

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 500 to 504 & 1935/Ahd/2015
(Assessment Years 2007-08 to 2011-12)

(Virtual hearing)

Bharuch Enviro Infrastructure Limited, 117/118, GIDC Estate, Ankleshwar, Gujarat. PAN No. AAACB 8075 F	Vs.	D.C.I.T./Addl. C.I.T. Bharuch Circle, Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Saurabh Soparkar, Senior Advocate with Ms. Urvashi Shodhan, Advocate.
Department represented by	Shri Ashok B. Koli, CIT-DR with Shri Vinod Kumar, Sr. DR.
Date of hearing	10/04/2023
Date of pronouncement	24/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, J.M.

1. This set of six appeals by the common assessee are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-VI, Baroda (in short, the Id. CIT(A) dated 10/11/2014 and 25/03/2015 for the Assessment years (AY) 2007-08 to 2011-12 respectively. In all these appeals, the assessee has raised certain common grounds of appeal. Facts in all these years are almost similar, except variation of disallowances/additions, therefore, with the consent of parties, all these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the

conflicting decision. For appreciation of facts, the appeal being ITA No. 500/Ahd/2015 for the A.Y. 2007-08 is treated as a "lead case". In this appeal, the assessee has raised following grounds of appeal:

"On Validity

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 re-opening the assessment under section 148 of the Income-tax Act, 1961 ('the Act').*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the validity of re-opening the assessment under section 148 of the Act in spite of the fact that reassessment under section 147 could not be made after the expiry of four years from the end of the assessment year viz. after 31 March 2011 unless there has been any failure on part of the appellant to disclose fully and truly all material facts necessary for the assessment.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the validity of re-opening the assessment under section 148 of the Act inspite of the fact that the agreement entered into with Gujarat Industrial Development Corporation (GIDC) mentioned in the reasons recorded for reopening and non submission of the same which was the basis for reopening the assessment was already submitted at the time of the assessment proceedings under section 143(3) of the Act.*

On Merits

4. *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 80I-A of the Act in respect of profit derived from Landfill Project 1 being an eligible infrastructure facility under section 80I-A(4) of the Act.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the appellant is not entitled for deduction under section 80I-A(4)(i)(b) in respect for Landfill Project 1 since it is not a 'new' undertaking as per provisions of section 80IA(4) of the Act.*
6. *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.*

7. *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.*
8. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80IA of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).*
9. *On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under section 234B of the Act without appreciating the fact that as per the provisions of section 234B(3) of the Act, interest is chargeable on the amount by which the tax on the total income determined on the basis of reassessment or recomputation exceeds the tax on total income determined on the basis of regular assessment.*
10. *On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under section 234C of the Act without appreciating the fact that amount under section 234C ought to be levied as per the return of income.*
11. *On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under section 234D of the Act without appreciating the fact that interest under the said section cannot be levied pursuant to the assessment made under section 147 of the Act if the regular assessment has already been made under section 143(3) of the Act.*
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 not allowing deduction amounting to Rs.95,54,119/-in respect of payment of pit covering expenses made against provision for earlier years.
Grounds of appeal raised in the appeal against the additions/disallowances made in the assessment order passed under section 143(3) which is in continuance with the assessment order passed u/s.143 (3) read with section 147 of the Act.*
13. *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 reducing from the "profits and gains of the business" an amount of Rs.42,88,461/- in respect of interest income earned on fixed deposit with Bank.*
14. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of*

appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.

15. *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 disallowing an amount of Rs.27,82,379/- in respect of provision for post closure care expenditure.*
16. *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 disallowing an amount of Rs.1,40,83,113/- in respect of provision for pit covering expenses.*
17. *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 adding back the following amount while computing the book profits under section 115JB of the Act:*
 - (a) Provision for post closure expenditure - Rs. 27,82,379/-*
 - (b) Provision of pit covering expenses - Rs. 1,40,83,113/-**The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law."*

2. At the outset of hearing Sh. Saurabh Soparkar learned Senior Advocate (Id. Sr Advocate) for assessee submits that against the decision of Id CIT(A) the revenue has also filed cross appeals which are pending before Mumbai Benches. The office of the assessing officer who has passed the assessment order, is situated in Bharuch, thus, Surat Bench of Tribunal have jurisdiction to entertain and adjudicate the appeals arising out of the addition made by assessing officer. The Id Sr Advocate for the assessee further submits that all the grounds of appeal raised by the assessee are covered by the orders of Tribunal in earlier years and these appeals can be decided independently. The Id

CIT-DR/ Sr DR for the revenue present in the court raised no objection for hearing and adjudication all these appeals independently.

3. Ground No. 1 to 3 relates to reopening of assessment under section 147. The Id Sr Advocate for the assessee submits that these grounds of appeal are covered by the decision of Tribunal in assessee's own case for AY 2006-07 in ITA No. 499/Ahd/2015 dated 28.02.2022. The case of assessee for AY 2007-08 as well as for AY 2006-07 was also reopened on similar reasons, after four years from the end of relevant assessment year on the basis of assessment order passed for AY 2010-11. The Id SR Advocate for assessee submits that in appeal for AY 2006-07, the Tribunal in its order dated 28.02.2022 has already held that reopening is not valid. The Id Sr Advocate for the assessee submits that there is no variation in the facts for this assessment year.
4. On the other hand, the Id DR for the revenue supported the orders of lower authorities.
5. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that the assessing officer reopened the case of assessee on the basis of assessment order in AY 2010-11 dated 01.03.2013, wherein the assessing officer took his view that the assessee does not fulfil the conditions for claiming deduction under section 80IA. The conditions of which deduction under section 80IA was disallowed are also applicable for AY 2007-08. We find that while adjudication the similar grounds of appeal in appeal for AY 2006-

07, which was also reopened on identical grounds of appeal, this combination passed the following order;

- "11. We have considered the rival submission of both the parties and have gone through the orders of authorities below. We have also deliberated on various case laws relied by the Id. CIT(A) in his order as well as various case laws relied by Id. Senior Counsel of the Assessee. There is no dispute that in the computation of total income the assessee claimed deduction under section 80IA. The case was selected for scrutiny and during the scrutiny assessment; the claim of deduction was examined by the assessing officer. The assessing officer disallowed part of the deduction under section 80IA. Being aggrieved, the assessee filed appeal before Id CIT(A). It is matter of fact that the admissibility of claim under section 80IA was not disputed rather a component of income, whether it was derived from eligible business or not was disputed by the lower authorities. Thus, during the original scrutiny assessment, the Assessing Officer examined the claim of deduction under section 80IA of the Act. The case was reopened by assessing officer after recording the reasons of re-opening. The reasons recorded by assessing officer are extracted in para-5.3 in the order of Ld. CIT(A). The main thrust of assessing officer in reasons recorded is that for claiming deduction under section 80IA, the assessee is required to enter into agreement with Central, State Government or with local authority for developing maintaining new infrastructure facilities. The assessee commenced its activity wef 01.04.1998 but entered into agreement with GIDC only on 15/05/2002 (after date of commencement) and that deduction should not have allowed to the assessee.
12. The Ld. Sr. counsel for the assessee vehemently argued that the claim of deduction under section 80IA was vehemently

examined and one component of working of profit was partly allowed by Assessing Officer, thus, the reopening of concluded assessment under section 14(3), was nothing but mere a change of opinion. It was also submitted that 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) and further before Tribunal and as per the principal of merger the assessing officer has no jurisdiction to reopen such assessment.

13. The Hon'ble Gujarat High Court in CIT Vs Nirma Chemical Works (P) Ltd (supra) held that when the assessee-company claimed relief under section 80-I, the assessing allowed part relief by reworking and reducing the relief available and on appeal entire relief was allowed to the assessee. Thereafter the Commissioner passed order under section 263 disallowing the claim under section 80-I on the ground that new industrial undertaking was formed by splitting/reconstructing up of old business. The Hon'ble High Court held that when deduction under section 80-I was granted by assessing officer after disallowing a part of claim which was carried in appeal before CIT(A), requirement of conditions stipulated by sub-section (2) of section 80-I was very much subject matter of appeal and merely because Commissioner took a different view, it would not be sufficient to permit Commissioner to exercise power under section 263.
14. Further, the Hon'ble Gujarat High Court in Nirma Industries Ltd Vs DCIT (supra) held that in case where an order of a subordinate forum is carried in appeal, the appellate court may - (i) reverse the order under appeal, (ii) modify the order under appeal, (iii) merely dismiss the appeal and, thus, confirm the order under appeal without any modification. The Apex Court has laid down that in all the three eventualities it is the appellate decision alone which subsists and is operative

and capable of enforcement. That there is no difference in principle and it is not possible to draw any distinction between the first two kinds of orders made by the appellate authority and the third kind of order made by the appellate authority. In law the terms 'affirm' and 'confirm' are synonymous. Both the terms denote notification of a judgment. Therefore, the view expressed by the Tribunal in the impugned order that when the High Court dismisses the appeal by holding that no substantial question of law arises, the High Court does not render any decision is an incorrect proposition and could not be accepted (as per para 16-17. It was also held that when on talks of merger of a judgment, order or a decision of a subordinate court or forum into the judgment, order or decision of a superior court or forum the merger may be of the entire order, i.e., the reasons and the conclusion, or only a part, viz., only the conclusion by a different process of reasoning. In that event what merges is the operative part after the confirmation, reversal or modification, but in any event, the order of the lower court or the forum does not have any independent existence thereafter. This would be a merger in a case where the reasoning of the subordinate forum is either expressly not approved, or a different reasoning is given by the Supreme Court or forum. However, in a case where the superior court either adopts or reiterates the reasoning, or records an express approval of the reasoning, the merger is in relation to both the operative part and the reasons(as per para 18). The net effect is that the order of the subordinate court or the forum merges with the order of the superior Court or forum and has no independent existence in relation to the issue which was carried before the appellate court or forum. If the merger is issue specific, there is fusion of the orders only to that limited extent. That is the reason why principle of merger

is stated to be neither rigid nor of universal application. Therefore, it cannot be successfully contended that in the latter situation, i.e., where the appellate court or the forum merely accords approval to the reasoning of the lower court or forum, there is no decision of the appellate court or forum. (as per para 19). The doctrine of merger is founded on principle of propriety in the hierarchy of justice delivery system, the underlying logic being that there cannot be more than one operative order governing same subject-matter at a given point of time. The only caveat to the doctrine of the merger is that the content or the subject-matter of challenge before the superior forum has to be borne in mind.

15. The Hon'ble jurisdictional High Court in the case of Clantha 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 was based on 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 after 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.
16. Hon'ble Apex Court in CIT Vs Kelvinator of India Ltd (supra) 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 per-condition and if the concept of 'change of opinion' is removed as contemplated on behalf of department, then in the garb of reopening the assessment, review would take place. One must treat the concept of

‘change of opinion’ as an in-built test check to abuse the power of assessing officer. Hence, 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 escarpment of income from assessment.

17. Now again adverting to the facts of the present case. We find that notice under section 148 of the Act in the present case was issued on 22.03.2013 i.e., after four years from the end of relevant assessment year and there was no failure on the part of the assessee in disclosing fully and truly all necessary for assessment as the assessing officer fully and extensively examined the whole of the claims while finalising the assessment. 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 merger would apply. Moreover, there is no tangible material before the assessing officer to reopen the assessment.
18. Thus, in view of the aforesaid factual and legal discussions, 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. Moreover, it was overreaching to the decisions of the superior authorities on the similar set of fact on similar issues. Therefore, the re-opening is held as invalid and subsequent action initiated thereof are void ab initio.
19. Considering the fact, that we have allowed ground No. 1& 2 of the appeal on the primary submissions of the learned Senior Counsel and held that the reopening under section 147/148 is not valid. Therefore, consideration on his other submissions on the validity of claim under section 80IA and

on the adjudication on the merits of various grounds of appeal has become academic.”

6. Considering the aforesaid decision of this combination on similar set of facts on similar grounds of appeals, the ground No. 1 to 3 of the appeal are allowed.
7. Ground No. 4 & 5 relates to disallowance /eligibly of deduction under section 80IA in respect of land fill project I, considering the same as new undertaking. The Id Senior Advocate for assessee submits that ground No. 4 & 5 are covered by the order of Tribunal in favour of assessee in assessee's own case for AY 2008-09, in ITA No. 1849/Ahd/2014 dated 27.12.2021. The Id Sr Advocate for the assessee submits that Id CIT(A) followed the order of CIT(A) in AY 2008-09, which has been allowed in favour of assessee and there, is no variation in the facts for this assessment year.
8. On the other hand, the Id DR for the revenue supported the orders of lower authorities.
9. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that this combination in assessee's own case for AY 2008-09 in ITA No. 1849/Ahd/2014 on similar issue on similar set of facts allowed relief to the assessee by passing the following order;
19. 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 query about the eligibility of deduction under section

80IA of Unit No.I, Unit-II and incinerator. 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 in respect of eligible business in each Undertaking Land Filling Project and Incinerator. The assessee also furnished the detailed particulars of all three Undertakings, allowable allowability of deduction, ownership status, agreement with the Central Government or a State Government or a local authority or any other statutory body, land area year of claim, description of plant and machinery and the process 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. It was also submitted that each Undertaking had been set up on different date. Accordingly, commercial activity on different date, each Undertaking has different technical set up. Project under Land Filling Project and Incinerator treat the waste of different type. Financial accounts of operating cost are maintained separate for each Undertaking. The AO while passing the assessment order allowed the deduction under section 80IA in respect of all three units i.e Land fill Unit-I, Land Fill Unit No.II and Incinerator by treating all the units as a composite undertaking.

20. On appeal against the finding of AO in treating all undertaking as composite undertakings, the Id CIT(A) issued show cause notice dated 29 November 2013 was issued to the appellant to explain as to why income from Land Filing Project –I should not be held ineligible for deduction under section 80-IA(4) of the Act and accordingly, entire deduction claimed on account of such income should not be disallowed and the assessment accordingly enhanced. The assessee filed detailed explanation dated 24.12.2013 as recorded in para 4.2.2 of order of CIT(A). The Id CIT(A) after considering the explanation of assessee held the assessee started claiming deduction under section 80IA(4) on an infrastructure facility which was already on operation since 01.04.1998. 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 F.Y. 2001-02 itself and hence if the assessee had entered into an agreement with GIDC during this Financial Year, it could have been eligible for deduction under section 80-IA(4) on account of such infrastructure facility already inexistence, as this infrastructure facility had been started after 1st of April, 1995. But since this has not been done, hence the assessee is not eligible for deduction under section 80-IA(4) on Landfill Project No. '1' as this is not a new infrastructure facility established in pursuance of an agreement entered into by the appellant with GIDC.

21. 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 1998-99 to AY 2017-18 and the assessee-company has opted to claim deduction from AY 2002-03 being the 5th 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 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 find convincing force in the submissions of the learned Senior Counsel of the assessee.
22. We find that 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 raised 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).

23. 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.”

24. In the case of CIT vs. Paul Brothers (216 ITR 548), the Hon'ble Bombay High Court 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.”

25. 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 land fill project No.I in AY 2002-03 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. So far as the objection of the Ld. Sr DR for the revenue is concerned that the assessee has made agreement with GIDC only after the claim of the assessee was disallowed by A.O and at the time of establishment of Land fill Project –II, no new establishment came in to existence. The nature of work being done by both the project is identical, therefore, the claim of the assessee based on the backdate agreement cannot be considered. 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 a separate agreement dated 16th October 2012 with GIDC with effect from 12th March 2007 and commenced its Land Fill Project-II in FY 2006-2007 and claimed deduction under section 80-IA of the Act from AY 2008-09 since the said unit is a separate infrastructure facility. Thus, Land fill II is a distinct and separate undertaking from Landfill I. In the result, the assessee succeeds on this ground of appeal.
26. In the result, ground No.1 of the appeal is allowed.”
10. Considering the aforesaid decision of this combination on similar set of facts on similar grounds of appeals, the ground No. 4 & 5 of the appeal, wherein no variation in facts is brought to our notice, thus, both the grounds of appeal are allowed with similar observation.
11. Ground No. 6 & 7 relates to not allowing deduction under section 80IA(4), when it was allowed in initial year and fulfilment of required conditions. Considering the fact that we have allowed relief to the assessee on ground No. 4 & 5 therefore, adjudication on these grounds of appeal have become academic.

12. Ground No. 8 relates to not treating Incinerator Project No. 2 as separate undertaking and not allowing separate deduction under section 80IA(4). The Id Senior Advocate for assessee submits that ground No. 4 & 5 are covered by the order of Tribunal in favour of assessee in assessee's own case for AY 2008-09, in ITA No. 1849/Ahd/2014 dated 27.12.2021. The Id Sr Advocate for the assessee submits that Id CIT(A) followed the order of CIT(A) in AY 2008-09, which has been allowed in favour of assessee and there is no variation in the facts for this assessment year.

13. On the other hand, the Id DR for the revenue supported the orders of lower authorities.

14. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that this combination in assessee's own case for AY 2008-09 in ITA No. 1849/Ahd/2014 on similar issue on similar set of facts allowed relief to the assessee by passing the following order;

32. Ground No. 3 & 4 relates to the fact that Incinerator is not a separate undertaking eligible for deduction under section 80IA(4). The learned Senior Counsel for the assessee submits that in the return of income for AY 2008-09, the appellant had claimed deduction under section 80-IA in respect of the profits of the following undertakings:

Undertaking	Amount (Rs.)
Land Filling- I	44,77,173
Land Filling- II	46,36,303
Incinerator	84,07,358

Total	1,75,20,834
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33. The assessing officer while passing the assessment order allowed deduction under section 80IA in respect of Land Fill I, Land Fill II and Incinerator project by treating the said undertakings as a composite undertaking. The Id CIT(A), held that the Incinerator is a new infrastructure facility and hence eligible for deduction under section 80- IA(4) of the Act for 10 years from AY 2007-08. The said finding of the Id. CIT(A) in respect of allowability of deduction in respect of Incinerator I project has not been challenged by the Department. Further, Id. CIT(A) has held that land fill Project -I and land fill Project -II are not separate undertakings and hence, not eligible for deduction under section 80IA(4) of the Act separately. It was submitted that in the year under consideration, the assessee had claimed deduction only in respect of Incinerator I project. Incinerator II has started its operation from Assessment Year 2012-13 and the same was not a subject matter of appeal before Id. CIT(A) for the year under consideration. Therefore, the aforesaid finding given by the CIT(A) is totally incorrect and irrelevant and ought to be deleted. In view of the above, the Id Senior Counsel for the assessee submits that the aforesaid observations made by Id. CIT(A) may be deleted.
34. On the other hand, the Id Sr DR for the revenue supported the order of Ld. CIT(A).
35. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. The assessing officer while passing the assessment order allowed deduction under section 80IA in respect of Land Fill I, Land Fill II and Incinerator project by treating the said undertakings as a composite undertaking. The Id CIT(A) held that Incinerator is a new infrastructure facility and hence eligible for deduction under section 80- IA(4) of the Act for 10 years from AY 2007-08. This finding of Id CIT(A) is not challenged by revenue before Tribunal, thus, it has attained finality. So far as finding of the Id CIT(A) with regard to Incinerator-II is concerned it was not a subject matter of appeal before Id. CIT(A) for the year under consideration, therefore, we are in agreement with the submissions of the learned Senior Counsel for the assessee that such finding given by the CIT(A) is totally incorrect and uncalled for while deciding the appeal for AY 2008-09.

36. In the result, ground No. 3& 4 of the appeal is allowed.
15. Considering the aforesaid decision of this combination in AY 2008-09, on similar set of facts on similar ground of appeals, wherein no variation in facts is brought to our notice, thus, this ground of appeal are allowed with similar observation.
16. Ground No. 9 to 11 relates to levy of interest under section 234B,234C & 234D, these grounds of appeals are consequential, therefore, the assessing officer is directed to recompute the interest accordingly.
17. Ground No. 12 & 16 are Pit covering expenses. The Id Senior Advocate for assessee submits that this ground of appeal is covered by the order of Tribunal in favour of assessee in assessee's own case for AY 2008-09, in ITA No. 1849/Ahd/2014 dated 27.12.2021. The Id Sr Advocate for the assessee submits that Id CIT(A) followed the order of CIT(A) in AY 2008-09, which has been allowed in favour of assessee and there, is no variation in the facts for this assessment year.
18. On the other hand, the Id DR for the revenue supported the orders of lower authorities.
19. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that this combination in assessee's own case for AY 2008-09 in ITA No. 1849/Ahd/2014 dated 27.12.2021, on similar issue on similar set of facts allowed relief to the assessee by passing the following order;

“ 52. Ground No.8 relates to disallowance of provision of pit covering expenses of Rs. 1.07 Crore.The learned Senior Counsel for the assessee submits that this ground of appeal is also covered in favour of the assessee by the decision of Tribunal in assessee’s own case for AY 2007-08 dated 27th February 2017.

53. On the other hand the Id Sr DR for the revenue supported the orders of the lower authorities.

54 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;

“14. The assessee's fourth & sixth substantive ground challenge disallowance of provision made for pit covering expenses of Rs.1,40,83,813/- as well as inclusion thereof in computing [Section 115JB](#) book profits. We notice herein as well that it has succeeded on the very issues before the tribunal in earlier assessment years (supra). The Revenue fails to rebut all these factual and legal developments post facto filing of the instant appeals. We therefore accept assessee's these two grounds as well. Its appeal ITA No.2223/Ahd/2010 succeeds.”

55. 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 allow / delete the disallowance of provisions of pit covering expenses.

56. In the result, ground No. 8 of the appeal is allowed.”

20. Considering the aforesaid decision of this combination in AY 2008-09, on similar set of facts on similar ground of appeals, wherein no variation of facts is brought to our notice, the ground No. 12 & 16 of the appeal are allowed with similar observation.

21. Ground No. 13 of the appeal relates to reducing the interest income of Rs. 42.88 lacs earned on fixed deposits from profit of business. The Id

Senior Advocate for assessee submits that this ground of appeal is covered by the order of Tribunal in favour of assessee in assessee's own case for AY 2008-09, in ITA No. 1849/Ahd/2014 dated 27.12.2021. The Id Sr Advocate for the assessee submits that Id CIT(A) followed the order of CIT(A) in AY 2008-09, which has been allowed in favour of assessee and there, is no variation in the facts for this assessment year.

22. On the other hand, the Id DR for the revenue supported the orders of lower authorities.
23. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that this combination in assessee's own case for AY 2008-09 in ITA No. 1849/Ahd/2014 dated 27.12.2021, on similar issue on similar set of facts allowed relief to the assessee by passing 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 abovestated 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 30 years 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.

41. In the result, ground No. 5 of the appeal is allowed.

24. Considering the aforesaid decision of this combination in AY 2008-09, on similar set of facts on similar ground of appeals, wherein no variation in facts is brought to our notice, thus, this ground No. 13 of appeal is allowed with similar observation.

25. Ground No. 14 of the appeal relates to not adjudication allowance of 10% interest income for deduction for exempt income. The Id Senior Advocate for the assessee submits that he is not pressing this ground of appeal. Considering the submissions of Id Senior Counsel for assessee this ground of appeal is dismissed.

26. Ground No. 15 relates to disallowance of provision of post closer expenses. The Id Senior Advocate for assessee submits that this

ground of appeal is covered by the order of Tribunal in favour of assessee in assessee's own case for AY 2008-09, in ITA No. 1849/Ahd/2014 dated 27.12.2021. The Id Sr Advocate for the assessee submits that Id CIT(A) followed the order of CIT(A) in AY 2008-09, which has been allowed in favour of assessee and there, is no variation in the facts for this assessment year.

27. On the other hand, the Id DR for the revenue supported the orders of lower authorities.

28. We have considered the rival submissions of the parties and perused the order of the lower authorities. We find that this combination in assessee's own case for AY 2008-09 in ITA No. 1849/Ahd/2014 dated 27.12.2021, on similar issue on similar set of facts allowed relief to the assessee by passing the following order;

48. 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;

“13. The assessee's third and fifth substantive ground inter alia plead that both the lower authorities have erred in disallowing its provision made for post closer expenses of Rs.27,82,379/- as well as adding the same in its book profits computation u/s.115JB of the Act. Both the learned counsel agree herein as well that the above stated co-ordinate bench decision has already deleted identical disallowance in earlier assessment years (supra) and latter issue of [Section 115JB](#) is rendered academic. We appreciate this fair stand to accept assessee's instant substantive grounds.”

49. xxxxxxxxx

50. 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 allow / delete the disallowance of provisions of post closer expenses.
51. In the result, ground No. 7 of the appeal is allowed.
29. Considering the aforesaid decision of this combination in appeal for A.Y. 2008-09 on similar set of facts wherein we have followed the order of Tribunal in A.Y. 2002-03 to 2004-05, therefore, following the principle of consistency, these grounds of appeal are allowed with similar directions.
30. Ground No. 17 relates to confirming the addition of book profit under section 115JB in respect of disallowance of disallowance of post closer and pit covering expenses. Considering the fact that we have allowed relief on both the disallowances to the assessee, therefore, this issue have become academic.
31. In the result, the appeal of the assessee is allowed on legal issue of reopening as well as on various issues on merit as well.
32. In ITA No. 501/Ahd/2015 for the A.Y. 2008-09, the assessee has raised following grounds of appeal:

“On Validity

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 re-opening the assessment under section 148 of the Income-tax Act, 1961 (‘the Act’).*

On Merits

2. *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 not granting deduction under section 80IA of the Act in respect of profit derived*

from Landfill Project 1 being an eligible infrastructure facility under 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 the appellant is not entitled for deduction under section 80IA(4)(i)(b) in respect for Landfill Project 1 since it is not a 'new' undertaking as per provisions of section 80IA(4) of the Act.*
4. *On the facts and in the circumstances of the case and in law, without prejudice, the CIT(A) erred in upholding the action of the Assessing Officer ('AO') in holding that Landfill Project 1 and Landfill project 2 are not separate undertakings and hence not eligible for deduction under section 80IA(4) of the Act separately.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the deduction in respect of Landfill Project 2 which started its operations from 11th March 2007 ought to be allowed from assessment year 2002-03 to 2011-12 instead of assessment year 2008-09 to 2017-18 being 10 years from the date on which the undertaking commenced its operations.*
6. *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.*
7. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80IA of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).*
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.*
9. *On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under section 234B of the Act without appreciating the fact that as per the provisions of section 234B(3) of the Act, interest is chargeable on the amount by which the tax on the total income determined on the basis of reassessment or recomputation exceeds the tax on total income determined on the basis of regular assessment.*
10. *On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under*

section 234D of the Act without appreciating the fact that interest under the said section cannot be levied pursuant to the assessment made under section 147 of the Act if the regular assessment has already been made under section 143(3) of the Act.

Grounds of appeal raised in the appeal against the additions/disallowances made in the assessment order passed under section 143(3) which continue in assessment order passed under section 143(3) read with section 147 of the Act.

- 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 reducing from the "profits and gains of the business" an amount of Rs.34,84,029/- in respect of interest income earned on fixed deposit with Bank.*
- 12. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.*
- 13. 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 disallowing an amount of Rs.29,84,694/- in respect of provision for post closure care expenditure.*
- 14. 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 disallowing an amount of Rs.1,07,44,898/- in respect of provision for pit covering expenses.*
- 15. 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 adding back the following amount while computing the book profits under section 115JB of the Act:*

(a) Provision for post closure expenditure -Rs. 29,84,694/-

(b) Provision of pit covering expenses - Rs. 1,07,44,898/-

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law.

33. Ground No. 1 relates to validity of reopening. The learned Senior Advocate for assessee submits that he is not pressing ground No.1 of the appeal. Considering the submissions of learned Senior Advocate of the assessee, this ground of appeal is dismissed as not pressed.

34. Ground No.2, 3 & 5 relates to not allowing deduction of Landfill project No.1 & Land fill project No. 2, under section 80IA(4). We find that theses grounds of appeals are identical with the ground No. 4 to 7 of appeal for AY 2007-08 in ITA No, 500/Srt/2015, which we have allowed in para 9 and 10 (supra). Thus, following the principles of consistency, these grounds of appeal are allowed with similar observation.
35. Ground No. 4 relates to not treating the Landfill project No.1& 2 as separate undertaking. We find that this ground of appeal is identical to the Ground No. 8 of appeal in AY 2007-08 in ITA No. 500/Ahd/2015, which we have already allowed vide para No. 14 and 15 of this order, thus, following the principles of consistency, this ground of appeal is allowed with similar directions.
36. Ground No. 6 relates to not allowing the deduction when it was allowed in initial year. Considering the facts that we have full allowed relief to the assessee on various under taking by following the order of earlier years, therefore, this ground of appeal have become academic.
37. Ground No. 7 & 8 relates to not treating Incinerator Project No.2 as separate undertaking. We find that ground No. 7 in the present appeal is identical to the ground No.8 in ITA No. 500/Ahd/2015 for AY 2007-08, which we have allowed vide para 12 and 13 of this order, therefore, this ground of appeal is also allowed with similar directions.

Once, we have allowed ground No. 7, the consideration of ground No.8 have become academic.

38. Ground No. 9 & 10 relates levy of interest under section 234B, 234C & 234D of the Act. We find that these ground of appeal are consequential, therefore, the assessing officer is directed to recompute various interests accordingly.
39. Ground No. 11 relates to reduction of interest income from fixed deposits from profits of eligible for deduction. We find that ground No. 13 in the present appeal is identical to the ground No.8 in ITA No. 500/Ahd/2015 for AY 2007-08, which we have allowed vide para 23 and 24 of this order, therefore, this ground of appeal is also allowed with similar directions.
40. Ground No. 12 relates to not adjudicating allowance of 10% income as deduction for expenses incurred for earning other income. The Id Senior Advocate for assessee submits that he is not pressing this ground of appeal. Therefore, this ground of appeal is dismissed as not pressed.
41. Ground No. 13 & 14 relates to disallowance of provisions for post closer expenses and pit covering expenses. We find that these ground of present appeal is identical to the ground No.15 & 16 in ITA No. 500/Ahd/2015 for AY 2007-08, which we have allowed vide para 28 and 29 of this order, therefore, this ground of appeal is also allowed with similar directions.

42. Ground No. 15 relates to confirming the addition of book profit under section 115JB on making addition of provisions of post closer and pit covering expenses. Considering the fact that we have allowed relief to the assessee on both the additions/ disallowances, therefore, adjudication on this ground of appeal have become academic.

43. In the result, this appeal of assessee is partly allowed.

44. In ITA No. 502/Ahd/2015 for the A.Y. 2009-10, the assessee has raised following grounds of appeal:

“On Validity

- 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 re-opening the assessment under section 148 of the Income-tax Act, 1961 (‘the Act’).*

On Merits

- 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 holding that Landfill Project 1 and Landfill project 2 are not separate undertakings and hence not eligible for deduction under section 80-IA(4) of the Act separately.*
- 3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the deduction in respect of Landfill Project 2 which started its operations from 11th March 2007 ought to be allowed from assessment year 2002-03 to 2011-12 instead of assessment year 2008-09 to 2017-18 being 10 years from the date on which the undertaking commenced its operations.*
- 4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80-IA of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).*
- 5. On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in levying interest under section 234B of the Act without appreciating the fact that as per the provisions of section 234B(3) of the Act, interest is chargeable on the*

amount by which the tax on the total income determined on the basis of reassessment or recomputation exceeds the tax on total income determined on the basis of regular assessment.

Grounds of appeal raised in the appeal against the additions/disallowances made in the assessment order passed under section 14(3) which continue in the assessment order passed under section 143(3) read with section 147 of the Act.

6. *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 reducing from the "profits and gains of the business" an amount of Rs.32,29,316/- in respect of interest income earned on fixed deposit with Bank.*
7. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.*
8. *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 disallowing an amount of Rs.29,91,757/- in respect of provision for post closure care expenditure.*
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 disallowing an amount of Rs. 1,07,70,324/- in respect of provision for pit covering expenses.*
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 in adding back the following amount while computing the book profits under section 115JB of the Act:*

(a) Provision for post closure expenditure -Rs. 29,91,757/-

(b) Provision of pit covering expenses - Rs. 1,07,70,324/-

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law."

45. Ground No. 1 relates to validity of reopening under section 147. The learned Senior Advocate for the assessee submits that he is not pressing this ground of appeal. Considering the submission of Id Senior Advocate, ground No. 1 of this appeal is dismissed.

46. Ground No. 2 relates to not treating the landfill project No. 1 and 2 as a separate undertaking for deduction under Section 80IA(4) of the Act. We find that this ground of appeal is identical to the ground No. 4 to 6 in appeal for A.Y. 2007-08, which we have already allowed vide para 9 and 10 of this order, thus, following the principles of consistency, this ground of appeal is allowed with similar direction.
47. Ground No. 3 relates to upholding deduction for landfill project from A.Y. 2002-03 to 2011-12 instead of A.Y. 2008-09 to 2017-18. We find that this ground of appeal is identical to the ground No. 5 in appeal for A.Y. 2008-09, which we have allowed by following order of Bench in earlier years in para 34 of this order. Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.
48. Ground No. 4 relates to upholding the deduction for incinerator project to in not considering the separate undertaking for deduction separately. We find that this ground of appeal is identical to the ground No. 7 in appeal for A.Y. 2008-09, which we have allowed by following order of Bench in earlier years in para 37 of this order. Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.
49. Ground No. 5 of the appeal relates to levy of interest under Section 234B. We find that this ground of appeal is consequential, therefore,

the Assessing Officer is directed to recompute the interest under Section 234 accordingly.

50. Ground No. 6 relates to confirming reduction of interest amount of Rs. 32.29 lacs earned on fixed deposits from profit eligible for deduction. We find that this ground of appeal is identical to the ground No. 11 in appeal for A.Y. 2008-09, which we have allowed by following order of Bench in earlier years in para 39 of this order. Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.
51. Ground No. 7 relates to not adjudicating allowance of 10% of interest income as deduction towards expenses incurred in earning exempt income. The Id. Sr. Counsel for the assessee submits that he is not pressing this ground of appeal. Considering the submission of Id. Sr. Counsel, this ground of appeal is dismissed as not pressed.
52. Ground No. 8 and 9 relates to disallowance of provisions of post closure care expenses and provision for pit covering expenses. We find that these grounds of appeal are identical to the ground No. 13 and 14 in appeal for A.Y. 2008-09, which we have allowed by following order of Bench in earlier years in para 41 of this order. Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.
53. Ground No. 10 relates to confirming the addition made in the profit under Section 115JB on disallowance of provision for post closure

expenses and provision of pit covering expenses. Considering the fact that we have allowed relief to the assessee on both the additions/disallowances, therefore, adjudication on this ground of appeal have become academic.

54. In the result, this appeal is partly allowed.

55. In ITA No. 503/Ahd/2015 for the A.Y. 2010-11, 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 holding that Landfill Project 1 and Landfill project 2 are not separate undertakings and hence not eligible for deduction under section 80-IA(4) of the Act separately.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the deduction in respect of Landfill Project 2 which started its operations from 11th March 2007 ought to be allowed from assessment year 2002-03 to 2011-12 instead of assessment year 2008-09 to 2017-18 being 10 years from the date on which the undertaking commenced its operations.*
- 3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80-IA of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).*
- 4. 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 reducing from the "profits and gains of the business" an amount of Rs.27,68,941/- in respect of interest income earned on fixed deposit with Bank.*
- 5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.*
- 6. 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 disallowing an amount of Rs.38,94,592/- in respect of provision for post closure care expenditure.*

7. *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 disallowing an amount of Rs. 40,26,304/- in respect of provision for pit covering expenses.*
8. *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 adding back the following amount while computing the book profits under section 115JB of the Act:*
 - (a) *Provision for post closure expenditure -Rs. 38,94,592/-*
 - (b) *Provision of pit covering expenses - Rs. 40,26,304/-*
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 of levying interest under Section 115P of the Act amounting to Rs. 7,08,361/-.*
The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law."

56. Ground No. 1 relates to upholding the disallowance of landfill project No. 1 and 2 in not treating as separate undertaking for deduction under Section 80IA(4) of the Act. We find that this ground of appeal is identical to ground No. 2 in appeal for A.Y. 2009-10 which we have allowed in para 46 of this order by following our order in earlier para, thus, following the principle of consistency, this ground of appeal is allowed with similar direction.

57. Ground No. 2 relates to upholding the deduction for landfill project No. 2 for A.Y. 2002-03 to 2011-12. We find that this ground of appeal is identical to ground No. 3 in appeal for A.Y. 2009-10 which we have allowed in para 47 of this order by following our order in earlier para, thus, following the principle of consistency, this ground of appeal is allowed with similar direction.

58. Ground No. 3 relates to upholding the incinerator project No.2 is not separate undertaking for separate deductions. We find that this ground of appeal is identical to ground No. 4 in appeal for A.Y. 2009-10 which we have allowed in para 48 of this order by following our order in earlier para, thus, following the principle of consistency, this ground of appeal is allowed with similar direction.
59. Ground No. 4 relates to confirming reduction of interest amount of Rs. 27.98 lacs earned on fixed deposits from profit eligible for deduction. We find that this ground of appeal is identical to the ground No.6 in appeal for A.Y. 2009-10, which we have allowed by following order of Bench in earlier years in para 50 of this order. Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.
60. Ground No. 5 relates to not adjudicating allowance of 10% income as deduction towards expenses incurred for earning exempt income. The Id. Sr. Counsel is not pressing this ground of appeal. Thus, this ground of appeal is dismissed as not pressed.
61. Ground No. 6 relates to provision of post closure care expenses and ground No.7 relates to disallowance of provision of pit covering expenses. We find that these grounds of appeal are identical to the ground No. 8 and 9 in appeal for A.Y. 2009-10, which we have allowed by following order of Bench in earlier years, in para 52 of this order.

Therefore, following the principle of consistency, this ground of appeal is allowed with similar direction.

62. Ground No. 8 relates to addition in book profit under Section 115JB on disallowance of provision for post closure expenses and pit covering expenses. We find that we have already allowed the relief on disallowance of provision of pit covering expenses and provision for post closure expenses. Thus, this ground of appeal has become academic.
63. Ground No. 9 relates to levy of interest under Section 115P of Rs. 7,08,361/-. The Id. Senior Advocate for the assessee submits that during the relevant period, the assessee declared dividend of Rs. 41.86 lacs and paid dividend distribution tax within statutory period prescribed under Section 115-O(3) of the Act. The Assessing Officer levied interest of Rs. 708361/- under Section 115P and failed to grant credit of dividend distribution tax. The Id. CIT(A) confirmed the action of Assessing Officer by holding that the assessee failed to furnish evidence that due tax were paid on 29/09/2010. The Id. Senior Advocate for the assessee submits that dividend distribution tax was paid within statutory time period, and may be verified by the Assessing officer, thus, the issue may be restored back to the Assessing Officer to grant relief to the assessee subject to verification of facts.
64. On the other hand, the Id./ CIT-DR for the revenue supported the order of the lower authorities. The Id. CIT-DR for the revenue submits

that Id. CIT(A) had given a categorical finding that no evidence was furnished by assessee if due tax were paid on or before 29/09/2010.

65. We have considered the submission of both the parties and find that Id. CIT(A) confirmed the action of Assessing Officer for want of evidence. However, before us, it was vehemently argued that due tax was paid within prescribed period under Section 115-O of the Act. Therefore, we deem it appropriate to restore this issue to the file of Assessing Officer to verify the fact if the assessee has paid dividend distribution tax in time, the assessee be allowed relief on this issue in accordance with law. Needless to direct that before passing the order, the Assessing officer shall grant opportunity to the assessee to furnish required details and evidence. Thus, this ground of appeal is allowed for statistical purposes.

66. In the result, this appeal for A.Y. 2010-11 is partly allowed.

67. In ITA No. 504/Ahd/2015 for the A.Y. 2011-12, 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 holding that Landfill Project 1 and Landfill project 2 are not separate undertakings and hence not eligible for deduction under section 80-IA(4) of the Act separately.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the deduction in respect of Landfill Project 2 which started its operations from 11th March 2007 ought to be allowed from assessment year 2002-03 to 2011-12 instead of assessment year 2008-09 to 2017-18 being 10 years from the date on which the undertaking commenced its operations.*

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80-IA of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).*
4. *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 reducing from the "profits and gains of the business" an amount of Rs.27,14,200/- in respect of interest income earned on fixed deposit with Bank.*
5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.*
6. *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 disallowing an amount of Rs.3,37,57,688/- in respect of provision for post closure care expenditure.*
7. *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 disallowing an amount of Rs. 2,07,61,318/- in respect of provision for pit covering expenses.*
8. *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 adding back the following amount while computing the book profits under section 115JB of the Act:*
 - (a) *Provision for post closure expenditure -Rs. 3,37,57,688/-*
 - (b) *Provision of pit covering expenses - Rs. 2,07,61,318/-*
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 of levying interest under Section 115P of the Act amounting to Rs. 7,99,528/-.*
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 in levying interest under Section 234C of the Act without appreciating the fact that amount under Section 234C ought to be levied as per the return of income.*

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law."

68. We find that all the grounds of appeal in the present appeal are similar to various grounds of appeal as raised in appeal for A.Y. 2010-11 in ITA No. 503/Ahd/2015 which we have allowed except ground No. 9 which we have restored to the file of Assessing Officer. Ground No. 9 in the present appeal is identical with ground No. 9 in appeal for A.Y. 2010-11, which we have restored to the file of Assessing Officer, therefore, ground No. 9 of this appeal is also restored to the file of Assessing officer with similar direction. In the result, ground No. 1 to 4 and 6 to 8 are allowed with similar direction as taken in earlier years, ground No. 5 is dismissed. Ground No. 9 is allowed for statistical purpose.

69. In the result, this appeal of the assessee partly allowed.

70. In ITA No. 1935/Ahd/2015 for the A.Y. 2009-10, 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 holding that Landfill Project 1 and Landfill project 2 are not separate undertakings and hence not eligible for deduction under section 80-IA(4) of the Act separately.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the deduction in respect of Landfill Project 2 which started its operations from 11th March 2007 ought to be allowed from assessment year 2002-03 to 2011-12 instead of assessment year 2008-09 to 2017-18 being 10 years from the date on which the undertaking commenced its operations.*
- 3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that Incinerator Project 2 is not a separate undertaking and not eligible for deduction under section 80-IA of the Act separately despite the fact that the said undertaking had started*

its operation from AY 2012-13 and the said issue was not raised in the appeal before the CIT(A).

4. *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 reducing from the "profits and gains of the business" an amount of Rs.32,29,316/- in respect of interest income earned on fixed deposit with Bank.*
5. *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 reducing from the "profits and gains of the business" an amount of Rs.3,30,000/- in respect of membership fees.*
6. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not giving any finding in respect of the ground of appeal relating to allow 10% of interest income as deduction towards expenditure incurred for earning other income.*
7. *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 disallowing an amount of Rs.29,91,757/- in respect of provision for post closure care expenditure.*
8. *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 disallowing an amount of Rs. 1,07,70,324/- in respect of provision for pit covering expenses.*
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 adding back the following amount while computing the book profits under section 115JB of the Act:*
 - (a) *Provision for post closure expenditure -Rs. 29,91,757/-*
 - (b) *Provision of pit covering expenses - Rs. 1,07,70,324/-*

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Honorable Tribunal to decide the appeal in accordance with law."

71. We find that grounds No. 1 to 4 of this appeal are identical to grounds of appeal in ITA No. 504/Ahd/2015 for the A.Y. 2011-12, which we have already allowed. Thus, grounds No. 1 to 4 in the present appeal are allowed with similar direction.

72. Ground No. 5 of the appeal relates to confirming the reduction of membership fees of Rs. 3.30 lacs profit eligible for deduction under Section 80IA(4) of the Act. The Id. Senior Advocate for the assessee submits that this ground of appeal is covered in favour of assessee by the decision of Tribunal in assessee's own case for A.Y. 2007-08 in ITA No. 2223 & 2290/Ahd/2010 dated 27/02/2017.

73. On the other hand, the Id. CIT-DR for the revenue supported the order of the lower authorities.

74. We have considered the submissions of both the parties and find that on similar ground of appeal in assessee's own case for A.Y. 2007-08, similar relief was allowed to the assessee vide order dated 27/02/2017 by passing the following order:

"11. We next proceed to deal with the latter limb of one time membership fee for incinerator plant (supra). There can hardly be any dispute that the assessee charges the above fee for its enrolments of members for the incinerator plant in question. We observe in these facts that the said fee is very much liable to be treated as business profits as accepted in assessee's books as profit and gain of business and profession which have nowhere been rejected in course of the lower proceedings. We accordingly accept assessee's arguments against this latter exclusion as well."

75. Considering the consistent view of our predecessor in A.Y. 2007-08 and following the principle of consistency, this ground of appeal is allowed with similar observation.

76. Ground No. 6 of this appeal relates to non-adjudicating allowance of 10% of interest income as deduction from exempt income. This

ground of appeal was not pressed by the Id. Senior Advocate for the assessee. Resultantly, this ground of appeal is dismissed as not pressed.

77. Ground No. 7 to 9 of the present appeal are identical to grounds No. 6 to 8 in appeal for A.Y. 2011-12, therefore, these grounds of appeal are allowed/disposed of with similar direction as made in A.Y. 2011-12.
78. In the result, this appeal of the assessee is partly allowed.

Order pronounced in the open court on 24th April, 2023.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 24/04/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat