



**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.7328/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2014-15)

The Indian Hume Pipe Company Ltd. Construction House, 2 <sup>nd</sup> Floor, Walchand Hirachand Road, Ballard Estate, Mumbai400001.	<b>बनाम/</b> Vs.	ACIT, CC-3(3) R. No. 1923, 19 <sup>th</sup> Floor, Air India Bldg, Nariman Point, Mumbai-400021.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC4063D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri H. P. Mahajani (AR)
Revenue by:	Shri Awungshi Gimson (DR)

सुनवाई की तारीख / Date of Hearing: 05/08/2019  
घोषणा की तारीख /Date of Pronouncement: 07/08/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 06.11.2017 passed by the Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds of appeal: -

- “ On the facts and in circumstances of the case and in law the Ld. CIT(A) erred in confirming the disallowance of claim of deduction, amounting to Rs.22,02,93,000/- u/s 80IA of the I.T. Act, 1961, relying upon the decision of the Hon'ble ITAT Mumbai for I.T. Asst. Years 2004-05 to 2010-11, for the reasons mentioned in the order.
2. On the facts and in circumstances of the case and in law the Ld. CIT(A) erred in confirming the disallowance u/s 80IA of the I.T. act, 1961 treating the appellant as works contractor and not as developer for the reasons mentioned in the order.



3. *The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal and/or the relief claimed, at any time before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee filed its return of income on 28.11.2014 declaring total income to the tune of Rs.36,64,10,280/- relevant to the A.Y. 2014-15. Thereafter, assessee filed the revised return of income on 30.03.2016 declaring total income to the tune of Rs.14,59,38,910/-. The assessee filed a copy of Tax Audit Report in Form No. 3 CA and 3CD together with printed annual accounts during the assessment proceedings. Notices u/s 143(2) & 142(1) of the I.T. Act, 1961 were issued and served upon the assessee. The assessee company was engaged in the business of activity of manufacture and laying of pipe lines of RCC pipes, hume steel pipes, pre-stressed concrete pipes, bar wrapped steel cylinder pipes, joint pipes, penstocks for water supply etc. The assessee claimed deduction u/s 80IA of the I.T. Act, 1961 in sum of Rs.22,02,93,000/-. Notice was given and after the reply of the assessee, the claim of the assessee was declined and the income of the assessee was assessed to the tune of Rs.36,73,62,022/- and Book Profit u/s 115JB of the I.T. Act, 1961 to the tune of Rs.38,68,89,949/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

### **ISSUE Nos. 1 & 2**

4. Under these issues the assessee has challenged the finding of the CIT(A) in which the CIT(A) has confirmed the disallowance of deduction u/s 80IA of the I.T. Act, 1961 in sum of Rs.22,02,93,000/-. The Ld. Representative of the assessee has argued that the assessee was the work contractor and was not working as developer and being a work contractor the claim u/s 80IC is liable to be allowed in the interest of justice. However, it is also argued that the claim of the assessee has being restored before the



AO in the earlier year, therefore, the issues are liable to be restored accordingly before the AO to decide afresh in accordance with law. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. The copy of order in case of **ITA. No.2210/M/2017 dated 19.09.2018 for the A.Y.2012-13** is on the file in which we found that the claim of the assessee has been restored before the AO to decide the matter of controversy afresh in view of the decision of Hon'ble ITAT in the assessee's own case for the A.Y.2009-10, 2010-11 & 2011-12. The relevant finding has been given in para no. 3 which is hereby reproduced as under: -

*“3. We have considered the rival submission of both the parties and have gone through the orders of authorities below. We have noted that similar ground of appeal was raised by assessee in Assessment Year 2011-12 in ITA No. 2868/Mum/2016 and the Co-ordinate Bench of Tribunal by following the decision of Assessment Year 2009-10 and 2010-11 restored the same to the file of Assessing Officer. Therefore, respectfully following the decision of Co-ordinate Bench, the appeal of the assessee is restored to the file of Assessing Officer to decide in accordance with the direction contained in order dated 03.01.2017 in ITA No. 2868/Mum/2016.”*

5. Since the matter of controversy from the earlier year is pending and the issues have been restored before the AO for the A.Y. 2009-10, 2010-11 & 2011-12, therefore, in the said circumstances, we set aside the finding of the CIT(A) on the said issues and restored the issues before the AO to decide the matter of controversy afresh in view of the direction given by the Hon'ble ITAT in the appeal of the assessee in **ITA. No.2210/M/2017 dated 19.09.2018 for the A.Y.2012-13**. Needless to say that an opportunity of being heard is liable to be given to the assessee in accordance with law. Accordingly, these issues are decided in favour of the assessee against the revenue.



**6. In the result, the appeal of the assessee is hereby ordered to be allowed for statistical purposes.**

Order pronounced in the open court on this 07/08/2019

Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 07/08/2019  
Vijay/ Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित //True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**