IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI

BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.7333/MUM/2019
(Assessment Year: 2015-16)

Dy.CIT, Central Circle-6(3), Room No. 1905, 19th Floor, Air India Building, Nariman Point, Mumbai – 400021	Vs.	M/s Kerla Enviro Infrastructure Ltd., Inside Fact Cochin, Divisi Ambalamugal, Cochin, Kerala- 692303

PAN No. AACCK6979P

(Revenue) (Assessee)

Assessee by : Shri Kirit Kamdar, A.R
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 16/06/2021
Date of pronouncement : 22/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-54, Mumbai, dated 25.09.2019, which in turn arises from the assessment order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 21.12.2017 for A.Y. 2015-16. The revenue has assailed the impugned order on the following grounds of appeal:

> "1. Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in accepting the mathematical computation in relation to post closure care expenditure as scientific when such computation is not backed by any scientific explanation/justification and is thus merely a mathematical exercise.

2. Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in allowing the pit covering and post closure care expenses when such liability has been estimated without any scientific/justification and thus is merely a contingent and not ascertained liability.

3. Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowance amounting to Rs.2,57,99,000/- toward provision for pit covering expenses relying on the decision of the Hon'ble ITAT in the case of M/s Bharuch Enviro Infrastructure Ltd. (ITA No. 733, 1424/AHD/2007 and others) despite the fact that the Revenue has not accepted the decision of the Hon'ble ITAT and preferred appeal before the Hon'ble Bombay High Court.

4. Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowance amounting to Rs.2,47,72,000/- toward provision for post closure expenditure relying on the decision of the Hon'ble ITAT in the case of M/s Bharuch Enviro Infrastructure Ltd. (ITA No. 733, 1424/AHD/2007 and 2223/Ahd/2010) despite the fact that the Revenue has not accepted the decision of the Hon'ble ITAT and preferred appeal before the Hon'ble Bombay High Court."

2. Briefly stated, the assessee company which is engaged in the business of operating facilities for treatment, storage and safe disposal of industrial waste had filed its return of income for A.Y.2015-16 on 30.09.2015, declaring an income of Rs.12,31,040/- under the normal provisions and Rs.1,00,42,240/- u/s 115JB of the Act. The return of income filed by the assessee was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had debited the following provisions in its profit and loss account:

"a.	Provision for pit covering	Rs.2,57,99,000/-
b.	Post closure expenses	Rs.2,47,72,000/-
		Rs.5,05,71,000/-"

Observing, that the aforesaid expenditure debited in the profit and loss account had neither accrued nor paid during the year, but mere provisions, the A.O called upon the assessee to explain as to why the

same may not be disallowed. In reply, it was submitted by the assessee that it was providing for 10% of the tariff that was collected from the users as disposal charges as per the terms of the agreement between KSIDC and UPL. It was submitted by the assessee that an amount equal to the provisions was kept in escrow fund with a bank, and the same would be available for use only against the identified actual expenses after closure in nature. On a similar footing the assessee offered its explanation with respect to its claim for deduction of provision for pit covering expenses. However, the A.O did not find favour with the aforesaid explanation of the assessee. Being of the view that the activities in question were in the nature of an event happening in future, the A.O, thus, held a conviction that even if it was a pre-determined liability it would accrue only after the execution of the contract. Observing, that only the expenses which are expended for earning the income accrued or received or deemed to have been accrued or received during the year under consideration were allowable as a deduction u/s 37(1) of the Act, the A.O disallowed the aforesaid claim for deduction of the aforementioned provisions aggregating to an amount of Rs.5,05,71,000/-. After inter alia making the aforesaid disallowance, the income of the assessee company was assessed at Rs.5,18,02,040/ under the normal provisions of the Act while for its 'book profit' u/s 115JB was reworked out at an amount of Rs.6,00,13,240/-.

4. Aggrieved, the assessee carried the matter in appeal. Before the CIT(A), it was submitted by the assessee that as the aforementioned provisions were made in respect of an ascertained liability, the expenditure of which has to be incurred in the future years but its corresponding income is earned during the year under consideration, thus, the same was rightly claimed as a deduction. As such, it was the claim of the assessee that as the aforesaid provisions were in the

nature of an ascertained liability, the same, thus, following the principle of matching concept were to be allowed as a deduction during the year under consideration. In order to buttress his aforesaid claim the assessee elaborated at length about the nature of the pit covering expenses. It was submitted by the assessee that as the provisions therein made were on the basis of a systematic and rational approach, occurrence of which was certain, thus, the same were to be allowed as a business expenditure u/s 37 of the Act. It was, thus, submitted by the assessee that as the provision for pit covering expenses was made only by using a substantial degree of estimation, therefore, there was no question of treating the same as a contingent liability and it ought to be allowed as a deduction. The assessee further relied on the judgment of the Hon'ble Supreme Court in the case of Rotork Control India (P) Ltd. Vs. CIT (2009) 314 ITR 62 (SC), wherein it was held that a provision can be recognized on a cumulative satisfaction of the following three conditions:-

> "(a) an enterprise has a present obligation as a result of a past event;
> (b) it is probable that an outflow of resources will be required to settle the obligation; and
> (c) a reliable estimate can be made of the amount of the obligation."

As such, it was the claim of the assessee that as it had cumulatively satisfied the aforesaid three conditions, therefore, there was no question of treating the provision for pit covering expenses as a contingent liability, and the same was rightly claimed by the assessee as a deduction. Insofar the provision for post closure care expenditure was concerned, it was submitted by the assessee that it was obligated to maintain the secured landfill for 30 years after the closure of the pits. Accordingly, it was submitted by the assessee that it had made a provision for post-closure expenses and claimed the same as a deduction u/s 37 of the Act, for the reason, that the said expenditure was to be incurred in future out of the income that was received and

was offered for tax by the assessee during the year under consideration. It was further submitted by the assessee that it was obliged under the provisions of Hazardous Waste (Management & Handling) Rules, 1989 made under the Environment (protection) Act, 1986 to maintain the landfills after their closure. It was further submitted by the assessee that the provision for post closure expenses was made at the rate of 10% of the tariff that was collected from the users as disposal charges, which in itself was based on the agreement between KSIDC and UPL. It was submitted by the assessee that the amount equal to the provision was kept in the escrow fund with a bank, which thereafter was to be used against the identified actual expenses after the closure of the pits. As such, it was submitted by the assessee that the provision for post closure expenditure was a mandatory contractual obligation of the assessee as per the terms of the agreement. In support of his claim for deduction of the aforementioned provisions, it was submitted by the assessee that the issue was squarely covered by the order of the ITAT, Ahmedabad, in the case of Bhaurch Enviro Infrastructure Ltd; ITA No. 733, 1424, 4389 and 4408/Ahd/2007, wherein the Tribunal had vacated the disallowance of viz, provision for pit covering expenses; and (i) provision for post closure expenses. After deliberating at length on the contentions that were advanced by the assessee, the CIT(A) finding favour with the same vacated the impugned disallowances of, viz. (i). provision for pit covering expenses of Rs.2,57,99,000/-; and (ii). provision for post closure expenses of Rs.2,47,72,000/-. Also, it was observed by the CIT(A), that as the additions had been vacated, therefore, the issue pertaining to the addition made by the A.O to the 'book profit' u/s 115JB would be rendered as merely academic, and thus, would not required to be adjudicated.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the assessee's claim for deduction pertaining to the issue in question, viz. (i) provision for pit covering; and (ii) provision for post closure expenses is squarely covered by the order passed by a coordinate bench of the Tribunal i.e ITAT, Ahmedabad in the case of the assessee's 'sister concern', viz. Bharuch Enviro Infrastructure Ltd., ITA Nos. 733, 1424, 4389 & 4408/Ahd/2007. It was submitted by the ld. A.R that the Tribunal in its aforesaid order had after drawing support from the judgment of the Hon'ble High Court of Rajasthan in the case of Udaipur Mineral Development Syndicate (P) Ltd. Vs. DCIT (2003) 129 taxman.com 728 (Raj) concluded that the assessee was entitled for claim of deduction, viz. (i) provision of pit covering expenses; and (ii) provision for post closure expenses.

6. Per contra, the ld. Departmental Representative (for short 'D.R') though relied on the orders of the lower authorities, however, he did not rebut the claim of the assessee's counsel that the issue in question was covered by the aforesaid order of the coordinate bench of the Tribunal in the case of Bharuch Enviro Infrastructure Ltd. (supra).

7. We have heard the Ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As stated by the ld. A.R, and rightly so, we find that the issue pertaining to the allowability of the aforementioned provisions, viz. (i). provision for pit covering expenses; and (ii). provision for post closure expenses is squarely covered by the order

passed by the ITAT, Ahmedabad, in the case of the 'sister concern' of the assessee, viz. Bharuch Enviro Infrastructure Pvt. ltd., ITA Nos. 733, 1424,4389 & 4408/Ahd/2007. On a perusal of the order of the CIT(A), we find, that he had after inter alia drawing support from the aforesaid order of the Tribunal in the case of Bharuch Enviro Infrastructure Ltd. (supra) had therein vacated the disallowance of the aforementioned provisions. Also, in the backdrop of the fact that now when the impugned addition/disallowance of the provisions were vacated by him, therefore, it was rightly observed by him that the impugned addition that was made by the A.O to the 'book profit' u/s 115JB was merely rendered as academic, and thus, would not require to be adjudicated. The CIT(A) while concluding as hereinabove had held as under:

> "5.2 The submissions of the Id. Counsel have been carefully considered. Pit covering or sanitary landfill covering means the activity of filling the waste in the pit created by digging the land. The provision for pit covering expenses is the estimation of expenses for capping of landfill based on the quantity of waste dumped into landfill. Similarly, once the pit is covered, the appellant is required to maintain the secured landfill for 20 years after post closure of the pits. The amount of Rs.2,47,72,000/- debited as post closure expenses, is for proper upkeep and safe and secure maintenance of the closed cells in the sanitary landfill. The assessee had given working of these expenses. According to the assessee, this is an ascertained liability, the expenditure of which has to be incurred in the future years but its corresponding income is earned during the year. Once the pit is closed, the assessee does not receive any income from KSIDC and, therefore, there cannot be direct source to incur the expenditure on pit covering and post closure. Therefore, this being an ascertained liability and following the principle of matching concept, the provision has to be allowed during the relevant year. The Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. vs. CIT [112 taxman 61], has held that:
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> > "If a business liability has definitely arisen In the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain Is the Incurring of liability. If should also be capable of being estimated with reasonable certainly though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in prasenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

Further, the Hon'ble Rajasthan High Court in the case of Udaipur Mineral Development Syndicate (P.) Ltd. vs. DCIT [129 taxman 728(Raj)(2003)] has held as under:

> "7. Considering the clause in the agreement i.e., as far as possible the lessee shall restore the surface land so used to its original condition, the moment assessee dug pits, it was bound under the agreement to fill those pits and liability did accrue on the date when the pits were dug. Therefore, the Tribunal had committed error in disallowing the claim of the assessee in the year under consideration. The moment the assessee dug the pits, liability did arise and it was entitled for deduction of the expenses which it was supposed to incur for filling those pits, as the assessee was following the mercantile system of accounting. It could claim the expenses incurred as soon as it dug the pits."

The Hon'ble ITAT, Ahmedabad in the case of Bharuch Enviro Infrastructure Ltd. ITA Nos. 733, 1424, 4389 & 4408/AHD/2007 has held as under:

> "21. *Common grievance no. 3 - Disallowance of provision for Pit Covering Expenses.*
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> *22. The AO found that the assessee has debited expenses of Rs.84.72.497/- under the head "Pit Covering Expenses". On further verification, the AO noticed that the assessee has incurred actual expenditure for pit covering at Rs.66,92,900/- as against the provision of Rs.84,72,597/-. The assessee was asked to explain why the expense of Rs.17,79,697/- should not be disallowed. The assessee explained that the liability to incur expenditure on pit covering arises as soon as the pits were dug and the pits are required to be covered after each pit is completely filled as per guidelines issued by GPCB. The AO denied the contention of the assessee on the ground that the pit is closed immediately and, therefore, the difference between the provision and the amount actually spent could not be explained properly.. The AO further added the excess provision to the book profit treating the same as unascertained liability for the computation AY 2002-03 to 2006-07 of book profit u/s. 115JB of the Act. The Hon'ble Rajasthan High Court in the case of Udaipur Mineral Development Syndicate Pvt. Ltd. 261 ITR 706 had held that "as soon as the assessee dig the pits its liability to refill them arose and it was entitled to deduction of the expenses incurred for filling those pits, as the assessee was following Mercantile System of accounting". Similar view was taken by the cooperative Bench of Hyderabad in the case of NMDC Ltd. 56 taxman.com 396. The co-ordinate bench at Ahmadabad in the case of Enviro Technology Ltd. in IT A No. 426, to 436/Ahd/2007 following the order of the Hon'ble Rajasthan High Court* (supra) *allowed the claim of the assessee.*
>
> *23. In the light of the aforementioned judicial decisions, we direct the AO to allow the provision for pit covering expenses in totality.*
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> *25. Common grievance no. 3 - Disallowance of Post Closure Expenses.*
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> *26. The assessee has made a provision for post-closure expenditure for the following major expenses:*
>
> *a) Air (gas) Monitoring expenses;*

b) Leachate treatment expenses;
c) Insurance expenses in respect of Public Health Liability;
d) Repairs and Maintenance expenses in respect of electric water pumps installed in the bore wells;
e) Security expenses;
f) Gardening expenses;
g) Laboratory expenses;
h) Electricity expenses;
i) Office and administration expenses.

27. It is worth to mention here that the charges collected from the members towards treatment of solid water includes charges towards post closure case expenses and the same have been offered to tax as per the directions of the Gujarat Pollution Control Board. After closure AY 2002-03 to 2006-07 of land fill at least for 30 years the assessee has to take measure for collection of leachate and gas emission generated if any. Therefore, the provision made in the books of accounts towards post closure care expenditure is an ascertained liability to meet at future date against which income earned during the year is offered to tax. We find that the Gujarat Pollution Control Board in its amendment of authorization dated 17.04.2001, interalia, stated "it shall prepare detailed financial estimate for the cost to conduct post closure care for 30 years, after closure of the portion/full part of the land fill". Pursuant to this stipulation, the assessee had scientifically computed the provision as under-

Bharuch Enviro Infrastructure Ltd. AY 2003-04 Working showing computation of Provision for post closure care expenses made during the year.

Total sludge Received during the year (Qty. in MT) 61,484,737/-past closure care fund *@ Rs.50/- per MT. 3,074,237(working as per lost year Notes enclosed herewith at annexure A) Opening Balance 7,700,000 interest @ 7.15% on Opening Balance required to be recovered 550,550 3,624,787 say Rs.3,625,000.*

28. Considering the totality of the facts, in the light of the stipulation of Gujarat Pollution Control Board (supra) and the Scientific Working AY 2002-03 to 2006-07, we direct the AO to allow the post closure expenses. Common *grievance no. 4 is allowed."*

5.3 In view of the above, as the issues are covered in favor of the assessee in its associate concern Bharuch Enviro infrastructure Ltd., by the decision of the Hon'ble ITAT Ahmadabad supra, the disallowances made on account of provision for pit covering expenses to the tune of Rs.2,57,99,000/- and provision for Post closure expenses to the tune of Rs.2,47,72,000/- are deleted. In view of the deletion of the additions made, the addition made to the profit computed u/s. 115JB would be merely academic and need not be adjudicated. These grounds of appeal are allowed."

We have given a thoughtful consideration to the issue in question, and finding ourselves in agreement with the view taken by the Tribunal in the aforementioned case of Bharuch Enviro Infrastructure Ltd.

(supra), respectfully follow the same. Accordingly, we herein uphold the order of the CIT(A) who in our considered view drawing support from the order of the Tribunal in the case of Bharuch Enviro Infrastructure Ltd. (supra) had rightly vacated the disallowance made by the A.O on account of, viz. (i) provision for pit covering: Rs.2,57,99,000/-; and (ii) provision for post closure expenses: Rs.2,47,72,000/-. As the aforementioned addition had been vacated by the CIT(A), we, therefore, concur with the view taken by him that the adjudication on the issue as regards the addition made by the A.O to the 'book profit' computed u/s 115JB would be merely rendered as academic, and thus, would not be required to be adjudicated. We, thus, finding no infirmity in the view taken by the CIT(A) uphold his order. The **Grounds of appeal No. 1 to 3** are dismissed.

8. Resultantly, the appeal of the revenue being devoid of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 22.06.2021

Sd/-	Sd/-
Rajesh Kumar)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 22.06.2021
PS: Rohit

Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai

6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai