

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

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6486/Mum/2019
(Assessment Year :2013-14)**

The Indian Hume Pipe Co.Ltd Construction House, 2 nd Floor Walchand Hirachand Road Ballard Estate Mumbai – 400 001	Vs.	Deputy Commissioner of Income Tax, Central Circle 3(3) R.No.1913, 19 th Floor Air India Building Nariman Point Mumbai – 400 021
PAN/GIR No.AAACT4063D		
(Appellant)	..	(Respondent)

Assessee by	Ms. Hetal Vora
Revenue by	Ms. Shreekala Pardeshi
Date of Hearing	07/06/2021
Date of Pronouncement	07/06/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6486/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal No.CIT(A)-51/IT-02/DCIT-CC-3(3)/2016-17 dated 13/08/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2016 by the Id. Deputy Commissioner of Income Tax, Central Circle-3(3), Mumbai (hereinafter referred to as Id. AO).

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

- 1) *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. 24,17,17,000/-, u/s 80IA of the Income Tax Act, 1961, relying upon the decisions 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 of claim of deduction u/s 80IA of the IT. Act, 1961, treating the appellant as works contractor and not as developer for the reasons mentioned in the order.*

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. We have heard rival submissions and perused the materials available on record. At the outset both the parties before us mutually agreed that the aforesaid grounds were already adjudicated by this Tribunal in assessee's own case for A.Y.2015-16 in ITA Nos.6330/Mum/2018 & 5684/Mum/2018 dated 06/11/2019. The relevant portion of the said decision is reproduced hereunder:-

"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 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 Coordinate 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."

4. The decision rendered in assessee's own case for A.Y.2015-16 by this Tribunal shall apply mutatis mutandis to this assessment year also in view of identical facts and grounds except with variance in figures. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 07/06/2021.

**Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT**

Mumbai; Dated 07/06/2021
KARUNA, *sr.ps*

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai