

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1560/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Asstt. Commissioner of Income Tax,
Ichalkaranji Circle, Ichalkaranji

.....अपीलार्थी / Appellant

बनाम / V/s.

Ichalkaranji Textile Common
Effluent Treatment Plant Ltd.,
Near Niramaya Hospital,
Ring Road, Ichalkaranji,
Tal.-Hatkanangale,
Distt.-Kolhapur - 416115

PAN : AADCI2895K

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 15-07-2019

घोषणा की तारीख / Date of Pronouncement : 04-09-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 13-07-2018 for the assessment year 2015-16.

2. The Revenue has assailed the order of First Appellate Authority on following grounds :

- “1. *Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in allowing deduction u/s 80IA(4) by ignoring the decision of Apex Court in the case of Goetze (India) Ltd. Vs CIT (74 CCH 0263 ISC-2006) that AO cannot entertain the claim of any deduction not made in the return of income otherwise than by filing a revised return?*
2. *Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in holding that the principle of mutuality would apply to the excess of income over expenditure when the present case is not an AOP but a company. The assessee company is making profit that means it is charging more from its members, which means that the contributing members are claiming more expenses. This results in loss of Revenue.*
3. *The appellant prays that the order of the CIT(A) be vacated and that of the Assessing Officer's order may be restored.*
4. *The appellant craves leave to add, alter, amend or delete any of the above grounds of the appeal at the time of proceedings before the Hon'ble Tribunal which may please be granted.*

3. The notice of appeal was sent to the assessee through RPAD on 13-06-2019 for 15-07-2019. Despite service of notice, none appeared to represent the assessee. A perusal of appeal file shows that the issue raised by the Revenue in appeal is recurring in the past several assessment years.

4. The assessee is a company registered u/s. 25 of the Companies Act, 1956. The assessee runs an effluent treatment plant. The assessee has entered into MOU with various units/undertakings engaged in processing of fabric in and around Ichalkaranji. As per MOU each member/industrial unit has to enter into an agreement with assessee to avail the facility of effluent treatment. The members pay the assessee effluent treatment charges. The assessee filed its return of income for the impugned assessment year on 25-09-2015 declaring total income as Nil after claiming deduction of Rs.94,55,159/- u/s. 80IA(4) of the Act. In scrutiny assessment proceedings, the assessee withdraws his claim of deduction u/s. 80IA(4) and raises fresh plea that the income earned by the assessee

from treatment of effluent is exempt under the principle of mutuality. The Assessing Officer rejected assessee's fresh claim and made addition of the amount claimed as deduction u/s. 80IA(4) of the Act. In First Appellate proceedings the Commissioner of Income Tax (Appeals) after placing reliance on the decision of Hon'ble Bombay High Court in the case of Common Effluent Treatment Plant (Thane Belapur) Association reported as 192 Taxman 238 granted relief to the assessee by applying the principle of mutuality. The Commissioner of Income Tax (Appeals) further observed that in assessment year 2014-15 the claim of assessee was allowed on the principle of mutuality. Against the aforesaid findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before us.

5. Shri N. Ashok Babu representing the Department vehemently defended the action of Assessing Officer in rejecting assessee's claim. The ld. AR submitted that the Hon'ble Apex Court in the case of Goetze (India) Ltd. Vs. Commissioner of Income Tax reported as 284 ITR 323 has held that the Assessing Officer has no power to entertain any claim of assessee except the claim made in return of income or revised return of income. The assessee made fresh claim of exemption on principle of mutuality by filing a letter during assessment proceedings. The Assessing Officer has no power to entertain the claim which was neither made in the return of income nor in the revised return.

6. We have heard the submissions made by ld. DR and have perused the orders of authorities below. The assessee is a company registered u/s. 25 of the Companies Act. The assessee is engaged in treatment of effluent discharged by processing industries located in and around Ichalkaranji. The assessee has entered into MOU with the industrial units for providing effluent treatment facility. The assessee is providing this facility only to its

member units. We find that the Commissioner of Income Tax (Appeals) in impugned order has mentioned that identical disallowance was made by Assessing Officer in the assessee's case in assessment year 2014-15. However, the Commissioner of Income Tax (Appeals) allowed the claim of assessee on the principle of mutuality in the said assessment year. The Commissioner of Income Tax (Appeals) entertained fresh claim of assessee in the impugned assessment year in light of the law laid down in the case of Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders (P) Ltd. reported as 349 ITR 336. We do not find any infirmity in the action of First Appellate Authority in accepting the fresh claim made by assessee before the Appellate Authority.

7. In so far as on the merits of allowability of assessee's claim, the Commissioner of Income Tax (Appeals) allowed the assessee's claim based on principle of mutuality by placing reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Common Effluent Treatment Plant (Thane Belapur) Association (supra). The Hon'ble High Court in the aforesaid case after considering various decisions and the applicability of principle of mutuality held as under :

“10. Applying the principle which has been enunciated by the Supreme Court, there can be no manner of doubt that the surplus generated by the assessee representing the excess of its income over expenditure would fall within the purview of the doctrine of mutuality. For the purposes of the first issue, it must be noted that this income is exclusive of interest which is earned on fixed and other deposits and on refund of income-tax which would be dealt with separately. The income of the assessee is contributed by its members. The assessee has been formed specifically with the object of providing a common effluent facility to its members. The income is not generated out of dealings with any third party. The entire contribution originates from its members and is expended only in furtherance of the objects of the association, for the benefit of the members. On these facts, both the CIT(A) and the Tribunal were justified in coming to the conclusion that the surplus so generated falls within the purview of the doctrine of mutuality and was not exigible to tax. The first question of law would accordingly have to be answered in favour of the assessee and against the Revenue.”

8. We see no error in the findings of Commissioner of Income Tax (Appeals) in allowing relief to the assessee on the principle of mutuality in the light of judgment rendered by Hon'ble Jurisdictional High Court. The appeal of Revenue is devoid of any merit.

9. In the result, the impugned order is upheld and appeal of Revenue is dismissed.

Order pronounced on Wednesday, the 04th day of September, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th September, 2019

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Kolhapur
4. The Pr. Commissioner of Income Tax-2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune