

आयकर अपीलिय अधिकरण "" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 6330/Mum/2018

(निर्धारण वर्ष / Assessment Year 2015-16)

Deputy Commissioner of Income-Tax, CC.3(3), Central Range-3, Mumbai	बनाम/ Vs.	Indian Hume Pipe Co. Ltd, 2 nd Floor, Construction House, Walchand Hirachand Marg, Ballard Estate, Fort, Mumbai-400 001
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AA ACT4063D		

आयकर अपील सं./ ITA No. 5684/Mum/2018

(निर्धारण वर्ष / Assessment Year 2015-16)

Indian Hume Pipe Co. Ltd, 2 nd Floor, Construction House, Walchand Hirachand Marg, Ballard Estate, Fort, Mumbai-400 001	बनाम/ Vs.	Deputy Commissioner of Income-Tax, CC.3(3), Central Range-3, Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Kumar Padmapani Bora, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri H.P. Mahajani, AR

सुनवाई की तारीख / Date of hearing:	06.11.2019
घोषणा की तारीख / Date of pronouncement :	06.11.2019

**आदेश / ORDER**

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These cross appeals by assessee are arising out of order of the Commissioner of Income Tax (Appeals)]-51, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-51/IT-162/DCIT CC 3(3)/17-18 vide dated 16.08.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 3(3), Mumbai (in short DCIT/ ITO/ AO) for the A.Y. 2015-16 vide order dated 29.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

In ITA No. 6330/Mum/2018

2. This appeal contains the quantum addition of ₹4,19,856/-. The learned Counsel for the assessee stated that the tax effect in this appeal is ₹1,38,552/-, which is below the low tax effect as prescribed vide CBDT Circular No. 17/2019 vide F.No. 279/Misc.142/2007-ITJ(Pt.) dated 08.08.2019, wherein the monetary limit for filing of appeal before ITAT is enhanced to ₹50 lacs. We noted that vide this circular No. 17/2019 dated 08.08.2019 an amendment was made to CBDT Circular No. 3/2018 dated 11.07.2018 vide F.No. 279/Misc. 142/2007-ITJ (Pt) increasing the monetary limit for filing of appeal before Income Tax Appellate Tribunal i.e. ₹ 50 lacs in each of the case



from the monetary limit of ₹20 lacs. We noted that earlier Circular No. 3 of 2018 was made applicable to pending appeals also and this clause of the circular remains unchanged even after the amendment. Admittedly, in this case tax effect is below prescribed limit for filing of appeal before the Tribunal by the Revenue i.e. ₹ 50 lacs.

3. When this was confronted to the learned Sr. Departmental Representative, he could not point out that this appeal falls under any of the exception as provided in Circular No. 3 of 2018, which are applicable to the present circular no. 17/2019. Admittedly, the tax effect in this appeal of Revenue is much below the prescribed limit of filing appeal before the Tribunal i.e. ₹ 50 lacs as per CBDT circular No. 17 of 2019. In view of the above, this appeal of Revenue is dismissed as withdrawn in view of Circular No. 17 of 2019. This appeal of Revenue's appeal is dismissed as withdrawn.

In ITA No. 5684/Mum/2018

4. The only issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of the claim of deduction under section 80IA of the Act. For this assessee has raised the following two grounds: -

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of claim of

deduction, amounting to ₹ 33,25,36,000/- . under section 80IA of the Income Tax Act, 1961, relying upon the decisions of the Hon'ble ITAT Mumbai, for I.T. Asset Years 2004-05 to 2010-11, for the reasons mentioned in the order.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in conforming the disallowance of claim of deduction under section 80IA of the I.T. Act, 1961, treating the appellant as works contractor and not as developer for the reasons mentioned in the order."

5. At the outset, the learned Counsel for the assessee stated that the CIT(A) has confirmed the disallowance of the claim of deduction of assessee made under section 80IA of the Act, amounting to ₹33,25,36,000/- by relying on the decision of the Tribunal in assessee's own case for AYs 2004-05 to 2010-11 & 2011-12. This decision of the Tribunal was considered and Tribunal in ITA No. 7328/Mum/2017 for AY 2014-15 vide order dated 07.08.2019 considered the decision of assessee's own case for AYs 2009-10, 2010-11 and 2011-12 and remanded the matter back to the file of the AO by observing as under: -

"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 been 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.



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. The learned Counsel for the assessee stated that exactly on identical circumstances, the matter can be restored back to the file of the Assessing Officer. The learned Departmental Representative, has not objected to the same.

7. After hearing both the sides and going through the facts and circumstances of the case. The Tribunal in ITA No. 7328/Mum/2017 for AY 2014-15 has already restored back and



exactly on identical directions, we also restore this issue of assessee's appeal.

8. In the result, the appeal of the assessee is allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 06.11.2019

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06.11.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai