

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No(s). 2018, 2019/Ahd/2014 (A Y: 2008-09 & 2009-10)

(Hearing in Virtual Court)

Enviro Technology Ltd., 2413/14, GIDC, Ankleshwar, Gujarat-393002. PAN : AAACE 4126 G	Vs.	A.C.I.T. Bharuch, Circle-Bharuch.
APPELLANT		RESPONDEDNT

ITA Nos. 497 & 498/Ahd/2015 (AY: 2010-11 & 2011-12)

Enviro Technology Ltd., 2413/14, GIDC, Ankleshwar, Gujarat-393002. PAN : AAACE 4126 G	Vs.	A.C.I.T. Bharuch, Circle-Bharuch.
APPELLANT		RESPONDEDNT

ITA No. 1845/Ahd/2016 (A Y : 2012-13)

Enviro Technology Ltd., 2413/14, GIDC, Ankleshwar, Gujarat-393002. PAN : AAACE 4126 G	Vs.	A.C.I.T. Circle-2, Bharuch.
APPELLANT		RESPONDEDNT

ITA No. 1471/Ahd/2017 (A Y : 2013-14)

Enviro Technology Ltd., 2413/14, GIDC, Ankleshwar, Gujarat-393002. PAN : AAACE 4126 G	Vs.	A.C.I.T. Circle-2, Bharuch.
APPELLANT		RESPONDEDNT

ITA No. 1473 & 1474/Ahd/2017 (A Y: 2008-09 & 2009-10)

Enviro Technology Ltd., 2413/14, GIDC, Ankleshwar, Gujarat-393002. PAN : AAACE 4126 G	Vs.	A.C.I.T. Circle-2, Bharuch.
APPELLANT		RESPONDEDNT

Assessee by	Shri S N Soparkar, Senior Advocate
-------------	------------------------------------

	with Ms. Urvashi Shodhan, Advocate
Department by	Shri H.P. Meena, CIT-DR with Shri Deependra Kumar, Sr. DR
Date of hearing	26/04/2022
Date of pronouncement	08/06/2022

Order under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This batch of eight appeals are filed by the assessee against the separate orders of the Id. Commissioner of Income tax (Appeals)-3, Vadodara ['Id. CIT(A)' for short] dated 3/03/2014, 10/11/2014, 19/04/2016, 08/03/2017 for the Assessment Years (AY) 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 respectively. Out of six appeals in quantum addition for A.Y. 2008-09 to 2013-14 and remaining two appeals are on penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).
2. In All the appeals, the assessee has raised certain common grounds of appeals, certain facts are common in all the appeals, thus, all the appeals are clubbed and heard and are decided by this consolidate order to avoid the conflicting decision. With the consent of parties, the appeal for A.Y. 2008-09 in ITA No. 2018/Ahd/2014 is treated as '**lead**' case, wherein the assessee has raised following grounds of appeal:-

- "1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ['CIT (A)'] erred in upholding the re-opening of the assessment under section 148 of the Income-tax Act, 1961 ('Act').*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting deduction*

under section 80IA in respect of profits of the eligible undertaking amounting to Rs. 1,18,74,445/- on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*
6. *On the facts and in the circumstances of the case and in law, it is submitted that interest earned on delayed payments received from customers amounting to Rs. 10,25,225/- and interest on other deposits amounting to Rs. 33,176/- ought not to be excluded while computing deduction under section 80IA of the Act.*
7. *On the facts and in the circumstances of the case and in law, it is submitted that expenditure estimated at 10% of interest earned on fixed deposits, loan and income- tax refund aggregating to Rs.8,17,273/- ought to be deducted while excluding the interest income for the purpose of computing the deduction under section 80IA of the Act.*
8. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not deleting the interest levied under section 234D by stating that it is consequential in nature.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

3. Brief facts of the case are that the assessee is engaged in the business of treating industrial effluent of small scale industries of Ankleshwar Industrial Estate. The assessee filed its return of income for the year under consideration on 27/09/2008 declaring total income of Rs. 83,58,410/- and book profit under Section 115JB of the Act of Rs. 1,62,37,896/-. In the computation of income, the assessee claimed deduction under section 80IA of Rs. 1.30 crores. The case of the assessee was selected for scrutiny and assessment was completed under Section 143(3) of the Act on 24/12/2010 determining total income of Rs. 94,51,000/-. The Assessing Officer while passing the assessment order, restricted the deduction under Section 80IA to the extent of Rs. 99,98,852/-. The Assessing officer also disallowed sludge disposal charges of Rs. 25,093/- and disallowed depreciation of Rs. 1,94,778/-. Aggrieved by the action of Assessing Officer, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 21/06/2013 allowed certain reliefs to the assessee.
4. Later on, the case of assessee was reopened under section 147 of Income-tax Act. Notice under Section 148 of the Act dated 28/03/2012 which was served to the assessee on 30/03/2012. The notice under Section 148 was served after recording reasons of reopening "*that the deduction under Section 80IA was disallowed in A.Y. 2009-10 on the ground that the assessee did not fulfill the prerequisite condition for claiming deduction under Section 80IA of the Act. The assessee entered into an agreement with Gujarat Industrial Development Corporation (GIDS) o 15/12/2006, thus there was no agreement prior to that date with a local authority or statutory body. The Assessing Officer further*

recorded that on verification of record, it was found that the assessee was prima facie not eligible for deduction under Section 80IA of the Act". In response to notice under Section 148, the assessee filed return of income on 20/04/2012 declaring total income of Rs. 73,25,530/- and claimed deduction of Rs. 1.19 crore under Chapter VIA of the Act. The assessee also filed objection against the reopening, the objection of assessee was rejected in a speaking order passed on 31/12/2012. Thereafter the Assessing officer after serving statutory notices proceeded for reassessment. The Assessing Officer while passing the assessment order, disallowed the deduction under Section 80IA of the Act of Rs. 1.18 crores, provision of sludge disposal charges of Rs. 25,093/- and depreciation of Rs. 1,94,778/-. The Assessing Officer also held that the assessee was not having any agreement with the State/Central Govt., local government or statutory body. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

5. We have heard the submission of Shri Sourabh N. Suparkar Ld. Senior counsel with Ms. Urvashi Shodhan, Id. Authorised Representative (AR) for the assessee and Shri H.P. Meena, learned Commissioner of Income-tax (Id. CIT-DR) with Shri Deependra Kumar, Id. Sr. Departmental Representative (DR) for the Revenue. Ground No. 1 relates to validity of reopening under section 147 of the Act. The Ld. Senior counsel for the assessee submits that during scrutiny assessment completed vide assessment order dated 24/12/2010 and Assessing Officer examined the entire claim of assessee on the eligibility of deduction under section 80IA. The Assessing Officer has no right to reopen the assessment

completed after making full enquiry, if the Assessing Officer had reasoned to believe that income has escaped assessment, it is based on mere change of opinion on the same set of fact which was submitted during the course of original scrutiny assessment. The Assessing Officer examined the claim of deduction under section 80IA and passing assessment order and allowed deduction under section 80IA at Rs.99,98,852/-. Accordingly, the re-opening of assessment is mere change of opinion and same set of fact. Ld. Senior Counsel for the assessee further submits that observation of Assessing Officer is that assessee has not developed any new infrastructure facilities on the basis of agreement as required under section 80IA(4)(i)(b) and has only operated old infrastructure facilities. The provision of section 80IA(4) does not stipulate that the agreement should have been entered into on or before a particular date and even otherwise. There is enough evidence in the form of correspondence with the Gujarat Industrial Development Corporation ('GIDC') and the assessee that a agreement exist right from the inception. The Central Board of Direct Taxes ('CBDT') in its Circular No.1/2006 dated 12.01.2006 clarified that effluents treatment facilities as developed, operate and maintain by assessee is eligible for deduction under section 80IA(4) and subsequent to the aforesaid clarification by CBDT, the assessee entered into formal with GIDC on 15.12.2006 for development, operation and maintenance of effluent treatment plant. Thus, assessee is eligible condition for claiming under section 80IA was fulfilled by assessee.

6. The Ld. Senior Counsel for the assessee submits that he has two fold legal arguments; firstly, the action of Assessing Officer is based on mere of change of opinion. To support his submission, Ld. Sr. counsel for assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of Clantha Research Ltd., vs. DCIT (2013) 35 taxmann.com 61 (Guj); Sai Consulting Engineers (P) Ltd., vs. DCIT, Circle-4(1) (2017) and Royal Infrastructure vs. DCIT, Circle-1(2) (2019) 108 taxmann.com 388 (Guj). And secondly on principle of merger re-assessment is not valid, to support his submission, the Ld. Senior Counsel for assessee further relied upon the decision of Hon'ble jurisdictional High Court in the case of Commissioner of income-tax Vs Nirma Chemicals Works (P) Ltd., (2009) 182 Taxman 183 (Guj) and Nirma Industries Ltd. vs. DCIT (2006) 155 TAXMAN 330 (Guj). Ld. Sr. counsel for the assessee submits that on merit all the grounds of appeal are covered by the decision of Tribunal in ITA Nos. 1849 & 1867/AHD/2014 for AY 2008-09 dated 27.12.2021.
7. On the other hand, Ld. CIT-DR for the Revenue has vehemently supported the orders of the lower authorities. The Id CIT-DR for the revenue submits that during the original assessment the assessing officer has not examined the eligibility criteria under section 80IA. The assessing officer has not examined the agreement with GIDC as there is no reference in the assessment order as such the action of reopening is not based on the change of opinion.
8. We have considered the rival submissions of both the parties and have also gone through the order of authorities below carefully. We have also deliberated on various case law relied by Ld. CIT(A) as well as Ld. Senior Counsel for the

assessee at the time of making his submission. We find that there is no dispute that initially assessee filed its return of income for AY 2008-09 on 27/09/2008 declaring income of Rs.83,58,410/-and book profit under Section 115JB of the Act of Rs. 1,62,37,896/-. Revised return of income was filed on 31.03.2010. The Assessing Officer completed under Section 143(3) of the Act on 24/12/2010 determining total income of Rs. 94,51,000/-. In the computation of income, the assessee claimed deduction of Rs. 1.30 crores under Section 80IA of the Act. The Assessing Officer while passing the assessment order, restricted the deduction under Section 80IA to the extent of Rs. 99,98,852/-. The Assessing officer also disallowed sludge disposal charges of Rs. 25,093/- and disallowed depreciation of Rs. 1,94,778/-.The Assessing Officer re-opened the assessment for this year by recording the reasons that in case of assessee for AY 2009-10, the assessment under section 143(3) was completed on 30.12.2011. As per the same, deduction claimed under section 80IA was disallowed and assessee did not fulfil the prerequisite the claiming of deduction under section 80IA in this year also and the assessee has claimed deduction of Rs.1.01 crores which was not allowable. On receipt of reasons recorded, the assessee filed objection dated 18.12.2012 against re-opening and said objection of assessee was rejected. The Assessing Officer after rejecting the objection for re-assessment, Assessing Officer recorded that for eligible claim of deduction under section 80IA, the assessee was required to enter into an agreement with government, local authority or statutory body. Before developing or operating and maintaining a new infrastructure facilities, the claim of assessee under section 80IA have been made on the basis of such

agreement with GIDC dated 15.12.2006. In this case, infrastructure facilities came into existence on 15.02.1997 which is not before the date on which agreement has been entered into. No infrastructure facilities has been developed for operating or maintaining on the basis of such agreement. The agreement was a condition precedent for claiming such eligible deduction. That the assessee did not comply with the requirement of section 80IA(4). The Assessing Officer accordingly in the re-assessment order disallowed the entire deduction of Rs.1,12,75,723/-. On appeal before Ld. CIT(A), the assessee filed detailed written submission. The Ld. CIT(A) confirmed the validity of re-opening as well as addition / disallowance under section 80IA of the Act.

9. We find that during the original scrutiny assessment, the Assessing Officer examined the claim of deduction under section 80IA of the Act. The Assessing Officer while recording reasons recorded extracted in para-6.1 in the order of Ld. CIT(A). The Ld. Senior Counsel for the assessee vehemently argued that the claim of deduction under section 80IA was examined and one component of working of profit was partly allowed by Assessing Officer. We find that the claim of deduction under section 80IA was not only examined by Assessing Officer but was a subject-matter of appeal before Ld. CIT(A). The Hon'ble jurisdictional High Court in the case of Cliantha Research Ltd. (supra), wherein the Hon'ble court held that where during the original assessment assessee's claim was processed at length and after calling for detailed submission, the same was accepted, merely because a certain element or angle was not in the mind of Assessing

Officer while accepting such a claim, could not be a ground for issuing notice under section 148 for reassessment.

10. Further, the Hon'ble jurisdictional High Court in the case of Sai Consulting Engineers (P) Ltd. (supra) when re-opening of assessment was within the period of four years on the ground that re-opening was nothing but change of opinion on the part of Assessing Officer and that all materials were available before the Assessing Officer which have already scrutinized. Therefore, notice issued within the period of four years from the end of relevant assessment years, issuance of such notice has to be held as nothing but a change of opinion on the part of Assessing Officer. The Hon'ble Supreme Court in CIT Vs Kelvinator of India Ltd (320 ITR 561 SC) held that the assessing officer has no power to review, he has a power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions and if the concept of 'change of opinion' is removed as contemplated on behalf of revenue, then in the garb of reopening the assessment, review would take place. It was further held that after 01.04.1989, the assessing officer has a power to re-open, provided there is 'tangible material' to come to the conclusion that there is escapement of income.

11. We find that notice under section 148 of the Act in the present case was issued on 28.03.2012 i.e., within the period of four years from the end of relevant assessment year. Therefore, no tangible material has come to the notice of Assessing Officer as there is no such reference in the reasons recorded. The Assessing Officer solely relied on the material information available on record. Further, we find that the assessment order passed by Assessing Officer was the

subject-matter of appeal before Ld. CIT(A) and principle of natural justice would apply. Therefore, we hold that the action of Assessing Officer for re-opening is not valid as the original scrutiny assessment was the subject-matter of appeal before Ld. CIT(A) and again appeal before Tribunal, moreover, the action of Assessing Officer is based on "change of opinion" on similar set of fact. Considering the aforesaid factual and legal discussions, the re-opening is held as invalid and subsequent action initiated thereof are void ab initio. In the result, ground No.1 of assessee's appeal is allowed.

12. Considering the fact that we have allowed the appeal of assessee on legal issue, therefore, adjudication of other submissions of the learned Senior Counsel and on other grounds of appeal have become academic.

13. In the result, the appeal of the assessee is allowed.

14. Now we take ITA No. 2019/Ahd/2014 for the A.Y. 2009-10, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting deduction under section 80IA in respect of profits of the eligible undertaking amounting to Rs. 91,02,996/- on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*
5. *On the facts and in the circumstances of the case and in law, it is submitted that interest earned on delayed payments received from customers amounting to Rs. 10,10,163/- , interest earned on GEB deposits amounting to Rs. 1,28,136/- and interest on fixed deposits and other deposits amounting to Rs. 12,13,380/- ought not to be excluded while computing deduction under Section 80IA of the Act.*
6. *On the facts and in the circumstances of the case and in law, it is submitted that expenditure estimated at 10% of interest earned on amounting to Rs.10,13,769/- ought to be deducted while excluding the interest income for the purpose of computing the deduction under section 80IA of the Act.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

15. Brief facts for adjudication of various grounds of appeal are that for the year under consideration i.e. A.Y. 2009-10, the assessee filed return of income on 28/09/2009 declaring total income of Rs. 90,45,667/-. The case was selected for scrutiny. The Assessing Officer while passing the assessment order, noted that the assessee has claimed deduction under Section 80IA of Rs. 91,02,996/-. The

assessee has included under the claim of Section 80IA of interest on fixed deposits and other deposits of Rs. 12,13,380/- and interest on GEB of Rs.1,28,136/- and interest on fixed deposit and other deposits amounting to Rs. 12,13,380/-. The Assessing Officer excluded the interest income from the profit eligible for deduction under Section 80IA. The Assessing Officer recorded that the assessee claimed deduction under Section 80IA of Rs. 91,02,996/-. The assessee has furnished details of eligible for deduction in Annexure-G of statement of P&L. The Assessing officer further recorded that the assessee prima facie is not eligible for deduction under Section 80IA of the Act and issued show cause notice to the assessee inter alia stating therein that on going through the statement, he found that the assessee have not fulfilled the condition mentioned in Section 80IA(4)(i)(b) of the Act as no new infrastructure facility has been developed or operated and maintained or developed, operated and maintained on the basis of an agreement with the specified authority and asked as to why the claim of deduction under Section 80IA should not be disallowed. The assessee filed its reply. The contents of reply of assessee is recorded in para 5.5 of assessment order. In the reply, the assessee stated that Ankleshwar Industrial Estate is one of the largest chemical industrial zones of Asia. One of the major challenge faced by the chemical industries is the treatment of effluents generated by the chemical industries. Most of the large and medium scale industries assessment order having their own effluent water treatment facilities. Majority of the small scale industries were unable to provide such treatment facilities. To address the issue, Akleshwar Industrial Association (AIA) alongwith

other social/professional organizations like Ankleshwar Environment Preservation Society (AEPS), Rotary Pollution Control Cell(RPCC) etc. carried out detailed studies and discussions at various forums and decided to make representation to GIDC and Gujarat Pollution Control Board(GPCB) for formation of common effluent treatment plant (CETP). Considering the representation of those associations, the success and failure of different CEPT's in India and abroad, a plot of land initially allotted by GIDC to Ankleshwar Environmental Preservation Society was allotted to Enviro Technology Limited (ETL) i.e. the assessee. The assessee was promoted by consortium of member industries for setting up of infrastructure undertaking. The assessee on the basis of object of consortium is involved in the business of developing, operating and maintaining of CETP, set up for the purpose of water treatment system involving treatment of effluent generated by chemical industries in an around of Ankleshwar. The assessee was not formed by splitting up or reconstruction of a business already in existence. The assessee is registered under the companies Act. The assessee entered into an agreement with GIDC for developing, operating and maintaining new infrastructure facility. The assessee entered into an agreement on 15/12/2006 with GIDC, a statutory authority owned by the Government of India established under the Gujarat Industrial Development Act, 1962. The assessee is solely authorised by Gujarat Pollution Control Board (GPCB) and Central Pollution Control Board. The assessee stated the operating and maintaining infrastructure facility on or after 1st day of April, 1995. Further the old clause (b) of Section 80IA(4)(i) and appreciated clause (b) of Section 80IA(4)(i) w.e.f. 01/04/2002

nowhere stipulates that the agreement should be in writing or should be entered into on or before a particular date. Accordingly, the assessee stated that they fulfilled all the conditions for claiming deduction under Section 80IA of the Act. The assessee also relied on circular of CBDT No. 1/2006 dated 12/01/2006 wherein it was clarified that under the treatment of effluents and its conveyance system, the effluents emanating from chemical industries are to be conveyed inside the sea through onshore pipeline and before discharging the effluent through pipeline, entire load of effluent is to be treated to marine standards. Therefore, it is a part of the water treatment system and would accordingly qualify as an infrastructure facility for the purpose of tax benefit under Section 80IA. The explanation furnished by the assessee was not accepted by the Assessing officer. The Assessing officer held that the assessee has not fulfilled the condition prescribed under sub-clause (iv) of sub-Section (4) of Section 80IA. As per report in Form 10CCB furnished by assessee, the date of commencement of operation/activity by undertaking is 15/02/1997. The sub-clause (b) was substituted by the Finance Act, 2001 w.e.f. 01/04/2002. The Assessing Officer after recording the amended provisions, held that new infrastructure facility came into existence on 15/02/1997 as shown in the audit report in Form NO. 10CCB for claiming deduction under Section 80IA of the Act, the assessee was required to enter into an agreement with any of the authorities either Central Government, State Government, local authority or some other statutory bodies before (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining new infrastructure facility. The assessee was asked to

furnish the evidence in support of its claim under Section 80IA of the Act. The assessee furnished copy of lease deed executed by GIDC in favour of assessee. On the basis of lease deed, one does not become eligible for deduction under Section 80IA of the Act. The assessee submitted agreement dated 15/12/2006 with GIDC and claimed deduction on the basis of that agreement. The assessee was asked to furnish all the agreements with any of the Government/local authority/statutory authority. The assessee has no agreement prior to the agreement dated 15/12/2006. The Assessing officer held that the assessee is unable to prove the condition mentioned in Section 80IA(1)(4)(b) of the Act. Thus, the claim of assessee of deduction under Section 80IA was disallowed. The Assessing officer also disallowed provision for sludge disposal charges by taking a view that the assessee has not incurred any expenses during the year and claimed the deduction to reduce the tax liability by making provision on account of sludge disposal charges. The Assessing Officer further disallowed the same by considering the opening written down value of asset on the basis of assessment order passed in earlier years and held that the assessee claimed excess depreciation of Rs. 3,10,022/-.

16. On appeal before the Id. CIT(A), the action of Assessing Officer in disallowance of deduction under Section 80IA and depreciation was upheld, however, on other two disallowances, the assessee was granted relief i.e. excess depreciation on sludge disallowances. The Id. CIT(A) held that eligibility was available to the assessee from A.Y. 2007-08 only. Thus initial allowance from A.Y. 2006-07 is not as per law. If the assessee had entered into an agreement with GIDC during

this Financial Year 2006-07, it could have been eligible for deduction under section 80-IA(4) on account of such infrastructure facility already in existence, as this infrastructure facility had been started in A.Y. 1997-98. But since this has not been done, hence the assessee is not eligible for deduction under section 80-IA(4) as this is not a new infrastructure facility established in pursuance of an agreement entered into by the appellant with GIDC. The Ld. CIT(A) also held that assessment for 2006-07 and 2007-08 were reopened under section 147 and assessment was completed under section 143(3)/ 147 denying the claim of deduction under section 80IA. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

17. Ground No. 1 to 4 relates to deduction under section 80IB(4) in respect of eligible under taking view that it is not a new undertaken. The learned Senior Counsel for the assessee submits that the assessee had its commenced the business activities in AY 1997-98 and engaged in business of developing, operating and maintaining common effluent treatment plant which is set up for the purpose of water treatment system involving treatment of effluent generated by the chemical industries in and around Ankleshwar. And after inclusion of solid waste management system as an eligible 'infrastructure facility' by the Finance Act 2000 w.e.f AY 2000-01, the assessee entered in to agreement with GIDC on 5th December 2006, a statutory body. This fact was communicated to the assessing officer and copy of the agreement was furnished to vide letter dated 05.12.2011. On entering in agreement with GIDC, the assessee fulfill the necessary conditions to claim deduction under section 80-IA of the Act, copy of

which is filed on record. The assessee company entered into an agreement with GIDC on 05.12.2006 and started claiming deduction under section 80-IA of the Act from AY 2006-07 onwards being the 4rd year of operations. The learned CIT(A) has held that the project of assessee is not a new undertaking on the ground that the appellant had not entered into an agreement during the FY 2001-02 being the year in which the appellant became eligible to claim deduction under section 80-IA(4) in view of the amendment to the provisions of section 80-IA(4) of the Act. The learned Senior Counsel submitted that as soon as the assessee became aware of the amendment regarding the eligibility of claim, an application was immediately made to GIDC after consulting their Tax Consultants was immediately entered into on 05th December 2006. It is submitted that the appellant made an application to GIDC for entering into an agreement in FY 2005-06 itself though the final agreement was entered into 05th December 2006. Accordingly, the said undertaking ought not to be treated as not a new infrastructure facility only on the ground that the agreement was not entered in FY 2001-02. The assessee is claiming deduction under section 80IA form A.Y. 2006-07. Further, the learned Senior Counsel invited our attention to the provisions of Section 80-IA(4)(i) and Explanation (c) to the aforesaid provision which reads as under;

“(4) This section applies to-

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfills all the following conditions, namely:-

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or local authority or any statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining anew infrastructure facility:

(c) it has started or starts operating and maintaining the infrastructure facility on or after 1st day of April, 1995:

.....

Explanation- For the purpose of this clause, “infrastructure facility” means-

(a) a road including toll road-----;

(b) a highway project---;

*(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or **solid waste management system**;*

(d) a port , airport, inland waterway, inland port or navigational channel in the sea; “

18. The learned Senior Counsel submitted that the assessee after refereeing the aforesaid provisions submits that assessee has fulfilled all the conditions as laid down under the provisions of section 80-IA(4)(i) of the Act and accordingly, is eligible to claim the deduction under section 80-IA of the Act.. It is submitted that the word 'new' used in section 80-IA(4)(i)(b) only implies that the facility must have started operating on or after 1st April 1995. The word 'new' has reference to a facility not existing before 1st April 1995 from which date the incentive was given to new infrastructure facility. When the assessee had put forward the proposal before GIDC, it was to set up a new infrastructure facility. No such infrastructure facility existed there before. The

facility need not be new on the date on which an assessee chooses to claim deduction under section 80-IA, since the section permits an assessee to claim deduction at his option for any 10 consecutive years out of the first 20 years from the date of commencement. If the unit has to be a new unit in the first year of claim for deduction then the option provided in the section would become redundant. Further, it is also to be noted that the fourth condition uses the expression "it has started or starts operating." The learned Senior Counsel explained that this wording clearly supports the view that an enterprise which has started developing, operating and maintaining the facility on or after 1st April 1995 will be eligible for deduction. Accordingly, it was submitted that the infrastructure facility set up by the appellant after 1st April 1995 constitutes a 'new' facility since it was not in existence before the appellant set it up. To support his submissions the learned Counsel for the assessee relied on the decision of the Madras High Court in the case of Shri Nagesh Chundur Vs CIT (358 ITR 521- Mad). The Id Counsel explained that in the said case, the assessee was claiming deduction under section 10A of the Act since it was a registered Software Technology Park ('STP') and fulfilled the requisite requirements as per the provisions of the Act. The assessee sought registration as a STP on 27th March 2002 whereas it had commenced production in the Financial Year 1999-00 itself. The revenue contended that since the assessee was already in the said business, it does not qualify to be a 'new' industrial undertaking. The Tribunal decided the issue in favour of the assessee and has held that "*the*

fact of the assessee being in the business prior to the date of the registration of the STPI would not stand in the way of granting relief to the assessee'.

On further appeal before the High Court issue was held in favour of the assessee.

19. The learned Senior Counsel submitted that it is well settled position that if a deduction or exemption is granted subject to fulfillment of conditions, an assessee is entitled to claim the deduction/ exemption from the year in which he satisfies the conditions, so long as he is within the overall exemption period. In the instant case, as stated above the assessee entered into an agreement with GIDC on 05th December 2006 and started claiming deduction under section 80-IA of the Act from AY 2006-07 onwards being the third year of operations and the first year of the claim. It is further submitted that sub-section (2) of section 80-IA lays down that the deduction specified in sub-section (1) may at the option of the assessee be claimed for any 10 consecutive years out of 20 years beginning from the year in which the undertaking develops or begins to operate the infrastructure facility. Thus, the assessee can choose to claim deduction for any 10 consecutive assessment years between AY 1998-99 to AY 2017-18. In the instant case, the assessee-company has opted to claim deduction from AY 2006-07 being the third year of the operation which is as per the provisions of section 80-IA(2) of the Act. There is no provision for withdrawal of deduction in the subsequent years if the said deduction has been allowed in the initial year.

20. The learned Senior Counsel submitted that once the deduction under section 80-IA of the Act is allowed in the initial year of the claim, then in the subsequent years the conditions cannot be re-examined with a view to determine the eligibility of the assessee making the claim for deduction. In such cases the deduction ought to be allowed for the stipulated duration as specified in the provisions of section 80-IA of the Act. It is pertinent to note that, there is no provision for withdrawal of deduction for the subsequent years for breach of certain conditions if the said deduction has been allowed in the initial year in section 80-IA of the Act. In this connection, reliance is placed on the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Maps Enzymes Ltd [2019] (111 taxmann.com 73) that the deduction under section 80-IA once allowed in the initial year cannot be re-examined or denied in any of the subsequent years out of the stipulated period of deduction allowable to the assessee as per the provisions of the aforesaid section. In the instant case, the deduction under section 80IA in respect of Land Fill- I, was allowed in the assessment order passed under section 143(3) for the AY 2002-03 i.e. the initial year of claim. Accordingly, the deduction in respect of Land Fill cannot be denied in subsequent assessment years for breach of conditions if the claim has been allowed in the initial assessment year. In view of the above, it is submitted that the appellant has fulfilled all the conditions as laid down in section 80IA(4) of the Act and accordingly, deduction under section 80-IA in respect of the infrastructure

facility ought to be allowed to the appellant. To buttress his submissions the Id Counsel relied on the following decisions;

- Shri Nagesh Chunder Vs CIT 358 ITR 521 (Mad),
- CIT Vs Satellite Engineering Ltd (113 ITR 208 Gujarat),
- PCIT Vs Maps Enzymes Ltd [2019] 111 taxmann.com 73 (Gujarat High Court),
- Saurashtra Cement & Chemical Ltd Vs CIT (123 ITR 669) (Gujarat),
- CIT Vs Paul Brothers (216 ITR 548 Bombay).

21. On the other hand the Ld. Sr DR for the revenue supported the order of the lower authorities. The assessee has not established new undertaking. Thus, no cognizance can be taken of the agreement dated 05th December 2006 with GIDC.

22. We have considered the rival submissions of the parties and deliberated on the various case laws relied by learned Senior Counsel. We find that during the assessment the AO raised quarry about the eligibility of deduction under section 80IA(4)(i) of eligible unit vide show cause notice dated 13.12.2011 (Para 5.4 of assessment order) . The assessee in its reply specifically stated that pursuant to insertion of sub-clause (c) in Explanation to section 80IA(4)(i) with effect from 01.04.2001 by new sub-clause so as to include Solid Waste Management System within the meaning of infrastructure facility, the assessee-company is covered under the amended definition of "Infrastructure Facility" and fulfills all the conditions as specified in sub-clause (a) to (c) of section 80IA(4)(i). Accordingly the assessee is eligible for claim of deduction under section 80IA of the Act. The assessee also furnished the

detailed particulars of Undertakings, allowable allowability of deduction, ownership status, and agreement with the GIDC and submitted that the assessee is entitled for deduction under section 80IA of the Act separately for each of three Undertakings for ten consecutive years from the date of claim made in the return of income. The AO while passing the assessment order disallowed deduction under section 80IA by taking view that the assessee operated and maintained old infrastructure undertaking in contravention of the term of agreement and the assessee has not developed infrastructure facilities and is not eligible for deduction under section 80IA.

23. On appeal against the finding of AO in treating the undertaking as not eligible for deduction under section 80IA, the assessee filed detailed written submissions as recorded in para 5.2 of order of CIT(A). We find that in the written submissions the assessee retreated similar submissions as submitted before assessing officer and also relied on certain case laws, wherein it was held that once the deduction is allowed in earlier years, it cannot be withdrawn in subsequent years. The Id CIT(A) after considering the submissions of assessee held the assessee started claiming deduction under section 80IA(4) on an infrastructure facility which was already on operation from 1997-98. Before him the assessee's AR claimed that the assessee started claiming deduction under section 80IA (4) when it became eligible on account of amendment made in the relevant provisions. The Id. CIT(A) held that eligibility was available to the assessee from A.Y. 2007-08 only. Thus initial allowance from A.Y. 2006-07 is not as per law. If the assessee had

entered into an agreement with GIDC during this Financial Year 2006-07, it could have been eligible for deduction under section 80-IA(4) on account of such infrastructure facility already in existence, as this infrastructure facility had been started in A.Y. 1997-98. But since this has not been done, hence the assessee is not eligible for deduction under section 80-IA(4) as this is not a new infrastructure facility established in pursuance of an agreement entered into by the appellant with GIDC. The Ld. CIT(A) also held that assessment for 2006-07 and 2007-08 were reopened under section 147 and assessment was completed under section 143(3)/ 147 denying the claim of deduction under section 80IA.

24. Before us, the learned Senior Counsel for the assessee vehemently argued that it is well settled position in law that if a deduction or exemption is granted subject to fulfillment of conditions, an assessee is entitled to claim the deduction/ exemption from the year in which he satisfies the conditions, so long as he is within the overall exemption period. It was further argued that sub-section (2) of section 80-IA lays down that the deduction specified in sub-section (1) may at the option of the assessee be claimed for any 10 consecutive years out of 20 years beginning from the year in which the undertaking develops or begins to operate the infrastructure facility and that the assessee can choose to claim deduction for any 10 consecutive assessment years between AY 1997-98 to AY 2017-18 and the assessee-company has opted to claim deduction from AY 2006-07, the assessment year under dispute is the third year of the operation which is as per the

provisions of section 80-IA(2) of the Act. There is no provision for withdrawal of deduction in the subsequent years if the said deduction has been allowed in the initial year. The learned Senior Counsel also submitted that once the deduction under section 80-IA of the Act is allowed in the initial year of the claim, then in the subsequent years the conditions cannot be re-examined with a view to determine the eligibility of the assessee making the claim for deduction. We are convince with the submissions of the learned Senior Counsel of the assessee that once the deduction under section 80-IA of the Act is allowed in the initial year of the claim, then in the subsequent years the conditions cannot be re-examined with a view to determine the eligibility of the assessee making the claim for deduction as has been held in various case laws by Jurisdictional High Court.

25. Hon'ble Jurisdictional High Court in PCIT Vs Maps Enzymes Ltd (supra), while considering the question of law whether Tribunal erred in law and on facts in deleting the disallowance of claim under section 80JJA of Act, though the years was eight year of business operation. The Hon'ble Court held that Tribunal committed no errors, not to speak of law in passing the impugned order. It was held that when the department thought fit to grant the deduction for four consecutive years, there was no reason to raise any objection with regards to maintainability of such deduction under section 80JJA in the fifth and final assessment year. Similar view was taken by jurisdictional High Court in PCIT Vs Quality BPO Services (P) ltd Vs CIT (Tax

- Appeal No. 439 of 2016) and By Hon'ble Bombay High Court in Simple Foods Products Ltd Vs CIT (2017) 84 taxmann.com 239 (Bom).
26. Hon'ble Gujarat High Court in Saurashtra Cement & Chemical Industries Ltd vs. CIT (123 ITR 669) has held as under:

“The Tribunal was perfectly justified in taking the view that if the relief of tax holiday was granted to the assessee company for the asst. yr. 1968-69, the assessee was entitled to continuance of that relief for the subsequent four years and the ITO would not be justified in refusing to continue the allowance for the assessment year under reference, i.e., 1969-70, without disturbing the relief for the initial year

The next question to which the Tribunal addressed itself, and in our opinion rightly, was whether the ITO was justified in refusing to continue the relief of tax holiday granted to the assessee-company for the asst. yr. 1968-69, in the assessment year under reference, that is, 1969-70, without disturbing the relief granted for the initial year. It should be stated that there is no provision in the scheme of s. 80J similar to the one which we find in the case of development rebate which could be withdrawn in subsequent years for breach of certain conditions. No doubt, the relief of tax holiday under s. 80J can be withheld or discontinued provided the relief granted in the initial year of assessment is disturbed or changed on valid grounds. But without disturbing the relief granted in the initial year, the ITO cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted.”

27. Further Hon'ble Bombay High Court in the case of CIT vs. Paul Brothers (216 ITR 548), has held as under:

“Either in s. 80HH or in section 80J, there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Hence unless the relief granted for the asst. yr. 1980-81 was withdrawn, the ITO could not have withheld the relief for the subsequent years.(See Gujarat High

Court decision in the case of Saurashtra Cement and Chemical Industries Ltd. vs. CIT (1979) 11 CTR (Guj) 139 : (1980) 123 ITR 669 (Guj)).

Hence, the approach of the Tribunal on all the counts has been perfectly legal. Question No. 2 thus will have to be answered in the negative and in favour of the assessee.”

28. In view of the above factual and legal discussions, we are of the view that once, the assessee has fulfilled all the conditions as laid down in section 80IA (4) of the Act and was allowed deduction in the earlier assessment years in respect of undertaking in AY 2006-07 that is in the initial year, therefore, deduction under section 80-IA in respect of the infrastructure facility should have been allowed to the assessee. We noted that the Ld. CIT(A) in his finding recorded that assessment for A.Y. 2006-07 was reopened under section 147 is factually wrong. There is no reopening notice under section 147 for A.Y. 2006-07. So far as the objection of the Ld. Sr DR for the revenue is concerned that the assessee has made agreement with GIDC and no new infrastructure facilities was set up by the assessee. We find that the submissions of the Ld. DR for the revenue is based on the finding of Ld. CIT(A). The assessee has entered into agreement dated 15.12.2006 with GIDC and started deduction under section 80-IA of the Act from AY 2006-07. On this objection, we are also in agreement with the submissions of learned Senior Counsel for the assessee that pursuant to insertion of sub-clause (c) in Explanation to section 80IA(4)(i) with effect from 01.04.2001, by new sub-clause so as to include Solid Waste Management System within the meaning of infrastructure facility, the

assessee-company is covered under the amended definition of "Infrastructure Facility" and fulfills all the conditions as specified in sub-clause (a) to (c) of section 80IA(4) (i). Accordingly the assessee is eligible for claim of deduction under section 80IA of the Act. Thus, the assessee succeeded on both the counts. The assessing officer is directed to allow the deduction under section 80IA claimed by the assessee.

29. In the result, ground No. 1 to 4 of the appeal are allowed.

30. Ground No. 5 relates to excluding the interest earned on delayed payment received from customer, interest earned from GEB deposits and interest on other deposits. The learned Senior Counsel for the assessee submits that this ground of appeal is covered by the decision of Tribunal in assessee's group case in Bharuch Enviro Infrastructure Ltd in ITA No. 1849/Ahd/2014 dated 27.12.2021.

31. On the other hand the Ld. CIT-DR for the revenue supported the order of lower authorities. The Ld. CIT-DR for the revenue submits that income of impugned receipt has no nexus with the business carried out by undertaking.

32. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We find that this issue consist of three components of income that is, (i) interest on delayed payments received from customers of Rs. 10,10,163/-, (ii) interest earned on deposit with Gujarat Electricity Board (GEB) of Rs. 1,28,136/- and (iii) interest on other deposits of Rs. 12,13,380/-. The assessing officer disallowed the receipt to include in the deduction of 80IA by taking view that

the assessee has not furnished the details for reduction of interest income. The Ld. CIT(A) that he has upheld the denial of deduction under section 80IA, thus, this issue has become infructuous. Before us, the Ld. CIT(A). Sr. Counsel claimed that this ground of appeal is covered by the decision of in Assessee's group case in Bharuch Enviro Infrastructure (supra). We find that this combination while considering the assessee's group case on allowability on interest income on fixed deposit with bank for the purpose of claiming deduction under Section 80IA passed the following order:

"39. We have considered the rival submissions of the parties and have gone through the order of the lower authorities carefully. We have also seen the order of the Tribunal in assessee's own case for AY 2007-08 in ITA No. 2223/AHD/2010, wherein on similar set of fact similar interest income, the coordinate bench by following order of AY 2002 -03 to 2004-05 passed the following order;

"9. We now proceed to deal with assessee's appeal ITA No.2223/Ahd/2010. Its first substantive ground pleads that both the lower authorities have erred in excluding interest income of Rs.42,88,461/- and one time membership fee for incinerator plan of Rs.11.20 lacs for the purpose of computing [Section 80IA](#) deduction claim by following hon'ble apex court's decision in Pandian Chemical's case 262 ITR 278 (SC) that the same could not be held to have been derived from the above stated solid waste disposal plant.

10. Heard both sides. It emerges that the assessee's interest income in question arises from fixed deposits maintain with bank in order to comply with Gujarat Pollution Control Boards, norms, terms and conditions since it has to upkeep the site in question for a period of 30years of closure date. Both the learned representatives very much agree that a co-ordinate bench in assessee's cases itself for assessment years 2002-03 to 2004-05 in ITA Nos. 733, 1424, 4389 & 4408/Ahd/2007 has already reversed similar exclusion thereby treating identical interest income as eligible profits for the purpose of [Section 80IA](#) deduction. We quote the very reasoning herein as

well assessee's former limb of the impugned disallowance pertaining to interest income."

40. *Considering the consistent decision of the Tribunal on similar set of fact on similar component of income, and following the principle of consistency, we direct the AO to follow the order of Tribunal in AY 2007-08 dated 27.02.2017 and recomputed the eligible deduction under section 80IA accordingly."*
33. Considering the decision of Tribunal in assessee's group case wherein interest income from fixed deposit in bank was allowed for deduction under Section 80IA, thus, the interest on deposits are allowed. So far as interest on delayed payment from customers is concerned, such payments were made by various members have direct nexus with the profit and gains derived from undertaking. So far as interest earned on deposits with GEB is concerned, the same is not derived from the business activity of the assessee nor flowing directly from the industrial undertaking therefore, not eligible for deduction under Section 80IA of the Act. Thus, the assessee partly succeeded on this ground of appeal.
34. Ground No. 6 of appeal relates to expenditure estimated at 10% on interest income. The Ld. Sr. Counsel for the assessee at the time of his submission, submits that he is not pressing this ground of appeal, therefore, this ground of appeal is dismissed as not pressed.
35. Now we take ITA No. 497/Ahd/2015 for the A.Y. 2010-11, wherein the assessee has raised following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [CIT(A)] erred in upholding the action of the Assessing Officer AO') in not granting deduction under section 80IA of the Income-tax Act, 1961 ('the Act') in respect of profit derived from effluent treatment plant being an eligible infrastructure facility under section 80IA(4) of the Act.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting deduction under section 80IA in respect of profits of the eligible undertaking on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*
6. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the ground in respect of non exclusion of interest earned on Bank deposits amounting to Rs. 19,50,357/- while computing deduction under section 80IA of the Act.*
7. *On the facts and in the circumstances of the case and in law, it is submitted that expenditure for earning interest income estimated at 10% of interest earned on loan and interest earned on Inter Corporate deposit amounting to Rs.12,21,339/- ought to be deducted while excluding the interest income for the purpose of computing the deduction under section 80IA of the Act.*

8. *Without prejudice to the above grounds of appeal, it is submitted that where the conditions necessary for claiming the deduction are fulfilled at any date subsequent to date from which the undertaking is eligible to claim such deduction, the deduction shall be allowable from such subsequent date.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

36. We find that ground No. 1 to 5 raised by assessee is similar as raised in ground No. 1 to 5 in appeal for A.Y. 2009-10 in ITA No. 2019/Ahd/2014 which we have allowed (supra). Thus, following the principle of consistency, these grounds of appeal are allowed with similar directions.
37. Ground No. 6 relates to excluding of interest income on bank deposit and other deposits. This ground of appeal is similar to the ground No. 5 in appeal for A.Y. 2009-10 wherein we have allowed the component of similar income for eligible deduction under Section 80IA of the Act, thus this ground of appeal is allowed with similar direction.
38. Ground No. 7 relates to estimated expense of 10% of interest income earned. The Ld. Sr. Counsel for the assessee at the time of his submission, submits that he is not pressing this ground of appeal, therefore, this ground of appeal is dismissed as not pressed.
39. In the result, this appeal is allowed.
40. Now we take ITA No. 498/Ahd/2015 for the A.Y. 2011-12, wherein the assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [CIT(A)] erred in upholding the action of the Assessing Officer AO') in not granting deduction under section 80IA of the Income-tax Act, 1961 ('the Act') in respect of profit derived from effluent treatment plant being an eligible infrastructure facility under section 80IA(4) of the Act.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting deduction under section 80IA in respect of profits of the eligible undertaking on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.*
- 3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*
- 4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
- 5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*
- 6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the ground in respect of non exclusion of interest earned on Bank deposits amounting to Rs. 20,07,149/- while computing deduction under section 80IA of the Act.*
- 7. Without prejudice to Ground No. 6, if interest on fixed deposits amounting to Rs. 20,07,149/- is excluded then the interest in respect of membership deposit amounting to Rs.28,28,709/- debited to Profit and Loss Account ought not to be included the expenditure while computing the eligible profits.*

8. *On the facts and in the circumstances of the case and in law, it is submitted that expenditure for earning interest income estimated at 10% of interest earned on loan amounting to Rs.13,76,818/- ought to be deducted while excluding the interest income for the purpose of computing the deduction under section 80IA of the Act.*
9. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in granting credit in respect of prepaid taxes amounting to Rs. 90,92,718/- instead of Rs. 91,72,744/- as claimed in the return of income.*
10. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO of levying interest under section 234D of the Act amounting to Rs. 3,92,951/-.*
11. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest on distributed profits amounting to Rs. 3,92,820/-.*
12. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in adjusting a sum of Rs. 11,51,038/- against demands outstanding in case of the appellant for various years.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

41. We find that ground No. 1 to 5 raised in this appeal are similar to the grounds No. 1 to 4 in appeal for A.Y. 2009-10 and ground No. 1 to 5 in A.Y. 2010-11 which we have allowed supra. Therefore, following the principle of consistency, these grounds of appeal are allowed with similar direction.
42. Ground No. 6 relates to not including interest on fixed deposit for computing eligible profit and interest and ground No. 7 is raised without prejudice to ground No. 6 that if interest on fixed deposit is excluded then interest

debited to P&L account on membership deposit ought not to be included in the expenditure computing profit. We find that ground No. 6 is similar to the ground No. 6 in appeal for A.Y. 2010-11 and ground No. 5 in A.Y. 2009-10 which we have allowed. Thus, with similar observation, ground No. 6 of appeal is allowed. As we have allowed ground No. 6, therefore, adjudication on alternative and without prejudice ground No. 7 has become academic.

43. Ground No. 8 relates to 10% of estimated expenses on interest earned. Ld. Sr. Counsel for the assessee at the time of his submission, submits that he is not pressing this ground of appeal, therefore, this ground of appeal is dismissed as not pressed.
44. Ground No. 9 relates to granting less credit of advance tax/prepaid tax of Rs. 9092718/- instead of Rs. 9172744/-. The ld. Sr. Counsel for the assessee submits that appropriate direction may be given to the lower authorities for verification of fact and grant full credit of advance tax paid by assessee.
45. On the other hand, the Ld. CIT-DR for the Revenue submits that he has no objection, if the lower authorities is directed for proper verification of tax credit.
46. We have considered the submissions of both the parties. Considering the fact that assessee has claimed that full credit of advance tax is not made therefore, Assessing Officer is directed to verify the advance tax paid by or on behalf of assessee and grant credit thereon. Needless to order that before passing the order, the Assessing Officer shall grant adequate

opportunity to the assessee. In the result, this ground of appeal is allowed for statistical purposes.

47. Ground No. 10 relates to interest under Section 234D of the Act. The Id. Sr. Counsel of the assessee submits that this ground of appeal is covered by the decision of Hon'ble Madras High Court in CIT Vs. United India Insurance Company Ltd. 438 ITR 301 (Mad), wherein the High Court has held that "interest under section 234D is leviable only if refund granted to assessee becomes collectable in order passed under regular assessment; hence, where assessment in pursuance to reassessment proceedings could not be termed as 'first assessment' so as to come within meaning of expression 'regular assessment' for purposes of section 234D, no interest could have been levied on assessee for excess income tax refund." The Id. Sr. Counsel submits that Assessing Officer may be directed to calculate the interest by following the aforesaid decision.
48. On the other hand, the Id. CIT-DR for the Revenue supported the order of Id. CIT(A).
49. We have considered the rival submissions of both the parties and considering the decision of Hon'ble Madras High Court supra, the Assessing Officer is directed to calculate the interest on refund by following the decision in the case of CIT Vs United Insurance Co. Ltd. (supra). In the result, this ground of appeal is allowed for statistical purpose.
50. Ground No. 11 relates to levy of interest on profit distributed. The Id. AR of the assessee submits that during the year, the assessee paid dividend

distribution tax of Rs. 392820/- on 01/11/2010. In the assessment order, the interest on distributed profit amounting to Rs. 392820/- has been levied. The assessee made application under Section 154 of 18/08/2014 and brought to the notice of Assessing Officer about the mistake apparent and for seeking rectification. Copy of the application is also placed on record. Before Id. CIT(A), the assessee prayed for direction to Assessing Officer for deleting such interest. The Id. CIT(A) held that assessee failed to submit any explanation or evidence that assessee complied with the time limit under Section 115-O(3) r.w.s. 115P of the Act. The Id. Sr. counsel submits that assessee furnished the challan of dividend distribution of tax paid on 01/11/2010. The Id. Sr. Counsel prayed for appropriate direction to the Assessing Officer for deleting the levy of such interest.

51. On the other hand, the Id. CIT-DR relied on the order of the Ld. CIT(A).
52. We have considered the submission of parties and perused the order of Id. CIT(A). We find that before the Ld. CIT(A), the assessee specifically contended that dividend distribution tax was paid on 01/11/2010, copy of challan of tax was also furnished. The Ld. CIT(A), held that the assessee failed to comply with the time limit. Considering the fact that the assessee moved appropriate application under Section 154 on 18/08/2014 for rectification of mistake and furnished the necessary challan of dividend distribution tax. Therefore, we direct the Assessing Officer to pass order on application of assessee under Section 154 in accordance with law after

giving opportunity of hearing to the assessee. In this result, this ground of appeal is allowed for statistical purpose.

53. Ground No. 12 relates to adjustment of refund of Rs. 11,51,038/-. The Sr. Counsel of the assessee submits that as per assessee's record, no demands were outstanding for this relevant year, thus adjustment of refund was erroneous.
54. On the other hand, the Ld. CIT_DR submits that the Assessing Officer may be directed to verify the defect.
55. We have considered the submissions and considering the fact that assessee claimed that no demands were outstanding, therefore, adjustment of refund is not correct. Therefore, the Assessing Officer is directed to verify the facts and pass the order if any adjustment of refund for relevant years were pending. In the result, this ground of appeal is allowed for statistical purpose.
56. In the result, this appeal is partly allowed.
57. Now we take ITA No. 1845/Ahd/2016 for the A.Y. 2012-13, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [CIT(A)] erred in upholding the action of the Assessing Officer AO' in not granting deduction under section 80IA of the Income-tax Act, 1961 ('the Act') in respect of profit derived from effluent treatment plant being an eligible infrastructure facility under section 80IA(4) of the Act.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting*

deduction under section 80IA in respect of profits of the eligible undertaking on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*
6. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in rejecting the ground in respect of exclusion of interest earned on membership deposits amounting to Rs.29,07,959/- while computing eligible profits for the purpose of deduction under section 80IA on the ground that the appellant is not entitled to deduction under section 80IA.*
7. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in rejecting the ground in respect of addition of an amount of Rs.7,05,034/- in respect of fixed assets written off while computing eligible profits for the purpose of deduction under section 80IA on the ground that the appellant is not entitled to deduction under section 80IA.*
8. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in rejecting the ground in respect of non-exclusion of interest on income tax paid amounting to Rs.3,03,204/- while computing eligible profits for the purpose of deduction under section 80IA on the ground that the appellant is not entitled to deduction under section 80IA.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

58. We find that grounds No. 1 to 5 of this appeal are similar to the grounds No. 1 to 5 in appeal for A.Y. 2009-10 which we have allowed. This is seventh year of claim under Section 80IA of the Act. Thus, following the principle of consistency, these grounds of appeal are allowed with similar directions.
59. Ground No. 6 relates to excluding interest earned on membership deposit. This ground of appeal is similar to the ground No. 6 in appeal for A.Y. 2009-10, which we have allowed. Thus, this ground of appeal is allowed with similar observation.
60. Ground No. 7 relates to addition in respect of fixed asset written off while computing deduction under Section 80IA and ground No. 8 relates to excluding interest on income tax paid while computing deduction under Section 80IA of the Act. At the time of hearing, Ld. Sr. Counsel for the assessee submits that he is not pressing these grounds of appeal, therefore, these grounds of appeal are dismissed being not pressed.
61. In the result, this appeal of the assessee is partly allowed.
62. Now we take ITA No. 1471/Ahd/2017 for the A.Y. 2013-14, wherein the assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred in upholding the action of the Assessing Officer (‘AO’) in not granting deduction under section 80IA of the Income Tax Act, 1961 (‘the Act’) in respect of profits

derived from effluent treatment plant being an eligible infrastructure facility under section 80IA(4) of the Act.

2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in not granting deduction under section 80IA in respect of profits of the eligible undertaking on the ground that the appellant had not fulfilled the conditions specified in section 80IA(4) of the Act.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that after the agreement with GIDC was entered into on 15 December 2006 the appellant had not developed any new infrastructure facility as envisaged under section 80IA(4)(i)(b) of the Act and only operated/ maintained an old infrastructure facility.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in observing that the deduction allowed in the initial assessment year i.e. 2006-07 was denied by reopening the assessment without appreciating the fact that the assessment for AY 2006-07 was not reopened under section 147 of the Act.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that once deduction under section 80IA was granted in the initial assessment year, it ought to be allowed in the subsequent years for the remaining period.*

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal."

63. We find that grounds No. 1 to 5 of this appeal are similar to the grounds No. 1 to 5 in appeal for A.Y. 2009-10 which we have allowed. This is eighth year of claim under Section 80IA of the Act. Thus, following the principle of consistency, these grounds of appeal are allowed with similar directions.
64. In the result, this appeal of the assessee is partly allowed.

65. Now we take ITA No. 1473/Add/2017 for the A.Y. 2008-09 (penalty levied under Section 271(1)(c) of the Act) vide order dated 09/03/2015.
66. We find that the assessment order for A.Y. 2008-09 was initially completed under Section 143(3) on 24/12/2010. Thereafter, the case of assessee was reopened under Section 147. Later on, the case of assessee was reopened under Section 147 and assessment was completed under Section 143(3) r.w.s. 147 on 28/02/2013. The Assessing Officer while passing the reassessment order, made disallowance of deduction under Section 80IA of Rs. 99.98 lacs. On appeal before Ld. CIT(A) in quantum assessment, the disallowance of deduction was upheld. The Assessing Officer after receipt of order of Ld. CIT(A), levied the penalty under Section 271(1)(c) @ 100% of tax sought to be evaded and worked out penalty of Rs. 3089645/- vide order dated 09/03/2015. On further appeal against the penalty order, the penalty was upheld vide order dated 08/03/2017, further aggrieved, the assessee has filed present appeal before this Tribunal.
67. Considering the fact that we have deleted the entire disallowance in quantum assessment in ITA No. 2018/Ahd/2014, therefore, the penalty levied by Assessing Officer under Section 271(1)(c) will not survive. In the result, appeal of the assessee is allowed.
68. Now we take ITA No. 1474/Ahd/2017 for the A.Y 2009-10 (penalty levied under Section 271(1)(c) of the Act) vide order dated 18/02/2016.
69. We find that the assessment order for A.Y. 2009-10 was completed under Section 143(3) on 20/12/2011. The Assessing Officer while passing the

assessment order, made disallowance of deduction under Section 80IA of Rs. 9102996/-, sludge disposal charges of Rs. 137374/- and disallowed excess depreciation of Rs. 310022/- and initiated penalty under Section 271(1)(c) of the Act. On appeal before Ld. CIT(A) in quantum assessment, the disallowance of deduction under section 80IA was upheld. However, the disallowance of sludge disposal charges and depreciation was allowed. The Assessing Officer after receipt of order of Ld. CIT(A), levied the penalty under Section 271(1)(c) @ 100% of tax sought to be evaded and worked out penalty of Rs. 3094110/- vide order dated 18/02/2016. On further appeal against the penalty order, the penalty was upheld by the Ld. CIT(A) vide order dated 08/03/2017, further aggrieved, the assessee has filed present appeal before this Tribunal.

70. Considering the fact that we have deleted the entire disallowance in quantum assessment in ITA No. 2019/Ahd/2014, therefore, the penalty levied by Assessing Officer under Section 271(1)(c) will not survive. In the result, appeal of the assessee is allowed.

71. Copy of this order be placed in each of the case record.

Order pronounced on 08/06/2022 in open court and result was also placed on the notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 08/06/2022
**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat