

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.907/Hyd/2018		
Assessment Year: 2013-14		
The Dy. Commissioner of Income Tax, Circle-17(2), Hyderabad.	Vs.	M/s. Waterlife India Pvt. Ltd., P.No.9, Sai Nidh, Krishnapuri Colony, West Maredpally, Secunderabad – 500 026. PAN: AAACW 8089 L
(Appellant)		(Respondent)

Assessee by:	Sri S. Rama Rao
Revenue by:	Sri Bhaskar Reddy, DR
Date of hearing:	10/06/2021
Date of pronouncement:	29/07/2021

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the Revenue against the order of the Ld. CIT (A)-5, Hyderabad in appeal No. 0049/2016-17/CIT(A), dated 16/02/2018 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2013-14.

2. The Revenue has raised three grounds in its appeal and they are extracted herein below for reference:-

“1. Whether on the facts and circumstances of the case and in the law, the ld. CIT (A) is correct in law in allowing the assessee’s claim of deduction U/s. 80IA of the Income Tax Act, 1961.

2. Whether on the facts and circumstances of the case and in law, the order of the CIT (A) was ex-facie not perverse to the facts of the case in allowing assessee’s claim of deduction U/s. 80IA of the Act pertaining to the income derived from community water systems, pipeline projects and operation and maintenance of water supply system, even though the assessee has not satisfied the conditions of being a developer ie development, operating, maintenance, financial involvement, defect correction and liability period in the contract agreement?

3. Any other ground(s) that may be urged at the time of hearing.”

3. The brief facts of the case are that the assessee is a private limited Company engaged in the business of developing, operating and maintaining community water system and contamination removal water system, filed its return of income for the AY 2013-14 on 30/09/2013 declaring its income at Rs. 2,12,22,982/-. Thereafter, the case was selected for scrutiny and assessment was completed on 22/03/2016 U/s. 143(3) of the Act wherein the Ld. AO disallowed the claim of deduction U/s. 80IA of the Act and thereby made addition of Rs. 2,33,55,275/- by holding that the assessee is not a developer in community water system but merely executing works contract on behalf of the State Government. Aggrieved, assessee filed an appeal before the Ld. CIT (A).

4. On appeal, the ld. CIT (A) held the issue in favour of the assessee after examining the tender papers and terms of contract, however disallowed deduction with respect to Fluoride Removal Unit and Arsenic

Removal Units because the assessee had only supplied those plants and therefore, it cannot be treated as infrastructure development.

5. Before us, the Ld. DR vehemently argued in support of the order of the ld. AO while as the ld. AR argued in support of the order of the Ld. CIT (A) partially on the issues which were favourably decided and further pleaded that the assessee is entitled for deduction u/s. 80IA of the Act with respect to supply of Fluoride Removal Unit and Arsenic Removal Units which was held against by the Ld. CIT (A).

6. We have heard the rival submissions and carefully perused the materials on record. On examining the entire issue, we find that the Hyderabad Bench of the Tribunal has dealt with similar issue in the assessee's own case for the AY 2012-13 in ITA No. 965/Hyd/2016, dated 17/01/2020 wherein the Tribunal partly allowed the appeal of the Revenue. The relevant portion from the said order of the Tribunal is extracted herein below for reference:

“8. We have heard the rival submissions and carefully perused the materials on record. On examining the entire issue, we find that there are two limbs to the transactions involved. Firstly, it appears that the assessee had supplied equipment and machinery for water treatment plant and also erected the same. The second limb to the transaction is that the assessee is entrusted with the job of operating and maintaining the water treatment plant / water treatment system. Provisions of section 80IA(4) and explanation (1) of the Act is crystal clear that the assessee shall be entitled for the benefit of deduction if it is carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facilities provided the conditions stipulated under 80IA(4)(i)(a)(b)(c) of the Act are fulfilled. Explanation to section 80IA(4) also makes it clear that infrastructure facility means a water supply project,

water treatment system, irrigation project, sanitation and sewage system or solid waste management system. From the above, it is abundantly clear that the assessee shall be entitled for deduction U/s. 80IA(4) of the Act with respect to operating and maintaining of the water treatment system / water supply project. It is also clear that the assessee is not a developer but only operating and maintaining the water treatment system / water supply project. The contract work entrusted to the assessee for procurement and supply of water treatment system / water supply project will obviously not fall under the ambit of section 80IA (4) of the Act which the Ld. CIT (A) had also made it clear in his order by disallowing the deduction for supplying Fluoride Removal Unit and Arsenic Removal Units and it is appropriate. For procuring, supplying and erecting water treatment plant by virtue of job contract, the assessee will not be entitled for deduction U/s. 80IA(4) of the Act unless he is a developer and from the facts of the case it is apparent that the assessee is not a developer. Accordingly, we hereby hold that:-

- (i) The assessee shall be entitled for the benefit of deduction U/s. 80IA(4) of the Act with respect to the profit earned out of operating and maintaining water treatment system / water supply project;*
- (ii) However, the assessee shall not be entitled for benefit of deduction U/s. 80IA(4) of the Act with respect to the profit earned by supplying and erection of water treatment system / water supply project / Fluoride Removal Unit and Arsenic Removal Units as it is not a developer but only engaged in the task as works contractor.*

It is ordered accordingly.”

7. Therefore, we are of the considered view that since there is no change of facts and circumstances in the case of the assessee for the 2013-14 and the AY 2012-13, the aforementioned decision of the Tribunal on the issue of deduction U/s. 80IA of the Act is squarely applicable for the relevant AY 2013-14 also. It is ordered accordingly.

8. In the result, appeal of the Revenue is partly allowed.

Pronounced in the open Court on the 29th July, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 29th July, 2021.

OKK

Copy to:-

- 1) M/s. Waterlife India Pvt Ltd., P. No. 9, Sai Nidh, Krishnapuri Colony, West Maredpally, Secunderabad – 500 026. (ii) M/s. Waterlife India Pvt Ltd C/o. S. Rama Rao, Advocate, Flat No. 102, Shriya's Elegance, H.No.3-6-643, St. No.9, Himayatnagar, Hyderabad.
- 2) Dy. CIT, Circle-17(2), 9th Floor, Signature Towers, Opp. Botanical Garden, Kondapur, Hyderabad.
- 3) The CIT (A)-5, Hyderabad.
- 4) The Pr. CIT-5, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File