one, and only one assessment for each assessment year shall be made separately on the basis of findings of search and any other material existing or brought on the record of the Assessing Officer. In respect of non-abated assessments, i.e., the assessments that have been concluded on the date of search, the assessments shall be made on the basis of incriminating material unearthed during the course of the search.

20. The provisions of Section 153A, relating to the procedure of assessment in pursuant to search conducted under Section 132 of the Act, have been examined by various courts, including the Hon'ble Supreme Court, in many cases. Although few High Courts have taken a contrary view on the issue, but the majority of the High Courts have taken a consistent view on the issue and held that insofar as pending assessments are concerned, the jurisdiction to make original assessment and the assessment under Section 153A merges into one and only one assessment for each assessment year shall be made and insofar as non-abated assessments, the assessment shall be made on the basis of incriminating material unearthed during the course of the search. One leading case on this issue is from the Hon'ble High Court of Delhi in the case of Kabul Chawla Vs. CIT reported in [2015] 61 Taxmann.com 412, wherein it has been categorically held that in respect of non-abated assessments, the AO shall assume jurisdiction and the assessment shall be made based on incriminating material unearthed during

the course of the search, and in case, there is no incriminating material, then the Assessing Officer cannot tinker with the completed assessment. Insofar as pending assessments are concerned, the AO shall assume jurisdiction to assess the total income of those assessment years on the basis of regular books of accounts and any incriminating material found as a result of the search. The Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd (supra) approved the ratio laid down by various High Courts, including the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) and held that, in the case of a search under Section 132 or requisition u/s 132A of the Act, the Assessing Officer assumes jurisdiction u/s 153A and further, in case, any incriminating material is found as a result of search, even in case of unabated/completed assessment, the Assessing Officer would assume jurisdiction to assess or reassess the total income, taking into consideration the incriminating material found during the course of search and other material available with the Assessing Officer, including the income declared in the return. In case no incriminating material is found during the search, the Assessing Officer cannot assess or reassess, taking into consideration other material in respect of completed assessment/unabated assessment. Meaning thereby, in respect of completed assessments, no additions can be made by the AO in the absence of incriminating material found during the search under Section 132 of the Act. The sum and substance of the ratio laid down by various High Courts, including the Hon'ble Supreme Court, in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd (supra) is

that when a search is conducted under Section 132, all pending assessments within the block of six assessment years immediately preceding the assessment year in which such search is conducted abates and the Assessing Officer shall have jurisdiction to assess or reassess the total income of those assessment years on the basis of incriminating material found as a result of the search and any other material or information provided in the returns. In case no incriminating material found, the completed assessment/ unabated assessment is final and the Assessing Officer shall not have the power to make any additions.

21. Having analyzed the legal position as enumerated under Section 153A of the Act in respect of assessments pursuant to search action under Section 132 of the Act, now let us come back whether the assessee is entitled to make a fresh claim under Chapter VI-A, which has not been claimed in the original return of income under Section 139(1). It is seen that the Department resists any new or subsequent claim in the return filed under Section 153A of the Act, primarily on the plea that such assessments are for the benefit of the Revenue rather than the assessee. The predominant view of the Department in this regard is the return filed under Section 153A of the Act is a consequence of search action taken under Section 132 on the assessee and, thus, cannot be for the benefit of the assessee and moreover, the proceedings under Section 153A are analogous to proceedings under Section 147 of the Act to the extent that these proceedings are for the benefit

of the revenue and not for the assessee. The submission on behalf of the Revenue is that the assessee cannot be permitted to use reassessment proceedings as appeal or revision in disguise and seek relief in respect of items not claimed in the original return of income. The revenue has also taken support from various judicial precedents, including the decision of the Hon'ble Bombay High Court in the case of K. Sudhakar S. Shanbhag Vs. ITO, reported in (2000) 241 I.T.R. 865 (Bom), which was rendered by taking note of the principle laid down by the Hon'ble Apex Court in the case of CIT Vs. Sun Engineering Works (P) Ltd (supra) to the effect that in the reassessment proceedings, an assessee can neither claim nor be allowed a deduction that was not claimed in the original return. According to the department a search under Section 132 of the Act, also cannot be utilized by the assessee to seek relief not claimed earlier. The Department, while disallowing such claims had also taken support from the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT (supra), wherein it has been laid down that the AO cannot entertain a claim for deduction otherwise than by filing a revised return. Since the assessee neither made any such claim in the original return filed under Section 139(1) of the Act, nor in any regular assessment proceedings by way of filing any revised return and, therefore, return in response to notice under Section 153A of the Act is not a substitution of a revised return for making claim of such benefits. Further, the Department also took support from the provisions of Section 80A(5) and Section 80AC of the Act to deny such

claims on the ground that, as per the provisions of Section 80AC, where the assessee fails to make any claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or Section 10BA or under any provision of this Chapter under the Head "C-Deductions in respect of certain income", no deduction shall be allowed to them. Further, the provisions of Section 80AC deal with deductions not to be allowed unless return of income is furnished and as per the said provisions, no deduction under Section 80IA or other deductions/exemption provisions as contemplated are admissible unless the assessee furnishes a return of income for such assessment year on or before the due date specified under Section 139(1) of the Act. Although the return filed in response to notice under Section 153A of the Act partakes the nature of a return required to be furnished under Section 139, that is provided for the limited purpose of filing the return and consequent limitation provided under various provisions of the Act and thus, same cannot be construed as the original return filed under Section 139(1) of the Act for the purpose of deductions/exemptions.

22. Per contra, the primary contention of the appellant to substantiate the fresh claim is that Section 153A mandates the AO to assess or reassess the total income of six assessment years falling within six assessment years immediately preceding the assessment year, in which such search is conducted under Section 132 and further, as per second Proviso, all pending assessments on the date of initiation of search would

stand abated and return of income filed by the person concerned for six assessment years in terms of Section 153A(1)(a) would be construed to be a return of income filed under Section 139(1) of the Act. Therefore, in view of the second Proviso to Section 153A of the Act, once the assessment got abated, it means that it is open for both parties, i.e., for the assessee as well as the revenue to make claims for allowances or deductions. The appellant further contended that the reliance placed by the AO on the case of CIT Vs. Sun Engineering Works (P) Ltd is misplaced, because the said decision was rendered in the context of reassessment proceedings initiated under Section 147 of the Act, and if we go by the words used in the said provision, it refers to such income i.e., income escaping assessment under Section 147 of the Act. The appellant further claims that the department's reliance on the case of Goetze (India) Ltd. Vs. CIT (supra) can be distinguished as being not applicable in case of raising the fresh claim in the return of income filed under Section 153A, since the return filed under Section 153A should be treated as a return filed under Section 139 of the Act.

23. We have given thoughtful consideration to the various arguments advanced by the learned counsel for the assessee and also, the counter-arguments advanced by the Senior Standing Counsel for the Revenue in light of the provisions of Section 153A of the Act, coupled with relevant case laws referred to by both parties. We find that it is well settled from the decision of various High Courts and the decision of the Hon'ble Supreme Court in the

case of PCIT Vs. Abhisar Buildwell (P.) Ltd (supra) that in case of search assessments, where search is conducted under Section 132 of the Act, all pending assessments within the block of six assessment years immediately preceding the assessment year in which such search is conducted shall abate and the AO shall have power to assess or reassess the 'total income' of those assessment years on the basis of incriminating material found as a result of the search and any other material available with the AO, including the information provided by the appellant in the return of income filed for those assessment years. In case of unabated/concluded assessments, the AO shall have the power to reassess the total income, but such reassessment should be confined only to the incriminating material found as a result of the search. In other words, in case there is no incriminating material found as a result of the search, the completed assessment cannot be disturbed.

24. Having said so, now let us come back to the question in the present appeals i.e., whether an assessee can make a claim for deduction under Chapter VI-A of the Income Tax Act, 1961, for the first time in the return of income filed in response to the notice issued under Section 153A of the Act, pursuant to search conducted under Section 132 of the Act. This legal position is no longer res integra. The Hon'ble High Court of Rajasthan in the case of Jai Steel (India) Vs. ACIT had considered an identical question of law in light of search conducted u/s 132 of the Act and the fresh claim made by an assessee for the first time in the return filed u/s 153A of the Act

and after considering the relevant facts and also by analyzing various case laws, including the decision of Hon'ble Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia reported in (2012) 211 Taxmann.com 453 (supra), which is in favour of the revenue held that it is not open for the assessee to seek deductions or claim expenses which have not been claimed in the original return for which assessment has already been completed only because assessment u/s 153A in pursuance of search or requisition is required to be made. Even otherwise, if we go by plain reading of provisions of Section 153A, it is analogous to erstwhile provisions of Section 158B(1) of the Act. From the above provisions, it is undisputedly clear that the purpose of assessment in relation to search cases is to assess undisclosed income, if any, on the basis of incriminating material found as a result of the search, but not to disturb the completed / unabated assessment. Further, if we go by the argument of the counsel for the assessee, in light of the provisions of Section 153A(1)(a) of the Act, once return is filed in response to a notice under Section 153A of the Act, the said return shall be treated as return which was furnished under Section 139 of the Act, in our considered view, it defeats the whole purpose of initiation of search and consequent assessments. In our considered view, although provisions of Section 153A make it very clear that return filed in response to a notice under Section 153A of the Act, partakes the nature of return filed u/s 139 of the Act, said interpretation cannot be enlarged so as to say that even in case where the assessee has filed a regular return under Section 139 and

not made any claim towards deduction and further for the first time, the assessee has made a claim of deduction under Section 80IA(4) in the return of income filed in response to notice under Section 153A of the Act, also to be considered as if the assessee has made a claim on or before filing the return under Section 139(1), and further, it is contrary to the scheme of regular assessment and search assessment and is devoid of merits. Further, the argument of the counsel for the assessee that ITR Form provides for separate schedule for claiming deduction under Section 80IA of the Act is also devoid of merit, because, unlike the erstwhile special procedure for the assessment of undisclosed income of the block period, a separate form is provided for filing return of income for a block period, in the present scheme of assessment of search cases, there is no separate form prescribed by the legislature, which means in a new scheme assessment of each assessment year in consequent to search, the appellant has to file his return of income under very same ITR 6 which is used for filing regular return of income and the return filed under ITR Form 6 provides for various information including deductions under Section 80IA of the Act. Therefore, in our considered view, merely because, separate schedule is provided for deductions under chapter VI-A, it cannot be construed that even in a case of filing return of income under Section 153A of the Act, the appellant can make a fresh claim. Further, once the assessment is abated, the original return which has been filed loses its originality, and the subsequent return filed u/s 153A of the Act takes the place of the

original return. In such cases, the return of income filed u/s 153A(1) of the Act, would be construed to be one filed u/s 139(1) of the Act and the provisions of the Act, shall apply to the same and accordingly, all legitimate claims would be open to the assessee to raise in the return of income filed u/s 153A)(1) of the Act. Therefore, the argument advanced by the learned counsel for the assessee in light of judicial precedents, including the decision of the Hon'ble Supreme Court in the case of V.D.M.Rm.M.Rm. Muthaiah Chettiar Vs. CIT fails.

25. Further, in our considered view, the requirement of assessment or reassessment under the provisions of Section 153A has to be read in the context of Section 132 or Section 132A of the Act, inasmuch as, in case if no incriminating material is found as a result of the search or requisition, the question of reassessment of the concluded assessment does not arise, which would require mere reiteration and it is only in the context of the abated assessment under the second proviso, which is required to be assessed. The underlying purpose of making the 'total income', under Section 153A of the Act is, therefore, to assess income which was not disclosed or would not have been disclosed. The purpose of the second proviso is also very clear, in as much, as once assessment or reassessment is pending on the date of initiation of the search or requisition, and in terms of Section 153A, a return is filed, and the AO is required to assess the same, there cannot be two assessment orders determining the total income of the assessee for the said assessment year and therefore, the proviso

provides for the abatement of such pending assessments and reassessment proceedings, and it is only the assessment made under Section 153A of the Act that would be the assessment for the said year. The necessary corollary of the above provision is that the assessments or reassessments which have already been completed and the assessment orders have been passed, determining the assessee's total income and such orders are subsisting at the time when the search or requisition is made, there is no question of any abatement since no proceedings are pending. In such cases, when the assessment has already been completed, the AO can reopen the assessment or reassess the assessment already made without following the procedure under Section 147 or Section 148 of the Act and determine the total income of the assessee. The arguments raised by the counsel for the assessee, in light of the provisions of Section 153A(1)(a) and Form ITR-6, that the moment the assessee files a return in response to Section 153A, it partakes the nature of the return filed under Section 139(1) of the Act and it satisfies all the conditions, including the provisions of Section 80A(5) and Section 80AC of the Act, is devoid of merit and is rejected.

26. We further note that, although the ratio laid down by the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd (supra) is in the context of additions made by the AO in the assessments which are unabated/concluded on the date of the search in the absence of any incriminating material found as a result

of the search, the Hon'ble Apex Court has in fact approved the ratio laid down by the Hon'ble High Court of Rajasthan in the case of Jai Steel (India) Vs. ACIT, which directly addresses the issue of a fresh claim made by the assessee for the first time in the return of income filed in response to the notice issued under Section 153A of the Act. From the observation of the Hon'ble Supreme Court in Para 8, it is clear that it has approved the ratio laid down by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of PCIT Vs. Saumya Constructions reported in (2016) 387 ITR 529 (Guj) and the Hon'ble High Court of Rajasthan has followed or considered the ratio of these two cases while deciding the issue in the case of Jai Steel (India) Vs. ACIT (supra). Therefore, in our considered view, once the matter has been finally concluded by the Hon'ble Apex Court and held that in unabated or concluded assessment, the AO cannot make any additions in the absence of any incriminating material found as a result of the search, in our considered view, particularly in the case of unabated or concluded assessments, and since the AO cannot tinker with unabated or concluded assessments in the absence of any incriminating material, with equal force, the same ratio should be applicable to the assessee as well. Thus, based on the findings of the Hon'ble Apex Court, in our considered view, the appellant also cannot make any fresh claim of deduction or expenditure for the first time in the return of income filed in response to the notice issued under Section 153A of the Act. Insofar as the abated assessment is concerned, the assessee can make

all claims, provided the return of income is filed in adherence to the timeline to furnish as per notice under Section 153A of the Act, failing which the assessee shall not be able to claim any deduction in view of Section 80A of the Act.

27. At this stage, it is necessary to consider the decisions relied upon by the learned counsel for the assessee and the learned senior standing counsel appearing for the Revenue. The learned counsel for the assessee placed reliance on the decision of the Hon'ble High Court of Bombay in the case of PCIT Vs. JSW Steel Ltd (2020) 422 ITR 71, CIT Vs. D.G. Shirke Construction Technology Pvt. Ltd. (2017) 79 Taxmann.com 306 and the Hon'ble Karnataka High Court in the case of G.M.R. Infrastructure Limited Vs. DCIT in ITA No.1036 of 2017 dt.06.07.2021. We have gone through the decisions rendered by the Hon'ble Bombay High Court in the case of PCIT Vs. JSW Steel Ltd (supra), and we find that, the Hon'ble High Court held that once the search is conducted u/s 132 of the Act and the original assessment was pending and was not completed as on the date of search, in view of the second proviso of section 153A, assessment got abated, and thus, it was open for the assessee to lodge a new claim for deduction etc., which remain to be claimed in his earlier/regular return of income. The Hon'ble High Court has discussed the issue in Paras 12 and 13 of the order, which reads as under:

"12. In this perspective we are called upon to decide the question projected by the revenue as substantial

question of law arising from the order of the Tribunal. We have considered the grounds of appeal and the orders passed by the AO, CIT(A) and the Tribunal with the assistance of learned counsel for the Appellant. From a reading of the above it is clear that Section 153A of the said Act, provides for the 34 of 39 procedure for assessment in search cases. As alluded to hereinabove, the said section starts with a non-obstante clause stating that it is, "notwithstanding anything contained in section 147, 148 and 149……." Further sub Section(a) of Section 153A(1) provides for issuance of notice to the persons searched under Section 132 of the Act to furnish a return of income. However, the second proviso to Section 153 A of the said act makes it clear that assessment relating to any assessment year filed within a period of the six assessment years pending on the date of search under Section 132 of the Act shall abate. Thus if on the date of initiation of search under Section 132, any assessment proceeding relating to any assessment year falling within the period of the said six assessment years is pending, the same shall stand abated and the Assessing Authority cannot proceed with such pending assessment after initiation of search under section 132 of the said Act.

13. In the present case, search was conducted on the assessee on 30.11.2010. At that point of time assessment in the case of assessee for the assessment year 2008-09 was pending scrutiny since notice under Section 143(2) of the Act was issued and assessment was not completed. Therefore, in view of the second proviso to Section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc. That apart, assessee could lodge a new claim for deduction etc. which remained to be claimed in his earlier/ regular return of income. This is so because assessment was never made in the case of the assessee in such a situation. It is fortified that once the assessment gets abated, the original return which had been filed looses its originality and the subsequent return filed under Section 153A of the said Act (which is in consequence to the search action under Section 132) takes the place of the original return. In such a case, the return of income filed under Section 153A(1) of the said Act, would be construed to be one filed under Section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. If that be the position, all legitimate claims would be open to the assessee to raise in the return of income filed under Section 153A(1)."

28. In the case of CIT Vs. D.G. Shirke Construction Technology Pvt. Ltd., (supra), the Hon'ble High Court of Bombay once again examined the question of law raised before the Court which is similar to the question before the Special Bench and after considering relevant provisions of Section 153A(1) of the Act, held that consequent to notice under section 153A of the Act, the earlier return filed for the purpose of assessment which is pending would be treated as non-est in law. Further, Section 153A(1) of the Act itself provides filing of the return consequent to notice, the provisions of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent/assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore, the provisions of the Act, which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act, would also continue to apply in the case of return filed under Section 153A of the Act. The relevant finding of the Hon'ble High Court is as under :

> *"11. In the present facts for the subject assessment years, it is an undisputed position that the pending assessment before the Assessing Officer consequent to return filed under Section 139(1) of the Act for the subject Assessment years had abated. This was on account of the search and as provided in the second proviso to Section 153A(1) of the Act. The consequence of notice under Section 153A(1) of the Act is that assessee is required to furnish fresh return of income for each of the six assessment years in regard to which a notice has been issued. It is this return which is filed consequent to the notice which would be subject of assessment by the Revenue for the first time in the case of abated assessment proceedings. Consequent to notice under Section 153A of the Act, the earlier return filed for*

> *the purpose of assessment which is pending would be treated as non est in law. Further, Section 153A(1) of the Act itself provides on filing of the return consequent to notice, the provision of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply."*

29. In the case of GMR Infrastructure Limited Vs. DCIT (supra), the Hon'ble High Court of Karnataka had occasion to consider a similar question of law before the Court, which is similar to the question for this Special Bench and after considering relevant facts and also by following the decision of Hon'ble Rajasthan High Court in the case of Jai Steel (India), Jodhpur Vs. ACIT (supra) has held that the assessment or reassessment made in pursuance to section 153A of the Act, is not a denovo assessment and, therefore, it was not open to the assessee to claim and be allowed such deduction or allowance of expenditure which it had not claimed in the original assessment proceedings which in the case of assessee stood completed vide order dated 15.01.2009 passed under section 143(1) of the Act. If we go by the observations of the Hon'ble High Court of Bombay and Hon'ble High Court of Karnataka in the above-mentioned case, it is only in the context of abated assessments which are pending as on the date of search under section 132 of the Act, the return filed in response to notice under section 153A of the Act partakes the nature of return filed under section 139 of the

30. Act and the assessee can make/lodge any claim which otherwise, it would have raised in the return of income to be filed under Section 139 of the Income Tax Act, 1961. In other words, in case of unabated/concluded assessments like the AO, who cannot make additions in the absence of any incriminating material, the assessee cannot make any fresh claim, including the claim of deduction under Chapter VI-A of the Act. Therefore, we are of the considered view that the assessee cannot make any fresh claim of deduction or allowance of the expenditure for the first time in the return of income filed under section 153A of the Income Tax Act, 1961.

31. Coming back to another important argument of the learned counsel for the assessee, in light of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra). The learned Senior Advocate Shri K.K. Chaitanya appearing for the assessee submitted that the decision in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra) is distinguishable on facts, because the said issue was rendered in the context of reassessment proceedings u/s 147 of the Act and the said provision only deals with assessment or reassessment of income escaping assessment, which is very clear from the use of the words *"and also any other income chargeable to tax ..."* in Section 147 and Explanation 3 thereto, as it stood prior to substitution vide Finance Act 2021". On the contrary, Section 153A deals with the assessment or reassessment of 'total income', as against assessment or re- assessment of such income i.e., income

escaping assessment u/s 147 of the Act, and therefore, the Revenue cannot rely upon the decision of Hon'ble Apex Court to deny fresh claim of deduction under Section 80IA(4) of the Act. In our considered view, the argument of the learned counsel for the assessee in light of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra) are fallacious for the simple reason that the provisions of Section 147 are analogous to provisions of Section 153A of the Act. Section 147 deals with income escaping assessment, and as per the said provisions, if any income chargeable to tax in case of an assessee has escaped assessment for any assessment year, the AO shall assess or reassess such income for such assessment year. Further, Section 147 makes it very clear that in order to invoke provisions of Section 147 of the Act, there should be income which has escaped assessment, and such escapement should be based on fresh tangible material which comes to the possession of the AO subsequent to the completion of the original assessment and further, the formation of belief of escapement of income should have a live nexus with reasons to believe and fresh tangible material. Similarly, the provisions of Section 153A deal with assessment in case of search or requisition, and as per the said provisions, notwithstanding anything contained in certain provisions of the Act, in case of a person where search is initiated after 31st day of May 2003, the AO shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment

year in which such search is conducted or requisition is made. According to the provisions of Sections 147 and 153A of the Act, although both operate in different fields, the purpose is the same. Section 147 deals with income escaping assessment, and Section 153A deals with assessment consequent to search and seizure under Section 132, where any money, bullion, jewellery, valuable article or things found as a result of the search. Therefore, in our considered view, when the Hon'ble Supreme Court, in very categorical terms, held in light of the provisions of Section 147 of the Act that said provisions are for the benefit of revenue, and the assessee cannot make any fresh claim of deduction towards any income or expenditure, then going by the scheme of assessment under Section 153A, there is no doubt that said provisions are only for the purpose of detection of undisclosed money, bullion, jewellery, or any other article or thing. and said provisions are also for the benefit of revenue, and the assessee cannot take to its advantage. Therefore, the reliance placed by the revenue on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd (supra) is justified. Thus, we reject the arguments taken by the learned counsel for the assessee.

32. Having said so, let us come back, what is the scope of Section 80A(5) and Section 80AC of the Income Tax Act, 1961. The learned counsel for the assessee vehemently argued that, once return is filed in response to notice under Section 153A of the Act, as per provisions of Section 153A(1)(a), such return should be considered as return

filed under Section 139 of the Act, 1961, and further, it is treated as if, the appellant has satisfied all the conditions prescribed under Section 80A(5) and Section 80AC of the Act, 1961. We do not subscribe to the arguments advanced by the learned counsel for the assessee for the simple reason that, the provisions of Section 80AC are very clear, inasmuch as deduction shall not be allowed to any assessee, unless he furnishes return of income for such assessment year on or before the due date specified under Section 139(1) of the Act. Similarly, Section 80A(5), in clear terms, states that when the assessee fails to make a claim in the return of income for any deduction under the heading "C- Deductions in respect of certain incomes," no deduction shall be allowed to him thereunder. A combined reading of Section 80A(5) and Section 80AC makes it very clear that, in order to make any claim including deduction under Section 80IA(4) of the Act, the assessee must file his return of income under Section 139(1) of the Act and further, the said deduction should be claimed in the return furnished for relevant assessment years. Therefore, in our considered view, the argument of the counsel for the assessee that in view of the specific provisions of Section 153A of the Act, even in case of a return filed in response to notice under Section 153A of the Act, the assessee satisfies all the conditions prescribed under Section 80A(5) and 80AC is devoid of merit and cannot be accepted. If we accept the argument of the learned counsel for the assessee that even after search, an assessee can make a claim for the first time towards deduction under Section

80IA(4) of the Act in the return of income filed under Section 153A, then in our considered view, the provisions set out under Section 80A(5) and Section 80AC become redundant, and in our considered view, this is not the intention of the Legislature. Further, if we accept the arguments of the learned counsel for the assessee, it discriminates the persons, who file the return of income and make a claim in the said return of income on or before the due date u/s 139 and the persons who do not file any return of income and also do not make any claim in the said return of income. Therefore, in our considered view, going by the wording of the provisions of Section 80A(5) and Section 80AC of the Act, in order to claim any deductions under Section 80IA(4) of the Act, the assessee should file its return of income on or before the due date prescribed under Section 139(1) of the Act and further, the said claim should be made in the return furnished. Further, in order to claim deduction under Section 80IA(4) of the Act, as per Section 80IA(7), furnishing of the audit report on or before the specified date referred to in Section 44AB of the Act is mandatory and not directory as argued by the learned counsel for the assessee. At this stage, we are taking support from the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Imports), Mumbai Vs. Dilip Kumar and Company, (supra) wherein the Hon'ble Supreme Court clearly held that beneficial provisions like, deductions/ exemptions provisions are required to be strictly interpreted and any perceived ambiguity would necessarily ensure to the benefit of the revenue. We further note that the Hon'ble Supreme Court, in the case

of PCIT Vs. Wipro Ltd (supra) has also considered the interpretation of provisions of Section 10B of the Act and held that such an option should be exercised before the due date under Section 139(1) by way of filing a declaration. Although the said decision was in the context of withdrawal of exemption under Section 10B of the Act, in our considered view, when it comes to the interpretation of exemption and deduction provisions, the said provisions should be strictly interpreted so as to achieve the larger intent of the Legislature. Therefore, we are of the considered view that the arguments of the learned counsel for the assessee that when the appellant filed its return of income in response to a notice under Section 153A of the Act, it partakes the nature of the return filed under Section 139 of the Act and thus, all the conditions prescribed under Section 80A(5) and Section 80AC are satisfied is contrary to law and devoid of merit and cannot be accepted.

33. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee cannot make a fresh claim of deduction under Chapter VI-A of the Income Tax Act, 1961, for the first time, in the return of income filed in response to notice issued under Section 153A of the Act, pursuant to search conducted under Section 132 of the Act, in unabated/completed assessment as on the date of search. In case of abated assessments, like the AO who can make assessment based on incriminating materials and any other information made available to him, including information furnished in return of income, the assessee may claim all deductions towards any income or

expenditure, as if it is a first return of income and fresh assessment. In view of the above, the questions referred are answered as under.

i) Whether an assessee can make a claim for deduction under Chapter VIA of Income Tax Act, 1961, for the first time, in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act ?	Yes
(ii) If yes, under which circumstances ?	I. In case of unabated/ completed assessment/s, no fresh claim can be made under chapter VI-A of the Income Tax Act, 1961, *for the first time, in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act.* II. in case of abated assessment/s, fresh claim can be made under chapter VI-A of the Income Tax Act, 1961, *for the first time, in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act.*

34. The present discussion hereinabove is with reference to the questions referred to on the issue, i.e.

whether a fresh claim of deduction under Chapter VI-A of the Income Tax Act, 1961 could be maintained for the first time in the return filed pursuant to a notice under Section 153A of the Act or not. The learned counsel for the assessee and the Senior Standing Counsel appearing for the Revenue did not argue on the merits as to whether the assessee is eligible for such a claim or not. Therefore, the present appeals filed by the Revenue are posted for hearing on the issue of deduction claimed under Section 80IA(4) of the Act on merits. The Registry is directed to list the appeals in due course and inform both parties.

Order pronounced in the open court on 7th October, 2024.

Sd/-	**Sd/-**	**Sd/-**
(MAHAVIR INGH)	**(C.V. BHADANG)**	**(MANJUNATHA G.)**
VICE -PRESIDENT	**PRESIDENT**	**ACCOUNTANT MEMBER**

Hyderabad, Dated 7th October, 2024

T. Yamini, Sr.P.S.

Copy to :

1. The Dy. Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
2. M/s. SEW Infrastructure Limited, 6-3-871, Snehlata, Greenlands Roads, Begumpet, Hyderabad.
3.Pr.CIT (Central), Hyderabad.
4. D.R. ITAT, Hyderabad.
5. Guard File.