IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 151 & 152/SRT/2020 (AYs 2009-10 & 2010-11)
(H*earing in **Virtual** Court)*

Income Tax Officer Ward-1, 2nd Floor, BSNL Building, Opp. Jalaram Mandir, Station Road, Bardoli-394 601	Vs	Radhe Flud 158, 159, Panchdev Estatte, Bambhora Patia, Kim, Pipodara, Surat-394 110 **PAN : AAKFR 1788 E**
Appellant / Revenue		Respondent / assessee

Assessee by	Shri Mehul R. Shah, CA
Revenue by	Mrs. Anupama Singla,Sr-DR
Date of hearing	29.12.2021
Date of pronouncement	29.12.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by Revenue are directed against the common order of ld. Commissioner of Income tax (Appeals)-1, Surat dated 11.02.2020, for the assessment years (AYs) 2009-10 & 2010-11 respectively. The Revenue has raised certain common grounds of appeals, except variation of amounts of disallowance under section 80JJA, facts in both the years are almost similar, therefore, both the appeals are clubbed together, heard and are decided by passing a common order. For appreciation of facts the appeal for AY 2009-10 in appeal No. 151/SRT/2020 for AY 2009-10 is treated as 'lead' case. The Revenue has raised the following grounds of appeal:-

"(i). On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the disallowance made by the AO of Rs.18,16,608/- whereas the AO on

examination / analysis of the deduction claimed u/s 80JJA of the Act has disallowed the same.

(ii). On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-1 Surat may be set-aside and that of the Assessing Officer's order may be restored."

2. Brief facts of the case are that assessee is partnership firm engaged in business of manufacturing of Bio-mass Fuel & Bio Coal by processing "Bagas" as raw material. The assessee filed its return of income for AY-2009-10 declaring nil income. In the computation of income, the assessee claimed deduction of Rs.18,16,608/- under section 80JJA of the Act. The assessee claimed that they are manufacturing of Bio-mass Fuel & Bio Coal. Subsequently, the case of assessee was re-opened under section 147. Notice under section 148 dated 05.02.2015 and was issued and served upon assessee on 10.03.2015. The Assessing Officer recorded that on verification of fact that assessee's claim of manufacturing bio-degradable waste bagas. The assessee actually purchasing and using bagas as a raw material in manufacturing its final product. The raw material "bagas" is not waste or bio-degradable waste. It is commonly used as fuel in sugar mill and therefore cannot be consider as a scrap. The Assessing Officer after serving the notice under section148 proceeded for re-assessment. The Assessing Officer recorded that despite service of various show cause notices and questionnaire, the assessee has not complied with such notices. Accordingly, Assessing Officer was of the view that assessee was not interested

in perusing its case, and in absence of compliance, the Assessing Officer disallowed the deduction of Rs. 18,16,608/- under section 80JJA of the Act and added income of assessee in the assessment order passed under section 143(3) r.w.s.147 on 16.10.2015.

3. Aggrieved by the addition and re-opening, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed written submission as recorded in para-7 of his order. In the submission, the assessee objected against the validity of re-opening and on merit the assessee claimed that its the case is covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Smt. Padma S. Bora [2013] 355 ITR 368 (Bom). The Ld. CIT(A) after considering the submission of assessee deleted the addition by following the decision of Smt. Padma S. Bora (supra) and allow relief to the assessee. However, on the issue of validity of re-opening, ld. CIT(A) held that once the assessee is granted relief on merit, the adjudication on validity of re-opening have become academic. Further, aggrieved, the Revenue has filed present appeal before this Tribunal.

4. We have heard the submissions of learned Senior Departmental Representative (DR) for the Revenue and the learned authorized representative (AR) for the assessee and have gone through the order of authorities below. At the outset of hearing, Ld. AR of the assessee submits that the tax effect involved in the

present appeal is less than the monetary limit of Rs.50 lakh as fixed by Central Board of Direct Tax ('CBDT' in short) in its Circular No.17/2019 dated 08.08.2019.Therefore, the appeal of Revenue is not maintainable and liable to be dismissed out rightly.

5. On the other hand, Ld. Sr. DR of the Revenue submits that assessment was re-opened on the basis of Audit objection and that audit objection was accepted by the revenue and the ground of present appeal is covered by exception clause-(c) of para-10 of Circular No.5 of 2017. And therefore, the monetary limit of tax effect as determined by CBDT in its Circular No. 17/2019 is not applicable in the present appeal.

6. In rejoinder submission, Ld. AR of the assessee submits that even otherwise on merit, the case is squarely covered by the decision of Hon'ble Bombay High Court in the case of Smt. Padma S. Bora (supra). The ld. AR of the assessee by referring the contents of decision in Padma S Bora (supra) submitted that assessee in that case was also using the similar raw material i.e., bagas, which is waste of sugar factory for manufacturing bio-mass. The Assessing Officer disallowed the deduction under section 80JJA. However, on appeal before Tribunal the assessee was allowed relief. The Revenue filed appeal before Hon'ble High Court wherein the appeal of Revenue was dismissed. The Ld. AR of the assessee accordingly submits that the issue on merit is also squarely

covered by the decision of Hon'ble Bombay High Court in the case of Smt. Padma S. Bora (supra).

7. In further reply, to the submission of Ld. AR of the assessee, the Ld. Sr. DR of the Revenue submits that she may be allowed sometime to verify the fact that if the decision of Hon'ble Bombay High Court, cited above is reversed by the Hon'ble apex court or not. Otherwise on the merit on the case, the ld. Sr DR for the revenue supported the order of Assessing Officer.

8. We have considered the rival submission of both the parties and have gone through the orders of lower authorities. There is no dispute about the manufacturing activities carried out by the assessee. The only dispute is whether 'bagas' used by assessee as raw material for preparation of final product, purchased from other parties can be considered as waste for manufacturing bio-mass fuel or not. We find that on similar set of fact, the Hon'ble Bombay High Court in the case Smt. Padma S. Boara (supra) while considering the question of law whether Tribunal was justified in allowing deduction under section 80JJA on the profit derived from business of manufacturing fuel briquettes from 'bagas'. The Hon'ble Bombay High Court after considering the submission of both the parties passed the following order:-

> *"**7.** We have considered the submissions. We find that on examination of the evidence both Commissioner of Income Tax (appeals) as well as Tribunal have reached a finding of fact that bagasse is a biodegradable waste used for making briquettes for fuel by the respondent assessee. This finding of fact was based on evidence led before the authorities by the respondent-*

assessee. We find that bagasse is a waste of the sugar factory. This waste is a bio-degradeable waste and the same is collected on consideration by the respondent assessee from the factory. 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. The fact that sugar industry also regards Bagasse as waste is evident from Circular dated 4/2/2006 issued by the Sugar Commissioner, Maharashtra State, Pune. Besides the ITC classification of the Exim policy also classifies bagasse as a waste of sugar industry under Chapter 23 Heading 23.20 thereof. Further, the Central Excise Tariff Act 1985 also regards bagasse as waste of sugar manufacture and is classified under Chapter 23 heading 23.01 of the Central Excise Tariff Act, 1985. We do not agree with the submissions of the appellant's Counsel that collection would mean collecting free of charge and not by purchasing the same. The word "collecting" means to gather; to fetch. It is a neutral word and does not mean collection for consideration or collection without consideration. It is an admitted/undisputed position that the respondent assessee has collected bagasse from sugar factories after having made payment for the same. Therefore, the aforesaid requirement of collecting as provided under Section 80JJA of the Act is satisfied. It is a undisputed finding of fact that the collected bagasse has been used by the respondent-assessee to make briquettes for fuel as that indeed is the business of the respondent-assessee. The reliance upon the circular No. 772 dated 23/12/1998 by the appellant is misplaced. The aforesaid Circular does not restrict its benefits only to local bodies. In any event the circular cannot override the clear words of Section 80JJA of the Act which provides deduction in respect of profits and gains derived from the business of collecting and processing/treating of bio-degradable waste i.e. bagasse into briquettes for fuel. In these circumstances, we find no fault with the order of the Tribunal both on facts as well as in law.

8. *In view of the above, no substantial question of law arises for consideration by this court. Therefore the appeal is dismissed, with no order as to costs.*

9. Considering the decision of Hon'ble Bombay High Court on similar set of fact, wherein bagasee/ bagas was held as waste for manufacturing fuel briquettes. Therefore, we do not find any merit in the grounds of appeal raised by Revenue. Further keeping in view that we have affirmed the order of ld CIT(A) on merit, therefore, discussions of the contention of ld DR for the revenue about the

applicability of exception clause of para 10(c) of CBDT Circular have become academic. Accordingly, order of Ld. CIT(A) is affirmed resultantly the appeal of Revenue stands dismissed.

ITA No. 152/SRT/2020 for A.Y. 10-11 by revenue

10. As noted above, the Revenue has raised identical grounds of appeal in appeal for this year as raised in Appeal for A.Y. 2009-10, except variation of figure of disallowance of deductions under section 80JJA, which have dismissed by affirming the the order of Ld. CIT(A) therefore, following the principle of consistency, this appeal is also dismissed with similar direction.

11. In the result, both the appeals of Revenue are dismissed. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in open court on 29/12/2021 and result was also placed on the notice Board.

Sd/-	Sd/-
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 29/12/2021
Dkp. Out Sourcing P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

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Assistant Registrar, ITAT, Surat