

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 902/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2011-12)

DCIT Circle 1(1)(1), 'A' Wing, Room No.309, 3 rd Floor, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad 380015	बनाम/ Vs.	M/s. Anil Bioplus Ltd. Anil Starch Premises, Anil Road, Naroda, Ahmedabad 380025
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA6331J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Laxman Singh Gurjar, Sr.DR
प्रत्यर्थी की ओर से / Respondent by :	None

सुनवाई की तारीख / Date of Hearing	29/01/2020
घोषणा की तारीख /Date of Pronouncement	30/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 29.01.2016 arising in the assessment order dated 27.03.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The Ground of appeal filed by the Revenue reads as under:

“The ld.CIT(A) has erred in law and on facts in holding that the assessee is eligible for deduction u/s 80JJA of the I.T. Act, even though no biological agents are manufactured and bio-degradable wastes are not used as raw materials.”

3. Briefly stated, the assessee, a limited company, carries on business of manufacturing of starch dextrose and related product and is also engaged in the business of trading of maize feed and maize oil. The assessee filed its return of income for AY 2011-12 declaring total income at Rs.2,15,67,890/-. The return filed by the assessee was subjected to scrutiny assessment. The AO *inter alia* rejected the claim of deduction of Rs.1,91,83,323/- claimed under s.80JJA of the Act.

4. The assessee preferred appeal before the CIT(A). The CIT(A) recorded submissions of the AO contesting the aforesaid action of the AO which is reproduced hereunder:

“3.2 In this connection, appellant submits that during the course of Assessment proceedings it has made detailed submission on how it is entitled to deduction u/s 80JJA which mainly includes:

- (i) Entire process of production of Biofeeds from Biodegradable Waste*
- (ii) Production of Biological Agents*
- (iii) Ingredients purchased for processing and treating waste*
- (iv) Details of Machinery used in the production process*
- (v) Trading and Profit & loss account of Bio Feeds*
- (vi) Details of Purchase and sale made from various parties along with ledger accounts*

The Assessing Officer has completely ignored the submission and details submitted by appellant and disallowed entire deduction u/s 80JJA without giving any valid reasons and even on imaginative and fanciful factors without calling any further information from appellant- The Assessing Officer has made certain unwarranted observation without any supporting evidences and as if he has so much technical knowledge of entire manufacturing process carried out by appellant.

2.3 The appellant invites reference to provisions of section 80JJA which reads as under:

*“Where the gross total income of an assessee includes any profits and gains derived from **the business of collecting and processing or treating of bio-degradable waste for generating power or producing bio fertilizers, bio-pesticides or other biological agents** or for producing bio-gas or making pellets or briquettes for fuel or organic*

manure, there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences."

Further the appellant would like to draw attention towards the Circular no.772 dated 23/12/1998 wherein the intention of introducing Section 80JJA has been explained. The relevant extracts of the circular are as follows:

80JJA Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste

44.1 Increasing population and urbanization pose challenges for planners. Waste management has been one area of serious concern, which so far has been primarily the responsibility of local bodies. Waste is now being thought not as a useless resource but a re-cyclable and reusable one given the proper framework. The waste can be utilized for generating energy and useful resources by way of composting, vermi-compost and anaerobic digestion. The potential for power generation is also tremendous.

44.2 Accordingly, a new section 80JJA has been inserted with a view to providing that where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power, producing bio-gas, making pellets or briquettes for fuel or organic manure,.....

On the basis of circular it is clear that intention was mainly to overcome the problem of waste management and to create employment opportunities. An increasing trend was seen towards recycling of waste which could be used for productive activities and production of some useful resources. Hence Section 80JJA was introduced to promote the activities like recycling of waste which could in turn be converted into some useful resources.

3.4 On perusal of the above Section it can be stated that deduction under Section 80JJA of the Act is eligible to be claimed, in other words, business would be considered as eligible business if it involves the following activities:

- Collection of biodegradable waste*
- Treating/processing of biodegradable waste*
- Generation of power or production of bio fertilizers, biopesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure*

In light of above it is submitted that the appellant treats and processes biodegradable wastes to produce biological agent "Biofeeds". It can be very well construed that the activities of production of Bio-feed in the case of the assessee company is clearly in line and coincides with the conditions stated out in the

provisions of Section 80JJA of the Act. Hence as the basic conditions of collection and processing of biodegradable waste in order to generate/manufacture Biofeeds (Biological Agents) are met with, the deduction under Section 80JJA is eligible to be claimed.

3.5 In this connection appellant states that it is engaged in the manufacturing of "Biofeeds" which are novel biological agents. They are nutrition booster derived by a combination of various biological processes for the use in Animal healthcare industry.

The appellant company manufactures Bio feed product by using agro products like wheat bran, Ground nut cake, soya cake, corn meal, gluten and crude enzyme and Phytase. First this agro waste is mixed after which sterilization is done and then seed bacterial culture is added. It is then incubated for 72hrs at required temp and humidity. After completing incubation period this material is dried in dryer at 55C temp and moisture is removed after which the material is grinded in grinder. It then undergoes process of blending in blander. Protein and oil content as per product pricing and costumer requirement is maintained. The assessee company uses Paper bag for packing purpose.

Thus the un-wanted bio-degradable waste, are further treated through a series of biological processes with the help of biotechnology to produce these Biofeeds (Biological agents) which are rich in energy values. Biofeeds help in improving the digestion in animals and poultry and the biological agents present in Biofeeds can also be used to replace chemical based antibiotics in animals and poultry. Considering the entire process, appellant is entitled to deduction u/s 80JJA as claimed in Return of Income.

3.6 The activities referred herein above at para 3.4 which relates to eligibility of deduction u/s 80JJA is fulfilled by appellant as under:

(A) Collection of Biodegradable waste

The appellant company submits that one of the preliminary activities of the company is manufacturing of biofeeds and hence all the material (waste) required in the process of manufacturing of biofeeds are purchased from outside and are not waste which are obtained as by-product of any manufacturing process. Materials such as bran, feed, feed Ez Plus, Gluten, wet bran, germs, etc. are purchased for production of biological agents (Biofeeds). These waste materials purchased are otherwise unusable or are have a very low worth. However, converting these waste materials into Bio-feeds make it commercially marketable.

It is an admitted position in the case of the assessee company that it collects the waste material from other entities after having made payment for the same. Therefore, the aforesaid

requirement of collecting as provided under section 80JJA is satisfied

(B) Process of Biodegradable waste

The assessee company submits typical and detailed manufacturing process of production of Biofeeds and same was also given to Assessing Officer:

- *Grind residual maize to fine powder form*
- *Addition of bio-degradable waste like fibre (wet bran), protein (gluten), germ to ground Maize powder in Fermenter (Bio reactors)*
- *Sterilisation and reaction of all these raw material at 121 degree C to make biological broth*
 - *Cooling of the broth*
- *Reaction the enzymes at specific temperature, pH and dissolved oxygen and time*
 - *Harvesting of broth*
 - *Stabilisation of broth by proper mixing*
 - *Drying*
- *Grinding crude biological agent (Biofeeds) to 30 mesh Powder.*
 - *Screening through Vibro Machine*
 - *Standardisation and Packing*

Thus it can be perused that the manufacturing process of Biofeeds involves a complex and typical treatment and processing of biodegradable waste.

(C) Production of Biological Agents

The un-wanted bio-degradable waste, are further treated through a series of biological processes with the help of biotechnology to produce "Biofeeds" which are novel biological agents rich in energy values. They are nutrition booster derived by a combination of various biological processes for the use in Animal healthcare industry. Biofeeds help in improving the digestion in animals and poultry. They help in breaking down the complex feeds into simpler compounds thus making it easy for the animal / poultry to get the extra energy which is locked in the complex feeds. In cattle, Biofeeds gives noticeable improvement in the health of the cattle, increase in milk yields and also improve quality of milk. The biological agents present in Biofeeds can also be used to replace chemical based antibiotics in animals and poultry. As appellant has satisfied all the conditions prescribed u/s 80JJA, Assessing Officer was not justified in rejecting such deduction.

3.7 With regards to observation of Assessing Officer that raw material used by appellant is not biodegradable waste and reference to definition of "Bio degradable waste" as per definition of European

Commission for Environment (herein after ECFE), appellant submits that Assessing Officer has failed to appreciate inter alia:

(i) that definition referred by Assessing Officer as mentioned by ECFE is for Bio-waste and not for biodegradable waste. The relevant definition given in said web site clearly states as under:

*"**Bio-waste** is defined as biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises, and comparable waste from food processing plants. It does not include forestry or agricultural residues, manure, sewage sludge, **or other biodegradable waste such as natural textiles, paper or processed wood.** It also excludes those by-products of food production that never become waste."*

The Assessing Officer has suitably replaced the word " Bio-waste" referred supra as "Bio-degradable waste" and it can be seen from aforesaid definition that Bio-waste does not include certain biodegradable waste whereas section 80JJA, reference is to "Bio-degradable waste" Thus meaning of both Bio-waste and Bio degradable waste is different.

(ii) that even otherwise waste has not been defined in the Income tax Act. As per Oxford Dictionary, definition of waste is as under:

"Unwanted or unusable material, substances, or by-products"

Further, the term 'biodegradable' has not been defined in the Act. Collins dictionary gives the definition of biodegradable as follows:

"Capable of being decomposed by bacteria or other living organisms and thereby avoiding pollution"

Bio-degradable means it can be degraded. Agricultural wastes being Wastes generated from farming activities and these substances are mostly biodegradable.

Further as per United Nations Statistics Division (U.N.S.D.):

'Wastes are materials that are not prime products (that is products produced for the market) for which the generator has no further use in terms of his/her own purposes of production, transformation or consumption, and of which he/she wants to dispose. Wastes may be generated during the extraction of raw materials, the processing of raw materials into intermediate and final products, the consumption of final products, and other human activities. Residuals recycled or reused at the place of generation are excluded.'

*As per dictionary of Wikipedia, **Biodegradable waste** is a type of waste which can be broken down, in a reasonable amount of time, into its base compounds by microorganisms and other living things, regardless of what those compounds may be.*

(iii) that the appellant company purchases items such as bran, feed, feed Ez Plus, Gluten, wet bran, germs, etc. Without any stretch of

imagination it can be construed that the waste obtained palpably falls under the parlance of "biodegradable waste" as they are agricultural waste; or waste or by-products from agro processing industry which are capable of being decomposed in nature without creating any damage to nature. In this context it shall be noted as these items are biodegradable in nature, any further processing will not change its basic characteristics. In furtherance to this, the assessee company submits that these biodegradable wastes are being further treated through biological processes of composting, reaction with enzymes etc. to make Biofeeds.

*(iv) that Hon'ble **Bombay High Court** in the case of **CIT vs. Padma S. Bora** [2013] 355 ITR 368 has held as under:*

There could be no universal definition of the word "waste". The term waste has to be understood contextually i.e. place where it arises and the manner in which it arises during the processing of some article.

In the above case the A.O had held that bagasse being a by-product of the sugar industry and being a saleable product cannot be considered as waste. In the above stated order it was held by the Honorable High Court that there is nothing like waste in the universe and everything has a use and that is how system is created or evolved on this planet-earth. The expression 'waste' has to be understood depending on the person owning such waste as such the expression is generic in its use. Thus it was duly held that whether a substance is a waste or not has to be seen with reference to the person who generates it.

Thus, it can be concluded that there exists no universal definition of waste and thus it has to be understood contextually as explicitly stated by the High Court of Bombay in its above referred judicial pronouncement.

(v) that during the course of assessment proceedings, appellant has submitted a certificate from highly qualified bio-technologists wherein he has explicitly certifying that the waste material obtained and used in the production process of Biofeed; falls under the ambit of technical parlance of "biodegradable waste" and also that the Biofeeds obtained as an end product on treatment of this waste are "Bio-logical agents".

Considering the above facts, appellant has fulfilled the all criteria laid down u/s 80JJA of the Act.

3.7.1 With regards to observation of AO at page 6 of the order that appellant has claimed that all the wastages are generated during the manufacturing process of producing starch, appellant submits that Assessing Officer has proceeded to make disallowance on wrong footing by observing that all waste are generated during manufacturing process carried out by it but appellant in its written submission dated 21st March 2014(no relevant extracts were produced by Assessing Officer in assessment order) categorically state that "one of the preliminary activity of the company is manufacturing of biofeeds and hence all the material required in the process of manufacturing of biofeeds are purchased from outside and are not waste which are obtained as by-product of any manufacturing process".

This once again prove that Assessing Officer wanted to make disallowance u/s 80JJA in any manner in the case of appellant hence without appreciating and understanding the facts of appellant's case, he made aforesaid unwarranted assumption and presumption without confirming the facts with appellant.

*3.8 Apart from above, appellant relies on decision of Hon'ble **Bombay High Court in the case of CIT vs. Padma S. Bora [20131 355 ITR 368 wherein it is held as under:***

"Section 80JJA of the Income-tax Act, 1961 - Deductions - Profits and gains from business of collecting and processing of bio-degradable waste - Fuel briquettes - Assessment years 2003-04 and 2004-05 - Whether assessee, engaged in business of manufacturing fuel briquettes from bagasse was entitled to deduction under section 80JJA - Held, yes [Para 7] [In favour of assessee]"

It is submitted that the facts and circumstances are very much analogous to the case of the appellant company. Bagasse is obtained as a residual product during the process of manufacturing sugar in a sugar industry. Further bagasse is obtained from sugarcane which is an agro commodity. It was used to make fuel briquettes having high calorific value. Regarding the objection put forward by the A.O relating to the end-product after processing being one and the same as the waste collected, the Hon'ble High Court disagreed with the said objection as there was great amount of change in terms of caloric value of the briquettes before and after the said processing or treatment.

Similarly on going through the facts and submissions given by the appellant it can be very well gathered that the appellant too uses similar agro commodity i.e residual maize and allied products for the production of Biofeed. Also on going through the typical manufacturing process as discussed herein above, these low value residuary wastes purchased are converted into biofeeds which are novel biological agents. These biofeeds are having high energy and nutrition value. Thus appellant is entitled to deduction u/s 80J JA of the Act.

*3.9 Apart from above, Circular no.772 dated 23/12/1998 wherein the intention of introducing Section 80JJA has been explained and from same, it is emerging that Section 80JJA was introduced to promote the activities like recycling of waste which could in turn be converted into some useful resources. In the present case the appellant has treated waste to produce Biofeeds which are rich in nutritional value and gives noticeable improvement in the health of the cattle, increase in milk yields and also improve quality of milk. Further it involves a separate series of processes which require additional staff through which it has created employment opportunities as well. Thus looking at the basic intent of legislature it can be maintained that the any recycling of waste that gives rise to **biological agents (useful resources)** would be an eligible activity under the provisions of Section 80JJA.*

Further the said explanation does not imply that the expression 'waste' means the one which is freely available. In fact, it explains that the waste is substrate or raw material for many other useful activities,

when recycled. In view of the above it can be seen that a stand has been taken that the expression 'waste' being undefined in the Act, general meaning needs to be adopted and the provision of Section 80JJA has to be interpreted by applying the principles of literal interpretation of jurisprudence. 3.10 Apart from above, Assessing Officer has also made certain unwarranted observation while making disallowance u/s 80JJA which are dealt as under

- (a) *Assessing Officer at page 6 of his order has observed that both appellant and Anil Limited(both sister concern) has claimed to be engaged in manufacturing Bio Feeds but raw material used for such production of final products are different which creates doubt of appellant's claim for deduction u/s 80JJA.*

In this connection, appellant submits that while making such observation, Assessing Officer has failed to appreciate inter alia –

- (i) *that if he had any confusion regarding different raw material used by both the concerns referred supra, he ought to have asked appellant to clarify or called for further explanation.*
- (ii) *that during the course of assessment proceedings, appellant vide its letter dated 23/12/2013 has stated that following finished products are produced as a result of the above mentioned process.*

*Biofeed S
Biofeed - SC 6
Biofeed Enz
Phytase Enzymes*

Further, Anil Limited also vide its letter dated 23/12/2013 has submitted such details as under:

*Biofeed Active
Biofeed Plus
Biofeed Ultra*

Thus, it can be seen from aforesaid details that though both companies are engaged in production of Bio-feeds, but they are manufacturing different types of such Bio-feeds hence raw material requirement for both the companies are different.

- (iii) *that he is not such a technical person who can simply make disallowance of deduction u/s 80JJA on comparing data of two companies without going to root of the case or without thorough examining the facts of appellant 's case. The Learned Assessing Officer ought to have understood that manufacturing Bio-feeds is main category of production but different types of Bio-feeds are prepared and one cannot presume that only one bio-feed can be produced. It is just like manufacturing of MEDICINES.*

There are number of pharmaceutical companies which are manufacturing medicines but one cannot compare medicine prepared for Heart Attack with CANCER.

- (iv) *that appellant has during assessment proceedings submitted complete details of purchase and sale along with manufacturing process and he himself has accepted book results and yield shown by appellant which itself suggest that there cannot be any doubt; for actual production activity carried out by appellant.*

Thus it is submitted that in support of aforesaid bold observation. Assessing Officer has not brought any positive evidence or even Learned Assessing Officer is not technically competent enough to give this vague.

- (b) *The learned Assessing Officer at page 6 has also observed that appellant has claimed that for carrying out production, appellant does not have boiler/Furness for generating 121 degree C and details of machinery submitted by appellant does not figure Sterilizer, Fermenter etc.*

In this connection, appellant submits that boiler required for such production process was owned by ANIL Limited and was part of Fixed Asset Block of said company. Even during the year under consideration, appellant has paid service utility charges of Rs 95.22 lacs to Anil Limited which includes payment for usage of Fixed Assets owned by Anil Limited and these facts are clearly mentioned at Clause 18 "Payment to related parties" in Tax Audit report. It is further submitted that Assessing Officer has not raised any doubt on this issue in show cause notice issued by him nor called for any further explanation during assessment proceedings. These facts itself suggest that Assessing Officer has made entire disallowance on prejudicial approach.

- (c) *With regards to observation of Assessing Officer at page 8 of his order that two parties from whom appellant has made purchases are not registered with VAT authorities, it is submitted that as both the parties are dealing with Agro Products, they are not liable to pay VAT hence VAT registration is not required. Even Assessing Officer has not called for such clarification in his show cause notice but the authorized representative has explained such facts to Assessing Officer.*
- (d) *With regards to observation of Assessing Officer that appellant has submitted only few copies of bills and failed to produce preliminary documents to prove purchases and receipt of goods, appellant submits that during the course of assessment proceedings, it has filed following written submission dated 21/03/2014 to AO:*

"In order to substantiate the purchases as genuine, the assessee company submits the following before your good selves:

- e. Copy of sales bills along with delivery challan in few cases, issued by the above three parties on a sample basis vide **Annexure-1(A)**. The bill explicitly reflects additional details required such as mode of transport, truck/tempo number etc. Further the assessee company submits that all the bills pertaining to purchases are available with the assessee company which would be willingly produced if required by your good selves in future.*
- f. Copy of ledger account of the assessee company in the books of the parties under consideration duly confirmed by the respective parties vides **Annexure-1(B)**.*
- g. Relevant extracts of the bank statement duly reflecting the payments made to the above three parties vide **Annexure-1(C)**. Your good selves shall appreciate the fact that all the payments have been routed through the bank; which have been highlighted for your good selves' kind perusal.*
- h. Further the assessee company submits that two out of there parties i.e. Shamiksha Marketing Pvt. Ltd & Anil Tradecom; from whom purchases have been made are group companies. Hence in order to explain the entire flow of payments in case of these two parties the assessee company has prepared a chart reflecting the flow of payments starting from the assessee company to the end party. On perusal of this it can be construed that eventually the payments made are going out of the net of group companies. The chart is hereby submitted vide **Annexure-1(D)**.*
- i. Also in order to justify genuineness of purchases, the assessee company has managed to arrange for VAT return of one of the parties from whom purchases are made; hereby submitted vide **Annexure-1(E)**.*

Details pertaining to Sales of Bio feeds

With regard to claim of deduction u/s 80JJA of the Act; your good selves have asked the assessee company to submit details pertaining to sales of bio feeds to 11 different persons. In order to substantiate the sales as genuine the assessee company submits the following before your good selves:

- a. Copy of sales bills issued by the parties under consideration on a sample basis vides **Annexure-2(A)**. The assessee company would like to bring to your kind attention the fact that all sales have been made ex- factory, hence details of mode of transportation are not available in all cases. Further the assessee company submits that all the bills pertaining to sales are available with the assessee company which would be willingly produced if required by your good selves in future.*

b. *Ledger account of the parties under consideration in the books of the assessee company duly confirmed by the respective parties vides Annexure-2(C).*

c. *Relevant extracts of the bank statement duly reflecting the payments received from the parties under consideration vide Annexure-2(D). Your good selves shall appreciate the fact that all the payments have been routed through the bank; which have been highlighted for your good selves' kind perusal.*

Further the assessee company hereby submits month wise details pertaining to purchase and sales of Biofeeds and consumption of raw material details for the year vide Annexure-3 for your good selves' kind perusal."

It can be seen from aforesaid submission that

(i) *Appellant has submitted sample copies of bills along with delivery challans and categorically stated that all the bills pertaining to purchases are available with appellant which would be produced, if required. But Assessing Officer has not called for any further details from appellant hence appellant thought no further bills are requires to be produced.*

(ii) *The appellant has submitted sample copies of bills along with delivery challan to Assessing Officer and such details includes additional details like mode of transport, truck/tempo no etc. This fact is also accepted by Assessing Officer at TOP of Page 9 but at middle of Page 9, he states that appellant has not produced any proof regarding actual receipt of material which itself suggest that Assessing Officer is making contradictory observation and that too without verifying details submitted by appellant.*

Even Ld Assessing Officer himself has accepted book results shown by appellant hence he was not justified in making observation that appellant has failed to produce any evidence to show actual purchase of good. He ought to have appreciated that without making purchases, appellant would not have achieved so much huge turnover.

(iii) *The appellant has submitted ledger account of parties from purchases were made along with confirmations of such parties which suggest that initial burden cast upon appellant to prove genuineness of purchases are proved. The payments are made though account. payee cheques which also prove that purchases are genuine.*

The Assessing Officer has observed that appellant has not submitted address or PAN of creditors. In this connection, appellant submits that name and addresses of creditors were already given to Assessing Officer vide submission dated 02/09/2013 and still he has any issue, he should have called for such details from appellant. It is further submitted that copies of bills submitted by appellant also reflects the addresses of the

said party. Further, Anil Tradecom from whom appellant has made purchases is assessed to same circle and details were already available on record of Assessing Officer. So far as PAN of Samiksha Marketing Limited is concerned, Assessing Officer himself at BOTTOM of Page 8 stated that PAN of said party as submitted by appellant is AACCS8742J. This fact one more time proves the approach of Assessing Officer.

(e) With regards to observation of Assessing Officer that cheques of Rs 29,00,000 issued to Shamiksha Marketing Pvt. Limited (SMPL) against purchases were ultimately deposited in the Bank account of JALARAM commodities Pvt. Limited (JCPL) which again prove that SMPL is paper entity, appellant submits that during the course of assessment proceedings, it was explained to Assessing Officer that name of SMPL has been changed to JCPL and certificate issued by Registrar of Companies, Gujarat was also submitted. Thus both the names referred by Assessing Officer are of same party and cheque issued To SMPL was deposited in its bank account only. The appellant has submitted copy of bank statement of appellant as well as of said party vide its reply dated 21/03/2014.

It is submitted that name of party was changed from 20/07/2011 hence name of creditor in the relevant financial year was only SMPL and copy of appellant's bank statement shown that payment was made in the name of SMPL only and even in bank statement of said company, name of account holder is mentioned as SMPL. The Assessing Officer during assessment proceedings called for Xerox copy of one cheque and in which account, same has been cleared and at that time, Bank of India has forwarded copy of cheque along with Bank statement in whose account same was forwarded and it was found to be in the name of JCPL. As at the time of assessment proceedings, name of SMPL was changed to JCPL, Bank has forwarded Bank statement in the name of JCPL and on sole such basis, Assessing Officer came to conclusion that cheque issued in favour of SMPL was actually deposited by JCPL but has failed to appreciate that both SMPL and JCPL is same party.

It is further submitted that in the bank statement provided by bank account number is mentioned as 2017201000000015 which exactly tallies with bank statement given by appellant. Even PAN of account holder matches with the PAN of SMPL which once again proves that both SMPL and JCPL is same party. This show that Assessing Officer has adopted very casual approach in making addition and that too without verifying facts hence such unwarranted assumption is uncalled for and SMPL is not paper entity.

(f) With regards to observation of SMPL is not registered with ROC of companies and on the basis of searching PAN, it was found that same is registered in the name of Jalaram Trading Pvt. Limited which is registered with ROC, Mumbai and said company was "DORMANT" Company, appellant submits that as SMPL was selling Agriculture produce, provisions of VAT are

not applicable hence same is not required to have VAT registration. It is further submitted that name of SMPL has been changed to JCPL and same is also updated on website of incometaxindiaefiling.gov.in and said company is regularly filing Return of Income with PAN supplied by appellant hence said company is DORMANT company is factually incorrect and even Assessing Officer has extracted details of Jalaram Trading Pvt. Limited and not of Jalaram Commodities Pvt. Limited. It is further submitted instead of searching data base for VAT authorities, had Assessing Officer once seen the website www.incometaxindiaefiling.gov.in and search the name of the company based on PAN provided by appellant in the section "KNOW YOUR JURISDICTION", he would have easily found that PAN is in the name of JCPL (formerly known as SMPL) and even ITD software, available with Assessing Officer, he would have easily obtained jurisdiction of the company and would have gathered all the information of said company very easily. Thus, aforesaid observation of Assessing Officer is factually incorrect.

Considering the facts of appellant case as discussed herein above, as appellant has satisfied all the conditions required for claiming deduction u/s 80JJA, addition made by Assessing Officer deserves to be deleted".

5. Based on the submissions noted above, the CIT(A) has rendered the findings partly allowing the claim of the assessee to the extent of Rs.1,54,15,286/- under s.80JJA of the Act. The relevant operative para is reproduced hereunder:

"2.4. I have carefully considered the assessment order and submission filed by the Appellant. The Assessing Officer has contended that appellant has claimed deduction u/s 80JJA on manufacturing of 'Biofeeds' which are not biological agents and are nutrition booster derived by combination of biological processes for use in animal healthcare industry. It was contended by AO that appellant has used raw material namely Biofeed Enz, feed, jute bags, husk, maize, rape doc and soya bean doc which are not biodegradable waste which is one of the conditions for claiming deduction u/s 80JJA. It was also contended by AO that deduction is available for generation of power, producing bio-fertilizer, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure but appellant has failed to produce any such article hence deduction u/s 80JJA of the Act is not available to it. It is also observed that though Appellant and Anil Limited both has same final products, raw material used for such production are different which creates doubt regarding actual production activity for which appellant has claimed deduction u/s 80JJA. The list of machinery submitted by the appellant does not figure any Sterilizer, Fermenter etc to sustain the claim of the assessee for production activity. It was also observed by Assessing Officer that the two parties being Samiksha Marketing Pvt Limited(SMPL) and Vision Traders from appellant company has made

purchases are not registered with VAT authority which create doubt for genuineness of purchase. The appellant has submitted only few bills of purchases and ledger accounts submitted by appellant do not contain PAN, Address of the party or VAT No. The appellant has failed to prove actual delivery of goods. The Cheque of Rs 29,00,000/- issued by appellant to SMPL against purchases were ultimately deposited in Bank account of M/s Jataram Commodities Pvt Limited (JCPL) which also prove that SMPL is paper entity. Thus Assessing Officer made disallowance u/s 80JJA for Rs 1,91,83,323/-.

2.4.1. On the other hand, appellant has argued that the manufacturing process of various agro-products e.g. wheat flour, groundnut, maize, etc. evolves crushing and then separation from other un-wanted material which are waste. These waste materials consist of residual grain grits, some un-wanted proteins, fibres (wet bran), seeds, etc and these waste material is purchased by appellant and biological processes is carried out with the help of fermentation to produce these Enzymes (Biological agents) which are biocatalyst and are rich in energy values. Biofeeds help in improving the digestion in animals and poultry. So far as argument of AO that wastes purchased by appellant are not biodegradable, appellant has argued that material purchased by it are agricultural waste or by-products from agro processing industry which are capable of being decomposed in nature without creating any damage to nature produce biological agent "Biofeeds" and they are nutrition booster derived by a combination of various biological processes for the use in Animal healthcare industry. The appellant has also submitted entire manufacturing process of biological agents along with certificate from highly qualified bio-technologists in support of its claim that as it has satisfied all the conditions laid down u/s 80JJA, it is entitled to such deduction as claimed in return of income. With regards to observation of Assessing Officer that both appellant and Anil Limited produces bio feeds but raw material used for such production are different, appellant has argued that both the companies produces different types of bio feeds hence raw material used by both parties cannot be compared. With regards to observation of Assessing Officer that boiler requires for production process is not owned by appellant, appellant has argued that such assets are owned by Anil limited and for same, utility service charges of Rs 95.22 lacs is also paid by appellant. The appellant has also submitted that parties from whom purchases were made were dealing with Agro products which do not require VAT registration. The appellant has also submitted that it

has submitted sample copies of invoices along with delivery challans which includes mode of transport, truck no etc, ledger account, confirmation of parties to prove genuineness of purchases and even Assessing Officer has accepted book results while passing the assessment order. With regards to observation of Assessing Officer that SMPL is not registered with ROC of companies, appellant has submitted name of SMPL has been changed to JCPL and not Jalaram Trading Pvt. Limited as observed by Assessing Officer and even these details are available on web site of income tax department. With regards to observation of Assessing Officer that cheque issued to SMPL against purchases are deposited in bank account of JCPL, appellant submitted that when bank submitted details regards clearance of cheque, name of

SMPL was changed to JCPL hence such details were provided by bank hence same cannot adversely affect disallowance u/s 80JJA of the Act.

2.4.2. On careful consideration of entire facts, it is observed that issue regarding disallowance under Section 80JJA was raised in A.Y. 2010-11 being the first year of the claim and disallowance made by Assessing Officer was deleted by undersigned vide order dated 27/01/2016 in Appeal No. 66/CIT(A)-1 and held as under:

2.6. On careful consideration of entire facts as discussed herein above, deduction u/s 80JJA is available to assesses when it satisfies following twin conditions:-

(i) Profits and gains should be derived from the business of collecting and processing or treating of bio-degradable waste, and

(ii) Profit and gain should be out of activity being generating power or producing bio fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure.

It is further observed that term bio-degradable waste is not defined in Income Tax Act. However, as per Oxford Dictionary, waste means "Unwanted or unusable material, substances, or by-products" and biodegradable as per Collins dictionary means capable of being decomposed by bacteria or other living organisms and thereby avoiding pollution". Even as per dictionary of Wikipedia, Biodegradable waste is a type of waste which can be broken down, in a reasonable amount of time, into its base compounds by micro-organisms and other living things, regardless of what those compounds may be. The AO has observed that material purchased by appellant and further treated are not biodegradable but has not given any reasoning why such waste is not biodegradable. The AO has referred to definition of biodegradable waste as per definition of European Commission for Environment but the said definition is actually for bio waste and such definition is given in web site of ECFE which reads as under:

*"**Bio-waste** is defined as biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises, and comparable waste from food processing plants. It does not include forestry or agricultural residues, manure, sewage sludge, **or other biodegradable waste such as natural textiles, paper or processed wood**. It also excludes those by-products of food production that never become waste."*

It can be seen from above definition that biodegradable waste is different than bio-waste and bio waste does not include biodegradable waste hence, reliance on such definition while denying deduction u/s 80JJA cannot be placed. The appellant has used wheat bran, ground nut cake, soya cake, com meal, gluten, husk etc during production process of articles and things eligible

for deduction u/s 80JJA and such waste are mainly derived from agro processing industry which are capable of being decomposed in nature and squarely considered as biodegradable waste as per definition of biodegradable given in dictionary of Collins.

2.7. During the course of assessment proceeding as well as appellate proceedings, appellant has submitted production process carried out by it and such process has not been found to be incorrect by AO or no defects have been pointed out by him. It is further observed that appellant has treated above referred biodegradable waste into biological processes with the help of fermentation to produce these Enzymes (Biological agents) which are biocatalyst. Specific microorganisms are added in the fermentation process which at specific controlled parameters of pH, temperature, aeration and time produces specific Enzymes. For each Enzyme a specific microorganism is used will changing the raw material (bio-degradable waste) proportions. Enzymes help in improving the any metabolic reaction in various industrial applications. They help in speeding up the breaking down the complex compounds into simpler compounds thus helping to avoid using conventional and hazardous chemicals which are harmful to the environment The appellant has manufactured bio degradable agents like biofeed S, Biofeed-SC 6, Biofeed Enz, etc., and these biological agents have helped in improving the digestion in animals and poultry. They have helped in breaking down the complex feeds into simpler compounds thus making it easy for the animal /poultry to get the extraenergy which is locked in the complex feeds. The biological agents present in Biofeeds are also used to replace chemical based antibiotics in animals and poultry. In entire process, appellant has produced biological agents and deduction u/s 80JJA simply state that appellant should produce or manufacture biological agents and AO has not disproved the contention of appellant that items manufactured by appellant are not biological agents.

2.8. It is further observed that during the course of assessment proceedings for A. Y. 2011-12, appellant has submitted certificate of qualified Bio-Technologist wherein he has submitted as under:

"This is to certify that our R&D is recognised by Department of Science and Industrial research (DSIR). We are well aware of applications and manufacturing processes of the products manufactures at M/s. Anil Bioplus Ltd (ABL). ABL also produces various Biological agents such as Biofeed S, Biofeed SC-6, Biofeed Enz and Phytase Enzymes. These products are biologically active in nature. The Biological Agents find applications in degradation of various complex materials such as proteins, carbohydrates, cellulosic materials, fats, etc. During the degradation process, these Biological Agents break complex materials into simple molecules. These simple molecules are readily absorbed by animals, birds,

soil, plants, environment, etc. These simple molecules act as nutrients and find various applications. To produce above Biological Agents, various biodegradable agricultural waste or bio-degradable waste or by-products from Agro processing industry are used. These are Wheat Branch, Groundnut Cake, Soya Cake, Corn Meal Gluten, Crude Enzymes and Phytase. Using biotech process, these materials are processed together with seed bacterial culture at required processing conditions."

The above technical certificate issued by concerned person was not found to be incorrect by AO and AO has brought any other evidences including certificate of technical person to substantiate its claim that waste procured by appellant are not biodegradable waste or articles produced by it are not biological agents. It is pertinent to note that even circular no 772 dated 23/12/1998 wherein intention of introducing provisions of section 80JJA has been explained, it has been categorically stated that section is introduced to promote activities like recycling of waste which could in turn be converted into useful resources. The activities carried out by appellant as stated herein above clearly suggest that it has produced biological agents which are rich in nutritional value and same is generated out of biodegradable waste hence profit and gains earned form such process is entitled to deduction u/s 80JJA of the Act. Reference is also drawn to decision of Hon'ble Supreme court in the case of Bajaj Tempo Ltd. v. CIT [1992] 196 ITR 188 wherein it was held that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. Since the provisions intended for promoting economic growth has to be interpreted liberally the restriction on it too has to be construed so as to advance the objective of the section and not to frustrate it. Considering the facts of the case as discussed herein above, it is held that appellant has produced biological agents after utilizing biodegradable waste and profits and gains earned from such activity entails appellant deduction u/s 80JJA of the Act.

2.9. *So far as issue of allocation of expenditure between activities eligible for deduction u/s 80JJA and other activities, it is observed that appellant has claimed purchases on actual basis and same cannot be allocated on the basis of turnover basis. So far as allocation of other expenditure, it is observed that when assessee can allocate particular expenditure to unit to which it attributes on scientific basis, there is no need to allocate expenditure on turnover basis as observed by A.O. The allocation of expenditure on turnover basis need to be the last resort for allocating expenditure and same can be adopted when other scientific formula is not available hence argument of AO for allocating expenditure on turnover basis cannot be accepted. The appellant has allocated power & fuel and stores & spares consumption on actual basis and this allocation is not found to be incorrect by AO. However, it is observed that appellant has not allocated interest & finance charges as well Research & development expenditure to sales pertaining to 80JJA activity*

*which need to be allocated to such activity on turnover basis. The appellant has claimed such expenditure at Rs 41.49 lacs and amount allocated to 80JJA sales would be 24.06 lacs hence revised profit & gains eligible for deduction u/s 80JJA would be at Rs 1,06,90,000/- as against Rs 1,30,95,557/- as claimed in return of income. Thus AO is directed to allow deduction u/s 80JJA at Rs 1,06,90,000/- and the **related ground of appeal is partly allowed**".*

2.4.3. *It is pertinent to note that while making disallowance under Section 80JJA in year under consideration Assessing Officer has raised certain objections which are dealt with as under:*

- (i) The Assessing Officer has contended that both Appellant and Anil Limited are producing Biofeed but raw material consumed in such process are different, which creates doubt for Appellant's claim for deduction under Section 80JJA. This contention of Assessing Officer cannot be accepted because Assessing Officer has not brought out any evidences which can suggest that raw material used by Appellant is not required in the production of biological agent being Biofeeds. Though both the companies produce Biofeeds, both are engaged in production of different types of Biofeeds which is evident from details of finished goods produced by Appellant as well as Anil Limited from submission dated 23rd December, 2013. The Appellant is producing Biofeed S, Biofeed ENZ, etc., whereas Anil Limited is producing Biofeed Active, Biofeed Plus, etc.*
- (ii) The observation of Assessing Officer that Appellant does not have boiler/furnace for generating 121 Degree Celsius and even sterilizer or fermenter are not available with Appellant which is required in production process. Even this observation of Assessing Officer cannot be accepted as no specific Show Cause Notice has been issued with regards to such observation in Assessment Order. It is pertinent to note that Appellant is using fixed assets owned by Anil Limited for its production process and it has been paying utility charges of Rs. 95.22 lacs in year under consideration and such charges include charges for usage of fixed assets and such details are already submitted by Appellant at Clause - 18 of Tax Audit Report.*
- (iii) The Assessing Officer has also observed SMPL and Vision Traders from whom Appellant has purchased goods are not registered with VAT Authorities. It is observed that as both parties are dealing in agro-products, they are not required to obtain VAT Number hence non-registration with VAT Authorities by those parties does not mean that Appellant is not entitled for deduction under Section 80JJA of the Act.*
- (iv) The Assessing Officer has a/so observed that SMPL is not registered with ROC but when details of such company are searched it was found that same is registered in the name of Jalaram Trading Pvt, Limited which is a dormant company. The Appellant has submitted details regarding change of name of SMPL to Jalaram Commodities Pvt. Limited from 20th July,*

2011. These details are considered and it has been found that name of SMPL was changed as JCPL and not Jalaram Trading Pvt. Limited. Even website of Income Tax Department wherein details of PAN can be obtained in the section "Know Your Jurisdiction" clearly shows that PAN is in the name of JCPL formerly known as SMPL. These facts clearly suggest that Assessing Officer has made fallacious observation that SMPL is not registered with ROC or is a dormant company.

- (V) *The Assessing Officer has a/so observed that cheques of Rs.29,00,000/- issued to SMPL is ultimately deposited in JCPL which proves that SMPL is paper company. It is pertinent to note that both SMPL and JCPL are same company as observed in preceding para hence observation of Assessing Officer that SMPL is Paper Company is incorrect. It is observed that Appellant has submitted copies of bank statements which clearly indicate that payment of Rs. 29,00,000/- is made to SMPL only. Even Appellant has submitted copies of bank statements of SMPL which clearly reflect these transactions. The Assessing Officer has reproduced scanned copy of bank statement in Assessment Order wherein above payments are reflected in bank account held in the name of JCPL. It is pertinent to note that bank account of SMPL and JCPL shows same bank account number which further proves that name of SMPL is changed to JCPL. As Assessing Officer has called for details during Assessment Proceedings, i.e. during FY 2013-14, name of SMPL was already changed to JCPL hence data base of bank shows name as JCPL. Thus, the entire observation of Assessing Officer for making impugned disallowance on the ground that SMPL is Paper Company is factually incorrect.*
- (vi) *The Assessing Officer has also observed that Appellant has failed to provide purchase bills/delivery challans in order to prove purchases made by it as genuine purchases. The reply filed by Appellant to Assessing Officer is reproduced at para - 3.10(d) in Appellant's submission wherein Appellant has categorically stated that sample copies of invoices along with delivery challans are produced and if further details are required, same can be submitted. However, Assessing Officer has not asked the Appellant to submit further copies of bills hence he is incorrect in observing that required details were not produced. The Appellant has also submitted copies of confirmations of parties from whom goods are purchased and even SMPL and Anil Tradecom are Group Companies of Appellant Company and sales made to Appellant are offered for taxation in both the companies hence purchases cannot be treated as bogus purchases. It is pertinent to note that though while making disallowance under Section 80JJA, Assessing Officer has created doubt of non-genuine purchases, he has accepted book results shown by Appellant while passing Assessment Order and even no disallowance regarding non-genuine purchases of inflated purchases is made which proves that Assessing Officer was not justified in making observation regarding alleged bogus purchases only while making disallowance of deduction under Section 80JJA.*

Considering the facts discussed herein above, Assessing Officer is not justified in making disallowance under Section 80JJA.

2.4.4. It is pertinent to note that Assessing Officer has not made any alternate disallowance under Section 80JJA on account of non-allocation of expenditure between sales eligible for deduction under Section 80JJA and other sales. However, this issue was dealt with by undersigned in A. Y. 2010-11 as under:

*"So far as issue of allocation of expenditure between activities eligible for deduction u/s 80JJA and other activities, it is observed that appellant has claimed purchases on actual basis and same cannot be allocated on the basis of turnover basis. So far as allocation of other expenditure, it is observed that when assessee can allocate particular expenditure to unit to which it attributes on scientific basis, there is no need to allocate expenditure on turnover basis as observed by AO. The allocation of expenditure on turnover basis need to be last resort for allocating expenditure and same can be adopted when other scientific formula is not available hence argument of AO for allocating expenditure on turnover basis cannot be accepted. The appellant has allocated power & fuel and stores & spares consumption on actual basis and this allocation is not found to be incorrect by AO. However, it is observed that appellant has not allocated interest & finance charges as well Research & development expenditure to sales pertaining to 80JJA activity which need to be allocated to such activity on turnover basis. The appellant has claimed such expenditure at Rs 41.49 lacs and amount allocated to 80JJA sales would be 24.06 lacs hence revised profit & gains eligible for deduction u/s 80JJA would be at Rs 1,06,90,000 as against Rs 1,30,95,557 as claimed In return of income. Thus AO is directed to allow deduction u/s 80JJA at Rs 1,06,90,000 and **the related ground of appeal is partly allowed.**"*

*2.4.5. It is observed that even in year under consideration Appellant has not allocated financial charges as well as research and development expenditure to sales eligible for 80JJA hence these expenditure are allocated in the ratio of turnover as held in A.Y. 2010-11. The total expenditure debited in Books of Account is Rs.54,95,674/- and allocation to sales under Section 80JJA works out to R\$. 37,68,037/- and to that extent deduction claimed in Return of Income is reduced. Thus AO is directed to allow deduction u/s 80JJA at Rs 1,54,75,286/- and **the related ground of appeal is partly allowed.***

6. Aggrieved by the partial relief granted in favour of the assessee, the Revenue preferred appeal before the Tribunal to impugn the order of CIT(A).

7. When the matter was called for hearing, none appeared for the assessee. Repeated attempts were made to serve the notice on the

assessee. As per the communication dated 29.01.2020 from the department, it was noticed that the premises of the assessee are found closed and therefore, the notice was serviced through affixture. In the circumstances, the matter was proceeded *ex parte* in the absence of assessee.

8. The learned DR for the Revenue relied upon the order of the AO.

9. We have carefully perused the assessment order of the AO and appellate order of CIT(A). The claim of deduction under s.80JJA of the Act on processing of biodegradable waste for generation of biofeeds (biological agents) is in question. The CIT(A) has found merit in the claim of deduction on principles. The CIT(A) has taken note of the submissions of the assessee towards process of production of biofeeds in the nature of biological agents from biodegradable waste, ingredients purchased for processing and treating waste, details of machinery used in production, details of purchase and sale made from various parties etc. The CIT(A) found merit in the case of the assessee for eligibility of deduction under s.80JJA of the Act from on profits arising from activity of collection and processing of biodegradable waste in order to generate/manufacture biofeeds/biological agents which are essentially nutrition booster derived by a combination of various biological processes for the use in Animal Healthcare Industry. As per process adopted, unwanted waste are further treated through a series of biological process with the help of biotechnology to produce biofeeds which are rich in energy values. Biofeeds are stated to help in improving the digestion in animals and poultry and the biological agents present in biofeeds are stated to be used to replace chemical based antibiotics in animal and poultry. On these facts, the CIT(A) has accepted the claim of the assessee under s. 80JJA of the Act on first principle but re-allocated a part of expenditure as considered attributable to the activity derived from the business of collecting and processing or treating biodegradable waste for production of biological agents. Owing to reallocation of expenses, the CIT(A) restricted the claim to the extent

of Rs.1.54 Crores as against the claim of the assessee amounting to Rs.1.91 Crore. We find considerable substance in the process of reasoning adopted by the CIT(A) while concluding the issue in favour of the assessee. The CIT(A), in our view, has dealt with the issue objectively and hence does not warrant interference. The Revenue has failed to rebut the findings of the CIT(A) in any assertive manner. We thus decline to interfere.

10. In the result, appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 30/01/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 30/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।