IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH, HYDERABAD.

BEFORE SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos.774 & 775/Hyd/2020
(Assessment Years : 2013-14 & 2014-15)

Dy. Commissioner of Income Tax, Circle 3(1), Hyderabad.	**Vs.**	M/s. Ramky Energy and Environment Limited, Hyderabad. PAN AADCR 3002K
Appellant		**Respondent**
Appellant By : Shri Vishal Kalra, CA		
Respondent By : Shri K P R R Murty, (D.R)		
Date of Hearing : 19.07.2022.		
Date of Pronouncement : 30.08.2022		

O R D E R

Per Shri Laliet Kumar, J.M. :

These two appeals filed by Revenue are directed against separate orders both dt.16.03.2020 of the learned Commissioner of Income Tax (Appeals)-9, Hyderabad relating to Assessment Year 2013-14 & 2014-15. Since identical grounds are involved in both the appeals, we deal with ITA No.774/Hyd/2020 as the lead case for the sake of convenience and brevity. The same decision shall apply for ITA No.775/Hyd/2020.

2. The grounds raised by the assessee in ITA No.774/Hyd/2020 are as under :

" 1. CIT (A) erred in allowing deduction claimed of assessee u/s. 80IA(4) wrt Bio Medical waste treatment facility at Salem, Mangalore in spite of fact that assessee has not entered in to agreement with Central Government of state Government or Local Authority or any other Statutory body for any developing, operating and maintaining the infrastructure facility as required u/s 80IA(4)(i) of IT Act.

2. CIT(A) erred in holding that approval of prescribed authority is sufficient to allow deduction erred in directing AO to allow deduction without verifying whether consent to operate the common facility for the period under consideration is brought on record wrt Mangalore unit or not.

3. CIT(A) erred in holding that approval of prescribed authority is sufficient to allow deduction erred in direction AO to allow deduction without verifying whether consent for operation of existing facility under section 25 of Water (prevention and control of Pollution Act), 1974 and Section 21 of Air (Prevention and control of pollution) Act, 1981 for the entire period under consideration is brought on record wrt both units under consideration or not.

4. CIT(A) erred in holding that approval of prescribed authority is sufficient to allow deduction erred in directing AO to allow deduction without noticing the fact that initially "consent to establish' Bio medical waste treatment facility at both Salem, Mangalore was taken by company named M/s. Medicare Incin Pvt Ltd whereas assessee company ended up operating the facility and no documents with regard to transfer of ownership of facilities have been filed before AO.

5. Whether, the facts and circumstances of the case, the Ld. CIT(A) is correct in directing the AO to delete the addition of Rs. 31,632/- pertaining to the late payments of the employees contribution to Provident Fund & ESI if the payments were made after the due date under stipulated acts but before filing of return of income?

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

3. The facts, in brief, are that the assessee company is engaged in the business of Bio-Medical & Municipal Solid Waste Management, filed its Return of Income for the Assessment Year 2013-14 on 30.09.2013 declaring a total income of Rs.7,31,785. The case was selected for scrutiny

by CASS on AST and the same was converted into scrutiny by issuing notice u/s. 143(2) of the Income Tax Act, 1961 (in short 'the Act'). In response to the notice issued, the learned Authorised Representative has furnished certain material and books of account. A show cause notice was issued to the assessee to explain the deduction claimed u/s. 80IA of the Act. After examining the details submitted by the assessee, the Assessing Officer disallowed the deduction claimed u/s. 80IA(4) of the Act stating that the assessee has not fulfilled the conditions in respect of bio medical waste management at Mangalore and Salem units. The Assessing Officer held that the assessee company is not eligible to claim exemption u/s. 80IA of the Act. The Assessing Officer has also disallowed the amount received by the assessee from its employees as contributions to Provident Fund or Superannuation fund and not remitted within the stipulated period, part of the amount which the assessee has failed to remit the amount of Rs.31,632 (Rs.1,46,290 – Rs.1,14,658) claimed u/s. 36(1)(va) of the Act. Aggrieved by the order of Assessing Officer, the assessee filed an appeal before the learned CIT (Appeals).

3.1. After examination of assessee's submission, the learned CIT (Appeals) allowed the appeal of the assessee stating that the units at Mangalore and Salem constitute infrastructure facility for the purpose of section 80IA(4) of

the Act. Further he held that these facilities have been developed and operated with due consent/agreement of the prescribed authorities who issued the necessary approvals/orders. So far as the disallowance made by the Assessing Officer of Rs.31,632 u/s. 36(1)(va) of the Act is concerned, the learned CIT (Appeals) held that by relying on the orders of ITAT in the case of M/s. Nuzivedu Swati Costal Consortium and order passed by CIT(A)-2, Hyderabad in the case of M/s. Golden Star Facilities, dt.29.02.2016, allowed the claim of deduction u/s. 43B of the Act. He directed the Assessing Officer to allow the deduction u/s. 80IA in respect of the units at Mangalore and Salem.

3.2. Aggrieved by the order of learned CIT (Appeals), the Revenue is in appeal before us.

4. The Ld.DR for the revenue has submitted that no agreement as contemplated under section 80 IA(4) was entered into by the assessee either with the central government or state government or local authority or any other statutory authority for the purposes of developing, operating and maintaining, developing operating and maintaining a new infrastructure facilities. It was submitted that the assessing officer had rightly denied the benefit of 80 IA to the assessee as the assessee failed to fulfil the requirement of law.

5. The Ld.DR for revenue had drew our attention to the consent for the establishment granted to the assessee on receipt of the application dated 7/7/2003. It was the submission of the DR that the consent granted by the pollution control board cannot be equated with the agreement as envisaged in section 80IA (4) of the Act. To buttress his argument he had drawn our attention to the supplementary agreement entered into between the assessee with Bruhat Bangalore Mahanagara Palika, wherein a proper agreement was entered between them and the assessing officer had granted the benefit of 80 IA(4) to the assessee.

6. It was also the contention of the Ld. DR that the "agreement" mentioned in section 80IA cannot be substituted either with the approval order or the consent order. It was submitted by DR that prerequisite of agreement is ad-idem to do a particular work on certain terms and conditions, whereas for the approval/consent granted for operating and maintaining were issued by the pollution control board on fulfilment of various conditions and no meeting of mind is required . The rational for grant of approval/consent for operation is different from fulfilling the obligation as contemplated under section 80 IA(4) of the Ac. The supplementary agreement to operate a facility for collection, reception, treatment etc at Industrial Area, Karnad Mulky, Dakshina Kanada District was entered with

Bruhat Banglore Mahanagar Palika, which provides as under :-

5545

Government of Karnataka
Registration & Stamps Department

SNSP/A100/08-09 No. 759319
Issued by
State Bank of Mysore

Certified that a sum of Rs. 100/- (Rupees One Hundred only) has been paid towards Karnataka Stamp duty by

Sri/Smt. Ramky Energy & Environment Ltd

s/d/w/o _____ residing at _____

HMT Industrial Estate Br (4028)

For STATE BANK OF MYSORE

Br.Name :

Date : 29 JAN 2009

Authorised Agent to collect stamp duty on behalf of Govt. HMT Industrial Estate Br. Jalahalli, Bangalore-31

SUPPLEMENTARY AGREEMENT

This Supplementary Agreement is entered into on this date, the Twenty forth march 2009 at Bangalore, by and

BETWEEN:

Bruhat Bangalore Mahanagara Palike (formerly known as Bangalore Mahanagara Palike), acting through its Deputy Commissioner (Health), Bruhat Bangalore Mahanagara Palike, having its main office at N.R. Square, Bangalore – 560 002, (herein after referred to as "BBMP" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

M/s Ramky Energy and Environment Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at D.No. 6-3-1089/G/10&11, Gulmohar Avenue, Raj Bhavan Road, Somajiguda, Hyderabad-500 082 (herein after referred to as "the Successor Company" which expression shall, unless repugnant to the context otherwise include its successors and permitted assigns)

WHEREAS BBMP desires to establish an Integrated Municipal Solid Waste Processing and Engineered Sanitary Landfill at Mavillipura through private participation of Build, Operate and Transfer (BOT) basis (herein after referred as the "Project").

Cont'd.....2

Ramky Energy & Environment Ltd
2958, Mahalaxmi Layout
Rajajinagar 2nd Stage
Bangalore-560 010

24/3/09

DEPUTY COMMISSIONER (HEALTH)
Bruhat Bangalore Mahanagara Palike
Bangalore

M/S Ramky Infrastructure Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at D.No.6-3-1089/G/10-11,"Ramky House" Gulmohar Avenue, Raj Bhavan Road, Somajiguda, Hyderabad, Andhra Pradesh – 500 082 (hereinafter referred to as "the Concessionaire" which expression shall, unless repugnant to the context otherwise include its successors and permitted assigns)

WHEREAS BBMP had invited competitive proposals from eligible Bidders for implementing the above said Project. The Concessionaire also submitted its Bid documents and after evaluating the proposals of all the Bids submitted by various Bidders, the proposal submitted by the Concessionaire was accepted by BBMP vide its Letter of Acceptance No.DC(H) PR(1) 677:04-05 dated August 4, 2004 for developing the Project.

WHEREAS BBMP and Concessionaire enter into a Concession Agreement on 11th August, 2004 to record the terms and conditions in accordance with which the Concessionaire shall implement the Project.

WHEREAS the Concessionaire vide its letter No. Nil dtd: 8th March' 2007 for transfer of business from M/s Ramky Infrastructure Limited (the Concessionaire) to M/s Ramky Energy and Environment Limited (the Successor Company) for implementation of the Project.

WHEREAS the BBMP vide its Council Resolution No.684,dt. 03.12.2008 has approved the proposal and intimated the Concessionaire vide its letter DC (H)/PR/272/08-09, dt.31.12.2008. Hence this Supplementary Agreement is executed to formalize the new arrangement.

NOW THIS SUPPLEMENTARY AGREEMENT WITNESSETH AS FOLLOWS:

1. That BBMP and the Concessionaire has entered into Concession Agreement on 11th August, 2004 (Agreement) for the above said Project and the BBMP vide its Council Resolution No. 684, dt.03.12.2008 has accepted the proposal of the Concessionaire to change the name of the company mentioned in the Concession Agreement and transfer the business i.e., implementation of the Project, from M/s Ramky Infrastructure Limited to M/s Ramky Energy and Environment Limited on the condition that the Successor Company will be bound by the terms and conditions of the Agreement.

2. That the Successor Company hereby agrees to undertake the Project awarded as per the terms and conditions mentioned in Agreement.

3. That the Successor Company will duly discharge, perform and observe all the liabilities, obligations and stipulations of the Agreement and is responsible and held liable for all the actions that may be taken by BBMP as per the terms and conditions mentioned in the Agreement.

4. That this Supplementary Agreement will become part and parcel of the Agreement for all practical and legal purposes and binding on the Successor Company.

5. Henceforth M/s. Ramky Energy And Environment Ltd., will be the new concessionaire.

IN WITNESS WHEREOF all the parties signed this Supplementary Agreement on the day and date above mentioned in the presence of the following:

For BRUHAT BANGALORE MAHANAGAR PALIKE

DEPUTY COMMISSIONER (HEALTH) 24/3/09

DEPUTY COMMISSIONER (HEALTH)
Bruhat Bangalore Mahanagara Palike
Bangalore

For M/s RAMY ENERGY AND ENVIRONMENT LIMITED

DIRECTOR

Ramky Energy & Environment Ltd.
2950, Mahakavi Kuvempu Rd.
Rajajinagar 2nd Stage
Bangalore-560 010

WITNESSESS:

1. 24/3/09
AEE (SWM)

From the perusal of the supplementary agreement, it is clear that Bruhat Bangalore Mahanagar Palike through DC Health, had signed the agreement with assessee, after the

assessee inviting and accepting the Bid, was accepted by the Palika.

7. The Ld.DR had submitted that the order passed by the CIT(A) is required to be reversed being contrary to the provision of law.

8. On the other hand, the Ld.AR for assessee had supported the order passed by the CIT(A). It was submitted that once the approvals have been granted to the assessee by the pollution control board then there was sufficient compliance by the assessee. The Ld.AR for the assessee had also submitted that the approval/consent granted by the pollution control board has attributes of agreement. It was also contended that no specific format for entering into agreement was given under section 80IA, therefore even the consent given by the pollution control board is sufficient for the purposes of granting the benefit to the assessee under section 80IA. The Ld.AR for the assessee had also submitted the following written submission in support of the assessee's case:

2.1. Ground No. 1 - 4: Disallowance of deduction claimed under section 80IA of the Act:

2.1.1 During the year under consideration, the Assessee is engaged in the business of Bio-Medical & Municipal Solid Waste Management. For AY 2013-14, Assessee claimed deduction under section 80IA in respect of units situated at Bangalore for Municipal Waste Management for INR 1,34,91,494; Mangalore for Bio Medical Waste Management for INR 1,57,67,675 and Salem (Part) for Bio Medical Waste Management for INR 1,26,20,793 ***(refer computation of income at page 67 of PB for AY 2013-14),*** and, filed duly audited form 10CCB ***(refer at pages 111 to 118 of PB for AY 2013-14)***.

2.1.2 Similarly, for AY 2014-15, Assessee claimed deduction under section 80IA in respect of units situated at Mangalore for Bio Medical Waste Management for INR 1,73,04,928 and Salem (Part) for Bio Medical Waste Management for INR 1,70,87,945 ***(refer computation of income at page 65 of PB)*** and, filed duly audited form 10CCB ***(refer at pages 120 to 127 of PB for AY 2014-15)***.

2.1.3 The AO allowed the claim for Bangalore unit. However, with regards to Mangalore and Salem unit, the AO questioned the documentary evidence supplied by Assessee in support of its claim for deduction under section 80-IA in respect of units situated at Mangalore (Karnataka) and Salem (Tamil Nadu). The Assessee in this regard, had furnished copies of renewal authorizations for operating facility of bio-medical waste, consent orders for discharge etc. being obtained from Karnataka State Pollution Control Board and Tamil Nadu Pollution Control Board for Mangalore and Salem unit respectively ***(refer pages 16 to 29 and 36-43 of the PB for AY 2013-14)***.

2.1.4 The AO noted that the 'orders' obtained from Karnataka State Pollution Control Board and Tamil Nadu Pollution Control Board do not tantamount to 'agreements' and hence, the primary condition required for claiming deduction under section 80IA(4), i.e. the enterprise has entered into an agreement with central / state government or a local authority or any other statutory body for developing, operating and maintaining a new infrastructure facility, has not been fulfilled by Assessee. Accordingly, the AO disallowed the deduction as claimed.

2.1.5 The CIT(A) held that the orders issued by the prescribed authorities are based on the applications / proposals made by the Assessee. Hence, the infrastructure facilities at Mangalore and Salem unit have been developed and operated with due consent / agreement of the prescribed authorities who issued necessary approvals / orders. Accordingly, the disallowance made for deduction claimed under section 80IA was allowed ***(refer para 10.6 and 10.9 at pages 19-20 of CIT(A) order)***.

2.1.6 During the hearing, the Hon'ble Bench raised a query as to whether "the authorization as annexed in the paper book at pages 16 to 43 would satisfy the condition laid down in section 80IA(4)(i)(b) of the Act.

2.1.7 In this regard, it is humbly submitted that the inference drawn by the AO is completely misconceived as he had failed to appreciate the true status of the Pollution Control Boards, with reference to the business of the Assessee, and the legal effect of a proposal and the consent thereto. The contentions of the Assessee in this regard have been briefed as below:

Prescribed Authority

2.1.8 It is submitted that as per clause (b) to section 80IA(4)(i), a condition has been prescribed that for claiming deduction under the said section, the Assessee has to enter into an agreement with the Central Government or State Government or local authority or any other statutory body for developing, operating, maintaining or developing / operating a new infrastructure facility.

2.1.9 The Central Government by an Act of Parliament in the year 1986 brought into force the Environment (Protection) Act, 1986. the relevant provisions of the said Act are being reproduced hereunder for ready reference:

> ***Section 3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.-***
>
> *(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.*
>
> ***5. POWER TO GIVE DIRECTIONS.-***
>
> *Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may1 , in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions*
>
> *Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*
>
> *(a) the closure, prohibition or regulation of any industry, operation or process; or*
>
> *(b) stoppage or regulation of the supply of electricity or water or any other service.*
>
> ***6. RULES TO REGULATE ENVIRONMENTAL POLLUTION.-***
>
> *(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3*

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the standards of quality of air. water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

8. PERSONS HANDLING HAZARDOUS SUBSTANCES TO COMPLY WITH PROCEDURAL SAFEGUARDS.-

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed

25. POWER TO MAKE RULES.-

(1) to (2) (b) ....

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9.

26. RULES MADE UNDER THIS ACT TO BE LAID BEFORE PARLIAMENT.

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

2.1.10 In view of the above enacted legislation. Bio-Medical Waste (Management & Handling) Rules, 1998 were formulated for establishment and operation of Bio-Medical Waste Management facilities in India. during the relevant period. The same were notified by the Ministry of

Environment & Forests; vide SO 630(E) dt 20.07.1998, in exercise of the powers vested by "The Environment Protection Act, 1986. Specific conditions and standards for treatment and disposal of Bio-Medical Wastes were codified under such Rules.

2.1.11 As per Rule 7 of the Bio-Medical Waste (Management & Handling) Rules, 1998, the Government of every State and Union Territory shall establish a Prescribed Authority with such members as may be specified for granting authorization and implementing these rules. The relevant extract of Rule 7 of sub rule 1 is as under:

> *"(1) The Prescribed authority for enforcement of the provisions of these rules shall be the Sate Pollution Control Boards in respect of States and Pollution Control Committees in respect of the Union Territories and all pending cases with a prescribed authority appointed earliers shall stand transferred to the concerned State Pollution Control Board, or as the case may be, the Pollution Control Committees."*

2.1.12 Further, as per the sub-Rule (2) to Rule 8 – every operator of Bio-Medical Waste facilities shall make an application in Form-1 to the prescribed authority for grant of authorization. As per sub-Rule (4), the authorization to operate a facility shall be issued in Form-IV, subject to the conditions laid in such authorization (as submitted by the Assessee at pages 16 to 43).

2.1.13 In the instant case, the Assessee had established and started operations of its Bio-Medical Waste Management facilities both at Salem and Mangalore, after obtaining necessary approvals from the Tamil Nadu State Pollution Control Board and Karnataka State Pollution Control Board which were notified to be the Prescribed Authorities for the purpose of implementation of Bio-Medical Waste Management Rules.

Procedure for Authorisation and consent from prescribed authority

2.1.14 The Rules laid down that the Prescribed Authority, on receipt of an application from any person proposing to set up a Bio-Medical Waste Management facility or for renewal of authorization of the existing facility, make such enquiry as it deems fit and if it is satisfied that the applicant possesses the necessary capacity to handle bio-medical waste in accordance with these rules, grant or renew an authorization, as the case may be.

2.1.15 Thus, the consent of the Prescribed Authority is mandatory both for establishment and operations of a facility. Further, the initial as well as renewal authorizations are subject to overall supervision of the Prescribed Authority which is empowered to cancel or suspend such authorization, if the operator has failed to comply with any provision of the Act or rules.

2.1.16 In the instant case, as submitted above the Assessee Company had established and subsequently started operations of its Bio-Medical Waste Management facilities both at Salem and Mangalore after obtaining necessary approvals from the Tamilnadu State Pollution Control Board ***(refer page 29 of PB)*** and Karnataka State Pollution Control Board ***(refer page 16-28 of PB)*** respectively which were notified to be the Prescribed Authorities for the purpose of implementation of Bio-Medical Waste Management Rules.

2.1.17 Further, the Assessee had been continuously obtaining the consent of such authorities for renewal of its operations i.e. discharge of effluents ***(refer consent order at pages 36-43 of PB)***.

Consent or agreement are same:

2.1.18 Attention of the Hon'ble Tribunal may also be invited to relevant sections of the Indian Contract Act, 1872.

The legal meaning of the word agreement is "a negotiated and typically legally binding arrangement between parties as to a course of action". Further the word agreement has been defined under section 2(e) of The Indian Contract Act 1872. The section 2(e) of the Act defines agreements as under:

> *"every promise and every set of promises, forming the consideration for each other is an agreement."*
>
> ***Section 2(b) of the Indian contract Act define promise as:***
>
> *"When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted becomes a promises."*
>
> ***Section 2(a) of the Indian contract Act define proposal as under:***
>
> *"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal"*
>
> *Section 8. Acceptance by performing conditions, or receiving consideration. — Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.*
>
> *Section 9. Promises, express and implied. —In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.*

2.1.19 It is thus, a settled principle in law that the only essential requirements to constitute an agreement are that there must be –

(i) Two or more parties/persons
(ii) A proposal/offer from one party/person and acceptance from the other party/person

As per dictionary law.com, the word consent means voluntary agreement to another's proposition and, as such, 'Consent' is a perfect synonym for 'Agreement'. Thus, upon receipt of the consent, the offer or proposal made by the Assessee ripens into an agreement.

2.1.20 Further, the AO himself had held at **para 4.5** of the assessment order that the consent given by the Pollution Board Control was in the nature of permission given to the Assessee to conduct its business.

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2.1.20 Further, the AO himself had held at **para 4.5** of the assessment order that the consent given by the Pollution Board Control was in the nature of permission given to the Assessee to conduct its business.

2.1.21 The expression 'permission' itself implies that the said authority had accepted the proposal of the Assessee thereby leading to a legally valid agreement. Hence, the AO has erred in holding that the said permissions do not amount to agreement.

2.1.22 It is also pertinent to mention that the status report issued by Karnataka state for BioMedical waste management also includes the name of Assessee as an authorized facility ***(refer pages 30-35 of PB).***

2.1.23 From the above, it is cumulatively transpired that promises/ understanding made between the parties against the consideration which is enforceable under the law can be called an agreement. In other words, it is well settled that the offer and acceptance must be based or founded on three components —certainty, commitment, and communication. If any one of three components is lacking either in the offer or in the acceptance there cannot be a valid contract: **Kilburn Engineering Ltd. vs Oil and Natural Gas Corporation Ltd., AIR 2000 Bom 405**. In the light of the above legal position, the letter of intent (application in the subject case) and work order (authorization in the subject case) being legally enforceable in the eyes of law contain all the features of a valid agreement.

2.1.24 Further, the Hon'ble Madras High Court in the case of **CIT vs A. L. Logistics (P.) Ltd.: [2015] 374ITR 609 (Madras)** has categorically held that where the proposal of the assessee was accepted by the Government on certain conditions, which were duly complied with by the assessee, there is no need to insist for specific execution of agreements. It is respectfully submitted that the facts of the case before the Hon'ble Bench is identical to the above case. In the present case, the Assessee made application to the prescribed authority (relevant Pollution Control Board) to set up a Bio-Medical Waste Management Facility and for renewal of authorisation of the existing facility. The application so made was accepted/authorised subject to some conditions, which were complied with. As a matter of fact, the authorisation granted was renewed for further periods. It is submitted that the State Pollution Control Boards are statutory authorities performing the regulatory functions of the Central/State Governments under Water, Air and Environmental pollution statutes and rules framed therein. Therefore, the application made by the Assessee and the acceptance/authorisation of the same and the performance of the same by the Assessee constitutes an agreement within the meaning of section 80IA(4)(i)(b) of the Act and therefore the Assessee is entitled to deduction under the said section. A copy of the above stated judgement was filed during the hearing. **Further, it may be pointed out that the SLP of the Department is dismissed and the above case has been approved by the Supreme Court; reported at CIT vs Container Corporation of India Ltd: 404 ITR 397 (SC).**

2.1.25 The Hon'ble Hyderabad Bench of the Tribunal in the case of **Hyderabad Menzies Air Cargo Private Limited, R.R.Dist Vs. DICT, Circle 2(2), Hyderabad: ITA Nos. 421, 422 & 423/Hyd/2015**, has also held that there may not be agreement in strict sense and authorization is sufficient to allow deduction. The relevant portion of the decision is extracted hereunder for ready reference:

> ***"7.5. The second objection of the Revenue is that the assessee has not entered into any agreement with the Central Govt., or State Govt. or local authority or a statutory body a provided u/s 80IA(4) of the Act. It is the contention of the***

assessee that Govt. of India has authorized GHIAL to grant further rights in respect of any of its activities, pursuant to which GHIAL has entered into an agreement with the assessee and therefore, there is no requirement of the assessee to enter into a separate agreement with the Govt. *In support of this contention, the assessee has relied on the decision of the Coordinate Bench in the case of Ocean Sparkles Ltd. In the said case, the assessee therein, engaged in the business of operation and maintenance of ports, cargo services and other related services, had entered into agreement for operation and maintenance of port, with developers who were engaged in development and operation of ports and had entered into an agreement with specified authorities i.e. State Govt. for development and maintenance of certain ports. The Hon'ble Tribunal observed that later on, under an agreement, the operation and maintenance services of said ports were sub-contracted by the developer to assessee company in accordance with original agreement with specified authorities after 1-4-99 and held that as per the proviso to section 80IA(4)(i), the assessee therein was entitled to deduction u/s 80IA(4) of the Act. For this purpose, the Tribunal had taken into consideration the proviso to section 80IA(4)(i) to hold that the proviso aims at qualifying the transferee enterprises, as enterprise eligible for deduction under this section provided, the other conditions be satisfied and that the proviso does not require any direct agreement between the transferee enterprise and the specified authority.*

7.6. Further, the Learned Counsel for the assessee has also placed reliance upon the decision of ***Hon'ble Madras High Court in the case of A.L. Logistics P. Ltd., wherein it has been held that where the proposal of the assessee was accepted by the Government on certain conditions, which were duly complied with by the assessee, there is no need to insist for specific execution of agreements.*** *In the said case, the assessee therein had applied to the Ministry of Commerce and Industry, Government of India, Infrastructure Division of the Department of Commerce for setting-up of a CFS at Haldia for handling, import and export of Cargo which has been approved by the Ministry, subject to execution of certain documents of compliance of other terms and conditions as stated in the letter. Taking the same into consideration,* ***the Hon'ble Madras High Court held that since the proposal of the assessee was accepted by the Government on certain conditions which were duly complied with by the assessee, there is no need to insist for the specific execution of the agreements.*** *Similarly, in the case before us, the assessee has applied to the Government of India, Ministry of Civil Aviation for registration as a Regulated Agent for handling the Cargo facilities at Hyderabad International Airport and vide letter dated 24.11.2008, the assessee was granted the registration while GHIAL has granted the assessee the right to handle the Cargo facilities by virtue of the agreement. The assessee's contention is that the assessee has been recognized also as a 'Service Provider Right Holder' as stipulated under the Concession Agreement itself and that further that the Government has recognized the assessee as 'a Regulated Agent' and therefore, the decision of the Hon'ble Madras High Court is applicable to the assessee and the assessee's contention that since the assessee has been given approval by the Ministry of Civil Aviation, it is not necessary to enter into a specific and independent agreement with the Government for claiming deduction under section 80IA of the Act, has to be accepted.*

7.7. The assessee has also placed reliance upon the definition of "Regulated Agent" under clause (5) of Rule-2 of the Aircraft (Security) Rules, 2011. Therefore, according to the assessee, the assessee being accepted as a regulated agent under the Aircraft (Security) Rules, 2011 needs no specific agreement with the Government for carrying on the work. However, we are unable to accept this contention of the assessee because the definition of a "Regulated Agent" given in the Aircraft (Security) Rules, 2011 is only to govern the security measures for Aircraft operators and it does not

mean that assessee has been recognized as an agent to operate and maintain the Cargo facilities at the Airport. In fact, it is the other way round, i.e., the person operating and maintaining the Cargo facilities is recognized as a 'Regulated Agent' who can function in accordance with the Aircraft (Security) Rules, 2011.

7.8. The assessee has also placed reliance upon the decision of this Tribunal in the case of Menzies Aviation Bobba, Bangalore in M.P.No.19/Bang/2014 in ITA.No.1160/Bang/2012 dated 05.10.2015 wherein the Tribunal has accepted Bangalore International Airport Limited as a statutory body under section 80IA(4) of the Act. *We find that in the said case, the Tribunal had relied upon the decision of the jurisdictional High Court therein i.e., the Hon'ble Karnataka High Court in a writ petition filed by M/s. Flemingo Duty-Free Shops P. Ltd., against the Bangalore International Airport Ltd.,("BIAL") wherein the Hon'ble Karnataka High Court has held BIAL to be a statutory authority as it is discharging statutory functions of the Government. There is no such decision in respect of Hyderabad International Airport Ltd., by the jurisdictional High Court i.e., Hon'ble High Court of Telangana and Andhra Pradesh.* ***However, since we have already held that the assessee does not require a specific and independent agreement with the Government for claiming deduction under section 80IA(4), we do not find it necessary to adjudicate this issue at this stage****. In view of these facts, the assessee's appeal is allowed."*

(emphasis supplied)

2.1.26 Moreover, Co-ordinate Bench of the Tribunal in the case of **Ayush Ajay Construction Ltd. vs. ITO, 79 ITD 213 (Indore)** while interpreting the provisions of section 80IA(4), even in the absence of agreement, on recognition of the work done has come to a conclusion that assessee was entitled to get deduction and reference can be made to the following observations:

"18. If we examine the relevant provisions of s. 80-IA(4A) of the Act and the object of its insertion to the tax statute in the light of the budget speech of the Hon'ble Finance Minister and the above said judicial pronouncements, we would find that the legislature has given a fillip of deductions to those enterprises who engage themselves in developing, maintaining and operating any infrastructure facilities for economic growth of the nation as it was felt by the legislature that inadequate infrastructure was a key constraint of our economic progress. As held by the apex Court in the case of Bajaj Tempo Ltd. vs. CIT (supra), the provisions of promoting economic growth should be interpreted liberally and the restriction on it too has to be construed so as to advance the objective of the provisions and not to frustrate it. ***If we put the facts of the case with the parameter laid down by the apex Court and the various High Courts, we would find that the assessee though not entered into an agreement with the State Government at the initial stage but has obtained the tender/contract by virtue of a valid assignment, which was duly recognised by the State Government, should be deemed to have entered into an agreement with the State Government for construction of the impugned bridge on BOT basis.*** *It is not the case of the Revenue that the entire expenditure incurred in the construction of the aforesaid bridge was not borne by the assessee but by M/s Ajay Constructions, the main tenderer. The Revenue has rejected the claim of the assessee for the simple reason that the assessee had never entered into any contract with the State Government and the assessee-company is nothing but a colourable device to evade tax. It is a settled position of law that the company is a juristic entity and it should be considered independent from the shareholders or the directors. Admittedly, M/s Ajay Construction, the original tenderer, have assigned the remaining work of the contract/tender along with the expenditure incurred by it to Smt Usha Agrawal. the promoter of the assessee-company though an agreement dt. 1St April, 1995 and thereafter the construction work was undertaken by the promoter of the assessee-company till its incorporation. When the permission of the assignment was granted by the State Government, fresh agreement was executed between the assessee company and the main tenderer. M/s*

Ajay Constructions, in which the assessee-company has ratified all the deeds and acts of its promoter, Smt. Usha Agrawal, and owned/taken over all the assets and liabilities of its promoter. The action of assigning and the work of construction undertaken by the assessee was recognised by the State Government and a tripartite agreement was executed between the assessee, M/s Ajay Constructions and the State Government through which the State Government have recognised that the assessee has stepped into the shoes of Mls Ajay Constructions and notified authorising the assessee to collect the toll tax for a particular period. A copy of the letter dt. 22nd May, 2000, to this effect is also placed before us. The assessee has also placed various correspondence entered into between the assessee and the State Government and the letter dt. 26th Aug., 1995, through which the assessee was informed about the notification in his favour to collect the toll tax. A copy of the letter placed at p. 140 of the compilation of the assessee. Copies of the notification and various receipts of toll tax are also placed on record for our perusal. It is also revealed from various correspondence of the assessee with the State Government that the assignment of contract was duly recognised by the State Government and it was admitted by them that the actual construction work was undertaken by the assessee only."

(emphasis supplied)

2.1.27 In the above case also the deduction was not granted to the assessee as assessee had not entered into an agreement with the State Government but from the approvals granted to the assessee it was inferred that assessee should be deemed to have entered into an agreement with the State Government.

2.1.28 Reliance in this regard is also placed on the following decisions wherein the requirement to have an agreement in strict sense has been diluted by the Courts and upheld the claim of deduction:

- CIT vs Chettinad Lignite Transport Services (P.) Ltd.: [2019] 413 ITR 162 (Madras);
- United Liner Agencies of India (Private) Ltd. vs JCIT: ITA No.273,275,943,944/Mum/2013;
- Katira Construction Ltd. vs ACIT: [2020] 185 ITD 173 (Rajkot - Trib.)

2.1.29 It is also submitted that the Revenue authorities in Assessee's own case have accepted the claim of the Assessee and allowed deduction under section 80-IA in respect of units at Mangalore and Salem for AY 2015-16, and in respect of unit at Salem for AY 2016-17. Refer intimation under section 143(1) of the Act, alongwith relevant extracts from ITR and Form 10CCB. The same was handed over to the Hon'ble Bench during the hearing.

2.1.30 The Hon'ble Bench next raised the query regarding applicability of recent judgment of the **Hon'ble Supreme Court in the case of PCIT vs Wipro Ltd. bearing [CA No.1449/2022]**. The Hon'ble Bench was of the view that as per recent decision by the Hon'ble Supreme Court, the beneficial provision(s) are to be construed strictly and complied in literal sense as prescribed by the legislation.

2.1.31 The issue in that case was "whether for deduction under section 10B of the Act, it is mandatory or directory to file the requisite declaration in the prescribed form while furnishing the return under sub-section (1) of section 139 of the Act. The Supreme Court is of the view that such requirement has to be complied in literal / strict sense and if the same has not been complied, the exemption under section 10B of the Act can be denied by the Revenue.

2.1.32 It may be pertinent to mention here that the above case was dealing with the provisions of section 10B of the Act and not section 80-IA of the Act as in the present case before the Hon'ble

Bench. **The apex Court in Para 11 of the judgement has categorically observed that section 10B(8) of the Act is an exemption provision and therefore, all the cases relied upon and applicable to Chapter VIA shall not operate or be applicable to Chapter III under the ambit of section 10B operates. The Court also observed that Chapter III and Chapter VIA of the Act operate in different realms and on different principles while a former deals with income which do not form part of total income; the latter deals with deduction under Chapter VIA and therefore, are not at parity to each other. The relevant observation of the Hon'ble Bench differentiating Chapter III and Chapter VIA are reproduced as under:**

> *"11. Now so far as the reliance placed upon the decision of this Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra),* ***relied upon by the learned counsel appearing on behalf of the assessee is concerned, Section 10B(8) is an exemption under section 32(1)(ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "income which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B (8) of the IT Act.***
>
> *12. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under Section 10B (8) to opt out of Section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under Section 10B (8) as being mandatory also has no substance.* ***As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.***"
>
> *(emphasis supplied)*

2.1.33 **In view of the above, it is to be appreciated that the apex Court in the above case was dealing with exemption provisions under section 10B of the Act and not deduction provisions under section 80IA of the Act, which is in controversy before the Hon'ble Bench. The perusal of the above extract from the judgment of the Apex Court clearly demonstrates the same is not applicable to the issue in hand. In fact, as stated *supra* the case of A L Logistics of the Madras High Court clearly holds in favour of the Assessee and the same has been affirmed by the Hon'ble Supreme Court.**

2.1.34 In view of the above it is to be appreciated that while interpreting the condition laid in section 80IA(4)(i)(b) of the Act, even if there is no written agreement and there is an authorization from

which the consent as well as the acceptance can be deciphered, the said condition should be considered to have been satisfied and the claim of deduction under the said section deserves to be allowed.

2.2. Disallowance of INR 31,632 and 81652 on account of delayed payment of EPF and ESI for the respective assessment years:

2.2.1. The Assessee claimed certain payments made towards employee's continuation towards PF and ESI under section 36(1)(va) of the Act. AO noted that the Assessee failed to deposit a part of it within the stipulated time and hence, disallowed the same on account of payments made after due date.

2.2.2. The CIT(A) noted that the impugned payments were made after the due dates specified under the respectibe Acts but before the due date of filing return of income under section 139(1) of the Act and hence, deleted the addition.

2.2.3. It is submitted that it is not in dispute that the above contributions were made by the Assessee towards EPF and ESI before filing of return of income under section 139(1) of the Act. However, the said amount was disallowed by the AO as they were paid beyond due dates prescribed under respective statutes. The case of the Assessee is that the issue of allowability of belated contribution of PF and ESI of Employees' share of contribution has been considered by various high courts and Tribunals, and considering the deletion of second proviso to section 43B of the Act, the High Courts and Tribunals have held that Employees' contribution to PF & ESI is allowable on payment basis under the provisions of section 43B(b) of the Act if the same is paid within the 'due date' prescribed in section 139(1) of the Act.

2.2.4. In this regard, the Assessee relies on the below case laws:

- Crescent Roadways Private Limited vs DCIT: 1952/Hyd/2018
- CIT vs. Hindustan Organics Chemicals Ltd. reported in 366 ITR 0001(Bom);
- PCIT vs Pro Interactive Services (India) Pvt. Ltd.: ITA No. 983/2018.

9. In rebuttal to the argument of the Ld.AR, the DR for the revenue had submitted that at the time of claiming the benefit of 80IA, the assessee is duty-bound to furnish the copy of the duly signed agreement along with the claim of benefit of 80IA. The Ld.DR had also relied upon the decision of the Hon'ble Supreme Court in the case of the PCIT Vs. Wipro Limited reported in 140 taxmann.com 223 (SC) whereby it was submitted that there should be strict compliance of the provision of law whenever any exemption of income/or direction was claimed by the assessee.

10. We have heard the rival contentions of the parties and perused the material on record. In the present case, the Assessing Officer has denied the benefit of 80IA(iv) of the Income Tax Act, 1961 by observing in of the assessment order for 2013-14 for the following reasons :

> *From the perusal of reasons, it is clear that the Assessing Officer has disallowed the claim only on the basis of that the assessee has not entered into an agreement with the Karnataka State Pollution Control Board, Bangalore and also with the Tamilnadu State Pollution Control Board, Salem District. Though for both the places, the assessee was having consent / authorization to operate facility for collection / reception / treatment / storage/ transport and disposal of bio-medical waste at its premises.*

11. However, the ld.CIT(A) had allowed the appeal of the assessee by giving his reasons in para 10.6 and 10.7 to the following effect :

> *" 10.6 The only contention of the Assessing Officer, is that the orders/approvals, issued by the prescribed authorities, cannot be said to be agreements between the appellant and the prescribed authorities. The orders issued by the prescribed authorities are in fact based on the applications/proposals, made by the appellant. What was proposed has been accepted by issuing orders. Therefore, there is a meeting of minds between the two parties involved which itself is an "agreement". The essential requirements of what constitutes "agreement" have been met. At para 4.5 of the assessment order, the Assessing Officer himself noted that the necessary permissions for conducting the business were obtained. This leaves no doubt that the 'agreement', as required u/s. 80IA(4), is in place. Further, once the prescribed authority has issued order/approval, in response to the proposal / application made, there is no point in saying that the orders obtained are not signed by the appellant company.*

10.7 As pointed out by the appellant, it would also be relevant to note that the term 'agreement' is not defined in the IT Act and no specific format for 'agreement' is provided either in the Act or under the Rules."

12. Now we have to decide whether the word "agreement" used in section 80IA(iv)(b) can be substituted/ replaced with the word "consent" or "authorization" AS ARGUED BY THE LD.AR . The ld.AR for the assessee during argument and in written submissions had submitted that no specific format of agreement was provided by the Act. He has drawn strength from the definition of the term "agreement" provided under Indian Contract, Act, 1972 and he had also drawn our attention to section 2(e), 2(a), 2(b), sections 8 and 9 of the Contract Act. He has submitted that the essential for constituting an agreement is plurality of persons and offer and acceptance by the parties. It was submitted that it is the case of the Assessing Officer that the permission was granted to the assessee for running the bio-medical waste facilities in the name of the assessee, hence there was sufficient compliance by the assessee. He relied upon the decisions which are referred hereinabove; in the written submissions.

13. The question which is required to be considered is whether the grant of approval / consent will partake the character of the agreement or not. As mentioned by the ld.AR that for the purpose of agreement, offer and acceptance by both the parties i.e. the promisor and

promisee are essential. In case any person applies for grant of setting up of Centralized Treatment Plan (CTP) or Sewerage Treatment Plant (STP) with the Pollution Control Board, Can it be said that application, would amount to entering into agreement for the purposes of consent creating new infrastructure in terms of section 80IA(4) or development of the infrastructure ? The answer is No, as in our view, the development of the infrastructure should be preceded with the agreement to create said infrastructure. In other words, there must be some agreement in existence prior to raising of any infrastructure either with the Central Government or State Government or local authorities. Based on such agreement, the assessee should have developed or operated or maintained the infrastructure.

13.1 Further the Pollution Control Board grants the consent for operating of the facilities in accordance with Rules and Regulations. The issuance of the certificate by the Pollution Control Board on the application of the assessee cannot be construed as an agreement between the Pollution Control Board and the assessee, it is a statutory approval under the Environment Pollution Act. It is the duty of the Central Government or State Government to protect and improve the quality of the environment. The Central Government in pursuance of its power had made rules providing standards for quality of air, water and soil etc. (Rule 6), Rule 8 provides that “no person shall handle

or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed". The Central Government had framed the Bio-medical Waste Rules, 1998 for the purposes of laying down the guidelines, conditions and standard for treatment and disposal of medical waste. Under Rule 8(4) of the Bio-medical Waste, the assessee filed an application authorizing it to operate the facilities for collection of reception / storage / treatment etc of the Bio-medical Waste. This authorization is essential for any person who is handling any hazardous substance including the Bio-medical Waste. In the absence of such authorization which provides the fulfillment of various conditions, no person can run the facilities of the Bio-medical Waste Management.

14. The authorization under the Bio-medical Waste Rules, 1998 is an essential statutory requirement for providing the facilities of the Bio-medical Waste Management. The authorization granted by the Pollution Control Board is not akin to any agreement, rather it is statutory approval for providing the facility under E.P. Act. Therefore, it cannot be said that merely because the assessee was authorized by the Pollution Control Board, the assessee had fulfilled the conditions as provided under section 80IA of the Act as there is no ambiguity in the statute and therefore, the plain literal meaning is required to be given to the word

"agreement"" used u/s 80IA(4). There was no ambiguity in understanding the meaning of "agreement" in the mind of assessee, as assessee had entered into a written agreement with Bruhat Bangalore Mahanagar Palika *(supra)*, after acceptance of its bid , with signature of both parties. Based on this agreement/supplement requirement, the Assessing Officer had granted benefit u/s 80IA(4) of the Act to the assessee.

15. Reliance of the assessee on behalf of the decision of Hon'ble Madras High Court in the case of A.L.Logistics (P.) Ltd. is on different facts. Similarly, in another case titled as CIT Vs. Chettinad Lignite Transport Services (P.) Ltd reported in (2019) 107 taxmann.com 12 (Madras) in the said case, "**impliedly the department has accepted the fact that the assessee has provided the infrastructure facilities to the specified authority".**

16. In our view, the grant of approval by the Pollution Control Board for running the facility of the bio-medical waste management would not amount to entering into agreement for providing the infrastructure facility to the specified authority. There is a distinction between the statutory approval for proving the facility and the agreement entered between authorities for providing or laying down or the infrastructure facilities. For the purposes of section 80IA, there must be some written agreement or an

agreement can be inferred from the conduct of parties agreeing for laying certain infrastructure facilities to be provided by the taxpayer to the specified authority. In the present case, nothing has been brought to our notice no agreement was entered between the assessee and the specified authority for providing the infrastructure facility, therefore, A.O. had rightly dismissed the benefit u/s 80IA(4) of the Act. We may lastly refer to the decision of Hon'ble Supreme Court in the case of PCIT Vs. M/s. Wipro Limited reported in (2022) 140 taxmann.com 223 (SC) wherein it was held as under :

> *"8. While considering the issue involved, whether the time limit within which the declaration is to be filed as provided under Section 10B (8) is mandatory or directory, Section 10B (8) is required to be referred to, which reads as under: "10B (8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of Section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years."*
>
> *On a plain reading of Section 10B (8) of the IT Act as it is, i.e.,*
>
> *"where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of Section 10B may not be made applicable to him, the provisions of Section 10B shall not apply to him for any of the relevant assessment years",*
>
> *we note that the wording of the Section 10B (8) is very clear and unambiguous. For claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under sub-section (1) of section 139 of the IT Act are required to be fulfilled and/or satisfied. In our view, both the conditions to be satisfied are mandatory. It cannot be said that one of*

the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under subsection (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.

9. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under Section 139(1) and cannot transform it into a return under Section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under Section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or setoff of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B (8) and furnishing the declaration as required under section 10B (8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B (8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature.

10. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8)

can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified.

11. Now so far as the reliance placed upon the decision of this Court in the case of G.M. Knitting Industries Pvt. Ltd. (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, Section 10B (8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1) (ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B (8) of the IT Act.

12. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under Section 10B (8) to opt out of Section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under Section 10B (8) as being mandatory also has no substance. As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.

13. So far as the submission on behalf of the assessee that against the decision of the Delhi High Court in the case of Moser Baer (supra), a special leave petition has been dismissed as withdrawn and the revenue cannot be permitted to take a contrary view is concerned, it is to be noted that the special leave petition against the decision of the in the case of Moser Baer (supra) has been dismissed as withdrawn due to there being low tax effect and the question of law has specifically been kept open. Therefore, withdrawal of the special leave petition against

the decision of the Delhi High Court in the case of Moser Baer (supra) cannot be held against the revenue.

14. In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8) of the IT Act. We hold that for claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on noncompliance of the twin conditions as provided under Section 10B (8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

17. We respectfully following the decision in the case of Wipro Limited (supra), hold that for the purpose of claiming 80IA(4) benefit, entering into an agreement with the specified authority is essential. So far as the finding recorded by the Hon'ble Supreme Court in the case of G.M. Knitting Industries Ltd is concerned, the Hon'ble Supreme Court has only permitted the filing of Form 3AA at the time of assessment proceedings but prior to passing of the final order as sufficient compliance. In the present case, no agreement has been entered into by the assessee till date. Therefore, it cannot be said that the assessee has fulfilled the condition as required under the law. Further, in Para 2

of the decision of the Hon'ble Supreme Court in the case of G.M. Knitting Industries Ltd., it was held as under :

> *"2. We concur with the aforesaid view of the High Court and hold that even if Form 3AA was not filed along with return of income but the same was filed during the assessment proceedings and before the final order of the assessment was made that would amount to sufficient compliance. These appeals are, accordingly, dismissed."*

18. In the present case, the assessee has not filed any agreement as contemplated u/s. 80IA(4)(b) of the Act, therefore, it cannot be said that there is sufficient compliance on the part of the assessee which entitled the assessee to avail the deduction under this Chapter VI of the Act. In view of the above, the grounds no 1 to 4 raised by the Revenue are allowed.

19. Ground No.5 pertains to ESI/EPF. In this regard, it is noted that the ld. CIT(A) had decided the issue in paras 9.1 and 9.2 of the order by relying upon the decision of the jurisdictional ITAT in the case of Nuziveedu Swati Coastal Constortium.

20. Ld.DR heavily relied on the order of the NFAC. He submitted that the Finance Act, 2021 has amended the provision of section 43B, as well as section 36(1)(va) by insertion of explanation to those sections. He drew the attention of the bench to the explanatory notes to the Finance Bill, 2021 and submitted that the legislature never

intended that section 43B would apply to employees' contribution. He submitted that the language of explanation 5 to section 43B, explanation 2 to section 36(1)(va) and that of the Memorandum explaining the Finance Act, 2021 make it abundantly clear that employees' contribution is out of the ambit of section 43B. Relying on various decisions, he submitted that the NFAC was fully justified in upholding the addition made by the AO on account of delayed payment of PF and ESIC amounting to Rs. 31,632/-.

21. On the other hand, the ld.AR relied on the decision of the ld.CIT(A).

22. We have heard the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. 31,632/- on account of delayed deposit of employees' contribution to PF and ESIC on the ground that the same were deposited beyond the due date prescribed in the said Act. We find the ld.CIT(A) had rightly allowed the contention of the assessee that such payments though made after the stipulated dates prescribed in the said Acts, however these payments were made before the due date of filing of the return. We find the co-ordinate benches of the Tribunal are

now consistently taking the view that no disallowances u/s. 36(1)(va) r.w.s. 2(24)(x) can be made on account of delayed payment of PF and ESIC, if such payments are made before the due date of filing of the return. It has further been held in these decisions that the amendment to section 43B as well as section 36(1)(va) r.w.s. 2(24)(x) by the Finance Act, 2021 are prospective and not retrospective in nature. Since, the assessee in instant case has admittedly paid the employees' contribution to PF and ESIC before the due date of filing of the return, therefore, we uphold the order of the ld.CIT(A). The grounds raised by the Revenue is dismissed.

23. Since we have decided the grounds in ITA No.774/Hyd/2020, same decision shall apply ITA No.775/Hyd/2020 mutatis mutandis.

24. In the result, both the appeals filed by the Revenue are partly allowed.

Order pronounced in the open court on 30th August, 2022.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(LALIET KUMAR)**
Accountant Member	Judicial Member

Hyderabad, Dt. 30.08.2022.

* Reddy gp

Copy to :

1.	M/s. Ramky Energy and Environment Limited, Room No.714, 7th Floor, Signature Towers, Kondapur, Hyderabad-500 084
2.	DCIT, Circle 3(1), Hyderabad.
3.	Pr. C I T-3, Hyderabad.
4.	CIT(Appeals)-9, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.