आयकर अपीलीय अधिकरण
मुंबई पीठ "बी" मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ओम प्रकाश कांत, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

आ.आ.सं. ५८६/मुंबई/२०१७ (नि.वं. २०१२—१३)
ITA No.586/MUM/2017 (A.Y.2012-13)

BEIL Infrastructure Limited
(Earlier known as Bharuch Enviro
Infrastructure Limited)
Plot No.9701-16, GIDC Estate,
Ankleshwar
Gujarat-393 002
PAN No. AAACB8075F ..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax, CC-6(3)
Room No. 1903, 19th Floor,
Air India Building, Nariman Point
Mumbai-400 021 ..... प्रतिवादी/Respondent

आ.आ.सं. ४००/मुंबई/२०१७ (नि.वं. २०१२—१३)
ITA No.400/MUM/2017 (A.Y.2012-13)
आ.आ.सं. १९५०/मुंबई/२०२२ (नि.वं. २०१५—१६)
ITA No.1950/MUM/2022 (A.Y.2015-16)

Deputy Commissioner of Income Tax, CC-6(3)
Room No. 1903, 19th Floor,
Air India Building, Nariman Point
Mumbai-400 021 ..... अपीलार्थी/Appellant

बनाम Vs.

BEIL Infrastructure Limited
(Earlier known as Bharuch Enviro
Infrastructure Limited)
Plot No.117/18, GIDC Estate,
Ankleshwar
Gujarat-393 002
PAN No. AAACB8075F ..... प्रतिवादी/Respondent

निर्धारिति द्वारा / Assessee by	:	Shri Kirit Kamdar & Ms. Saisudha Multani
राजस्व द्वारा / Revenue by	:	Shri Salil Mishra, CIT-DR

सुनवाई की तिथि / Date of hearing	:	14/06/2023
घोषणा की तिथि / Date of pronouncement	:	30/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

The assessee in ITA No.586/Mum/2017 has assailed the order of Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter referred to as "the CIT(A)") dated 07.10.2016, for the assessment year 2012-13. The Revenue has filed Cross Appeal for assessment year 2012-13 in ITA No.400/Mum/2017. The Revenue has also filed appeal for assessment year 2015-16 in ITA No.1950/Mum/2022, assailing the order of CIT(A), dated 27.05.2022. These appeals are taken up together for adjudication as the facts germane to the issues raised in appeal are identical. For the sake of convenience, the appeals are taken up for adjudication in seriatim of assessment years.

ITA No.586/Mum/2017 (AY.2012-13)

2. The assessee in appeal has raised following grounds:

"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 CAO) in holding that Landfill Project 1 and Landfill Project 2 are not separate undertakings and hence not eligible for deduction under section 80-1A(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 11 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 801A of the Act separately despite the fact that the said undertaking had started its operation from AY 2012-13.

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 disallowing an amount of Rs. 1,89,103/- under section 14A as per Rule 8D under normal provisions as well as under section 115JB of the Act.

5. On the facts and in the circumstance of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing an amount of Rs 5,94,32, 456/- in respect of provision for post closure care expenditure (net) under normal provisions and under section 115JB 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 treating the closing balance of the advances received from customers for treatment of waste through incinerator amounting to Rs. 7,93,90,389/- as income for the above assessment year under normal provisions and added to the book profits under section 115JB of the Act.

7. Without prejudice to ground no. 6, the CIT(A) erred in dismissing the alternate prayer of the appellant that only the incremental advance received during the relevant assessment year amounting to Rs. 1,20,30,883 ought to be considered as income of the appellant for the relevant assessment year.

8. Without prejudice to the above grounds of appeal nos. 6 and 7, the CIT(A) erred in dismissing the ground of appeal wherein it was submitted that in case the aforesaid advances are treated as income then the estimated expenses required to be incurred for incineration of that quantity of waste for which advances are received in the relevant assessment year ought to be allowed as deduction.

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 234C of the Act without appreciating the fact that amount under section 234C ought to be levied as per the return of income."

3. The Revenue has assailed the order of CIT(A) on a solitary ground, the same reads as under:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 80IA(4) to the assessee for incinerator Project I & II, ignoring the fact that both of these projects are not new enterprises and only expansion of the Incinerator Projects of the assessee."

4. Shri Kirit Kamdar appearing on behalf of the assessee narrating facts of the case submitted that, the assessee is engaged in management and handling of hazardous toxic waste generated by various industries of District Bharuch. For treatment and disposed of highly toxic solid waste, Gujrat Industrial Development Corporation ('GIDC') has allotted centralised secured landfill facility to the assessee. The assessee commenced its business activity in April, 1998, for this purpose land bearing plot no. 9701 to 9716 ad measuring 59040 sq. mts. was allotted to the assessee by GIDC (hereinafter referred to as 'Landfill-I'). Thereafter, in March 2007, another set of plots bearing no. 7905/E to 7905/H, 7924 to 7927, 9401 to 9412 and 9501 to 9506 total having area of 1,36,402 sq. mts. was allotted to the assessee (hereinafter referred to as 'Landfill-II'). The assessee claimed deduction u/s 80IA of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of the separate Landfills, that is Landfill-I and Landfill-II as independent and separate undertakings. For Landfill-I, the assessee stated claiming deduction u/s 80IA of the Act from AY 2002-03 and for Landfill-II, the assessee claimed deduction u/s 80IA of the Act for the first time in AY 2008-09. The Assessing Officer (AO) while framing assessment for AY 2008-09 rejected assessee's claim of deduction u/s 80IA of the Act in respect of Landfill-II as separate undertaking. After being unsuccessful before the First Appellate Authority, the assessee carried the issue in appeal before the Tribunal in ITA No.1849/Ahd/2014. The Tribunal vide order dated 27.12.2021 held that Landfill-II is a distinct and separate undertaking from Landfill-I and hence, is independently eligible to claim deduction u/s 80IA of the Act.

4.1 The assessee has also set up incinerator for the treatment, safe storage/management/disposed of toxic chemical waste discharged by various

chemical industries in District Bharuch. The Incinerator-I was setup on plot no. 9601 to 9604 allotted by GIDC. The assessee entered into an agreement with GIDC on 21.11.2005 (at page 35 to 38 of the Paper Book). The assessee claimed deduction u/s 80IA of the Act in respect of Incinerator-I w.e.f. AY 2007-08. Thereafter, the assessee started a new industrial undertaking known as Incinerator -II in the period relevant to the AY 2012-13. For setting up of Incinerator-II, GIDC allotted plot no. 9923 to 9928 and 10001 to 10003 and in an agreement was entered with GIDC on 16.10.2012 (w.e.f. 01.10.2011). Incinerator-II commenced its commercial activity on 01.10.2011. The assessee claimed deduction u/s 80IA of the Act for the first time in respect of Incinerator-II in AY 2012-13. The ld. Authorised Representative (AR) submitted that Incinerator-I and Incinerator-II are separate independent undertakings. Both the incinerators are located at different places. Incinerator-II is not formed by splitting up of Incinerator-I. The workers employed at both the incinerators are separate. Separate new plant and machinery was installed for Incinerator-II. The ld. AR submitted that in AY 2007-08, the AO had disallowed assessee's claim of deduction u/s 80IA of the Act in respect of Incinerator-I. The assessee carried the issue in appeal before the CIT(A). The CIT(A) held that incinerator is a new infrastructure facility and eligible for deduction u/s 80IA(4) of the Act starting from AY 2007-08. The Revenue accepted this position as the findings of CIT(A) were not challenged by the Revenue before the Tribunal. The ld. AR referred to para 35 of the Tribunal order in ITA No. 1849/Ahd./2014 (supra) in support of his contentions.

4.2 In respect of ground no. 4 of appeal, the ld. AR submitted that the AO made disallowance u/s 14A read with Rule 8D(2)(3) of the Act Rs.1,89,103/- under normal provision as well as u/s 115JB of the Act. During the period relevant to assessment year under appeal, the assessee has not earned any dividend income/income

exempt from tax. Hence, no disallowance u/s 14A of the Act is warranted. In support of his submissions, the ld. AR placed reliance on the following decisions:

i. PCIT vs. Red Chillies Entertainment (P.) Ltd., 116 taxmann.com 77 (Bom.);
ii. PCIT vs. Ballarpur Industries Limited in ITA No. 51 of 2016 decided by Hon'ble Bombay High Court;
iii. PCIT vs. McDonald's India Private Limited, 101 taxmann.com 86 (Delhi);
iv. State Bank of Patiala, 99 taxmann.com 286 (SC);
v. Vireet Investment (P.) Ltd. (2017), 165 ITD 27 (Del.) (SB)

4.3 In respect of ground no. 5 of appeal, the ld. AR submits that after the landfill pits are closed, the assessee has to incur expenditure on its maintenance viz: to manage sludge spillage, treatment of gases emanating from pit etc. For this purpose, the assessee has made a provision for post closure care expenditure Rs.6,16,17,191/-. During the year, the assessee has claimed an amount of Rs.21,85,463/- utilised towards the maintenance of pit. The AO disallowed the remaining amount that is Rs.5,94,32,456/-. The ld. AR submits that the assessee had to maintain and manage the landfills post closure up to 30 years. He pointed that similar disallowance was made in AY 2008-09. The Tribunal in an appeal by the assessee in ITA No.1849/Ahd./2014 (supra) deleted the disallowance of provision of post closure care expenses. Thus, this issue is covered by the order of Tribunal in assessee's own case in preceding assessment year.

4.4 In respect of ground no. 6 of appeal, the ld. AR submitted that the assessee had received advances from its customers for treatment of waste through incinerator. The AO made addition of the closing balances of such advances amounting to Rs.7,93,90,389/- as income of the assessee under normal provision and added to the Book Profit u/s 115JB of the Act. The ld. AR submitted that the assessee recognizes the revenue at the time of incineration of the waste and not at

the time of receiving of advances along with the waste. The assessee has been consistently following this method of accounting of recognisation revenue since 2007. The ld. AR referred Notes to Financial Statements for the year ended 31.03.2020 at page 26 of the Annual Report 2011-12. He pointed that under the head "Revenue Recognisation", it has been specifically stated that money received as incineration charges from different customers is recognized as Revenue at the time of incineration of the waste. The ld. AR further submitted that his issue came up for consideration before the Tribunal in Revenue's appeal for AY 2007-08 in ITA No.2290/Ahd./2010 decided on 27.02.2017. The Tribunal restored the issue back to the file of AO. In AY 2008-09, again this issue came up for consideration before the Tribunal in Department's appeal in ITA No.1867/Ahd./2014. The Tribunal following its own decision in AY 2007-08 restored the issue back to the file of AO.

4.5 In respect of ground no. 7 and 8 of appeal, the ld. AR submitted that if ground no. 6 is decided in favour of assessee, the alternate prayer made in ground no. 7 and 8 would become infructuous.

5. Per contra, Shri Salil Mishra representing the Department vehemently defended the findings of CIT(A) against which the assessee is in appeal. However, the ld. Departmental Representative (DR) fairly admitted that the issues raised by the assessee in ground no. 1, 2, 5, and 6 of appeal were considered by the Tribunal in assessee's own case in preceding assessment years.

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. The ground no. 1 to 3 of appeal are taken up together as they are interrelated. The assessee has claimed deduction u/s 80IA(4) of the Act in respect of different undertakings viz, Landfill-I, Landfill-II, Incinerator-I and Incinerator-II. The assessee is engaged in management and disposal of toxic waste discharged by various chemical industries in district Bharuch. For the disposal of

toxic waste, the assessee has been allotted plots of land at different locations by GIDC. The assessee has separate sites for landfills. For Landfill-I, the assessee was allotted plot nos. 9701 to 9716 ad measuring 590404 sq. mts. The assessee commenced its activity on the said land in April, 1998. The assessee claimed deduction u/s 80IA(4) of the Act in respect of said site for the first time in AY 2002-03. The assessee was allowed deduction u/s 80IA of the Act in respect of said undertaking. For Landfill-II, the assessee was separately allotted land ad measuring 136402 sq. mts. The assessee commenced its activity on the said site in March, 2007 and the assessee claimed deduction u/s 80IA(4) of the Act in respect of activities commenced on said site for the first time in AY 2008-09. Both the landfills were held to be separate undertakings by the Tribunal in AY 2008-09 eligible for deduction u/s 80IA(4) of the Act independent to each other. The relevant extract of the Tribunal order in AY 2008-09 in ITA No.1849/Ahd./2014 (supra) is as under:

> *"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.1 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 80-1A 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.*
>
> *30. We have considered the rival submissions of both the parties and have gone through the order of the lower authorities. As recorded above the AO treated all three Project of the assessee as composite undertaking. The Id. CIT(A) in its specific finding held that the assessee is eligible for Land Fill Project-II and is*

eligible for such deduction till AY 2011-12 only. For eligibility of the deduction under section 80-1A for Land Fill Project-II, the ld. Senior Counsel for the assessee vehemently submitted that it is a separate undertaking. It was submitted that the assessee-company was allotted additional lands bearing Plot No.7905E to 7905H, 7924 to 7927, 9401 to 9412, 9501 to 9506 admeasuring 1,36,402 Sq. Mts. in Ankleshwar Estate by GIDC to create, execute and operate a Centralized Secured Land Fill Facility Project-II for the disposal of solid waste generated by the industries of Bharuch District. It was also brought to our notice that the assessee has also entered into a separate agreement dated 16th October 2012 with GIDC with effect from 12 March 2007. The assessee had commenced its Land Fill Project-II in FY 2006-2007 and claimed deduction under section 80-1A of the Act from AY 2008-09 since the said unit is a separate infrastructure facility. These facts are not controverted by ld. SR DR for the revenue. Moreover, the Land Fill Project-II is set up on the separate land allotted by GIDC in Bharuch District, which was allotted to the assessee and separate agreement was entered with GIDC on 16th October 2012 with effect from 12.03.2007. We find that in appeal for AY 2007-08, the Ld. CIT(A) held that both the unit of the assessee i.e. Land fill Project No. I & Land Fill Project-II are different and independent unit by way of process, method, machine and infrastructure. The finding of Ld. CIT(A) was upheld by Tribunal in ITA No. 2290/Ahd/2010 dated 27.02.2017. Hence, in view of the aforesaid factual discussions the ground No. 2 of the appeal is allowed."

The Co-ordinate Bench held Landfill-I and Landfill-II as separate and independent undertakings. The Co-ordinate Bench further clarified in para 25 of the said order that Landfill-II is eligible to claim deduction u/s 80IA of the Act from AY 2008-09 being a separate infrastructure facility. It is relevant to note here that the Tribunal orders in AY 2007-08 (dated 31.01.2017) and for AY 2008-09 (dated 27.12.2021) were passed subsequent to the impugned order. Thus, the CIT(A) did not have the benefit of Tribunal orders for AY 2007-08 and AY 2008-09. In the light of decision of Co-ordinate Bench, ground no. 1 and 2 of appeal are allowed.

7. The assessee for the purpose of safe storage/management/disposed of toxic waste has also set up incinerator. The first Incinerator-I was set up in January, 2005. The assessee claimed deduction u/s 80IA of the Act in respect of Incinerator-I for the first time in AY 2007-08. The CIT(A) in AY 2007-08 allowed assessee's appeal and held that Incinerator is a new infrastructure facility, hence, eligible for deduction u/s 80IA(4) of the Act for 10 years from AY 2007-08. The said findings of

the CIT(A) were not challenged by the Department before the Tribunal, thus, it attend finality. In the impugned assessment year, the assessee has claimed deduction u/s 80IA(4) of the Act in respect of Incinerator Project-II. The contention of the assessee is that Incinerator-II has commenced its activities w.e.f. 01.10.2011. The AY 2012-13 is the first year of claim of deduction u/s 80IA of the Act. The assessee has entered into a separate agreement with GIDC on 16.10.2012 (w.e.f. 01.10.2021) for a period of 15 years. The GIDC has allotted separate plots bearing no. 9923 to 9928 and 10001 to 10003 ad measuring 16147 seq. mts. for setting up of Incinerator-II facility. The ld. AR has also drawn our attention to Schedule of Fixed Assets at page 11 of the Paper Book to show that a separate plant and machinery was purchased for Incinerator-II. We find that the CIT(A) in the impugned order has rejected the claim of assessee by merely placing reliance on the order of his predecessor in AY 2011-12. The Co-ordinate Bench in ITA No.504/Ahd./2015 for AY 2011-12 vide order dated 24.04.2023 has reversed the findings of CIT(A). Taking into consideration the documents furnished by the assessee, we are of the view that the Incinerator Project-II is a separate undertaking eligible for deduction u/s 80IA(4) of the Act starting from AY 2012-13. The assessee succeeds on ground no. 3 of appeal.

8. In ground no. 4 of appeal, the assessee has assailed disallowance made u/s 14A read with Rule 8D under normal provision as well as u/s 115JB of the Act. It is an admitted position that in the period relevant to the assessment year 2012-13, the assessee has not earned any exempt income. It is no more *res-integra* that where the assessee has not earned any income exempt from tax, no disallowance u/s 14A of the Act is to be made. Hence, ground no. 4 of appeal is allowed.

9. In ground no. 5 of appeal, the assessee has assailed disallowance of provision for post closure care expenditure under normal provision and u/s 115JB of the Act.

We find that disallowance in respect of identical provisions was made in AY 2007-08 and AY 2008-09. In AY 2007-08, the Tribunal in appeal of the assessee ITA NO.2290/Ahd./2010 (supra) deleted the disallowance placing reliance on earlier order of Tribunal in assessee's own case. In assessment year 2008-09, the Co-ordinate Bench followed the decision of Tribunal in assessee's own case for AY 2007-08. No material has been brought on record by the Revenue to substantiate that there has been any change in the facts in the impugned assessment year. We see no reason to deviate from the consistent view taken by the Tribunal on this issue. Hence, assessee's claim of provision for post closure expenditure is allowed. Thus, assessee succeeds on ground no. 5 of appeal.

10. In ground no. 6 of appeal, the assessee has assailed the addition in respect of advances received from customers for treatment of waste as income of the assessee. We find that in AY 2007-08, similar claim was made by the assessee in respect of closing balances of the advances received. The AO added closing balances of the advances as income of the assessee. The Tribunal restored the issue back to the AO observing as under:

> *"8. Heard both sides. The relevant issue between the parties is as to whether the assessee's advance receipts from its customers amounting to Rs.10,34,19,765/- in the nature of non-refundable receipts are to be treated as income in entirety pertaining to relevant assessment year or not. We find that Hon'ble jurisdictional high court's decision in (2015) 15 taxmann.com 429 (Guj.) CIT vs. Unique Mercantile Services Pvt. Ltd. decides a similar question pertaining to membership fee spreading over to a time span of more than one assessment year to be taxable on prorata basis. We adopt the same reasoning herein as well and direct the Assessing Officer to assess the above stated non-refundable receipts by adopting similar proportionate computation formula. This Revenue's ground is accordingly accepted for statistical purposes. The Revenue partly succeeds in its appeal ITA No.2290/Ahd/2010."*

In AY 2008-09, the Co-ordinate Bench followed the decision of the Tribunal for AY 2007-08. Facts being identical in the impugned assessment year (except for the

amount), we deem it appropriate to restore this issue back to the file of AO in similar terms. Ground no. 6 of appeal is thus, allowed for statistical purpose.

11. In ground no. 7 and 8 of appeal, the assessee has made an alternate prayer to the ground no. 6 of appeal. Since, we have restored ground no. 6 of appeal to the AO. The ground no. 7 and 8 are also restored to AO. Thus, ground no. 7 and 8 are allowed for statistical purpose.

12. In ground no. 9 of appeal, the assessee has assailed charging of interest u/s 234C of the Act. Interest u/s 234C of the Act is consequential and mandatory. The AO is directed to re-examine the issue and charge interest u/s 234C of the Act on the returned income, in accordance with law. Ground no. 9 of appeal is thus allowed for statistical purpose.

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

ITA No.400/Mum/2017 (AY.2012-13)

14. The Revenue in its appeal has assailed the findings of CIT(A) in allowing deduction u/s 80IA(4) of the Act to the assessee for Incinerator Project-I and II. The contention of the Revenue is that Incinerator Project-I and II are not new undertakings and only extension of the existing undertakings. The ld. DR submitted that the Department has not accepted the Tribunal order of the preceding years where it has been held that Landfill projects and Incinerator projects are separate undertakings. The Department is in appeal against the said orders of Tribunal.

15. Both sides heard. The issue that Landfill Project-I, Landfill Project-II, Incinerator Project-I are separate undertakings and are eligible for deduction u/s 80IA of the Act independently has been decided by the Tribunal in AY 2008-09 (supra). Merely for the reason that the Department has not accepted the said order

of Tribunal and is in appeal against the said order cannot be a reason to allow the appeal of Revenue. While deciding appeal of assessee for AY 2012-13, we have referred to the decision of Tribunal in ITA No. 2290/Ahd./2010 for AY 2007-08 where the issue has been decided in favour of the assessee holding Landfill Project-I, Landfill Project-II and Incinerator Project-I as separate independent undertakings for the purpose of deduction u/s 80IA of the Act. Since, there is no contrary material on record, we find no merit in appeal by the Revenue. Hence, the same is dismissed.

16. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

ITA No.1950/Mum/2022 (AY.2015-16)

17. The Revenue in appeal has raised 8 grounds. The ground no. 1 to 3 and 5 of appeal are with respect to assessee's claim of deduction u/s 80IA(4) of the Act qua Landfill Project-II, Incinerator Project-I and Incinerator Project -II. These issues have already been decided by us while adjudicating appeal of the assessee for AY 2012-13. There being no contrary material on record, the findings given by us while adjudicating appeal of the assessee, would *mutatis-mutandis* apply to the present appeal. In the result, ground no. 1, 2, 3 and 5 of appeal by the Department are dismissed.

18. In ground no. 4 of appeal, the Revenue has assailed the findings of CIT(A) in deleting disallowance of Rs.6,30,89,423/- in respect of provision for post closure care expenditure. Both these sides are unanimous in stating that the facts in -impugned assessment year are similar to the facts in AY 2012-13 (except for the amount). There is no material on record contrary to the findings of Tribunal on this issue in the impugned assessment year. We see no reason to take an inconsistent view. Following the decision of Co-ordinate Bench in preceding assessment years

in assessee's own case, this issue is decided in favour of the assessee. Accordingly, ground no. 4 of appeal is dismissed, being devoid of any merit.

19. In ground no. 6 of appeal, the Revenue has assailed the findings of CIT(A) in reversing the findings of the AO in treating advances received from customers as income of the assessee. In the preceding assessment years, the Tribunal has restored this issue back to the file of AO for fresh consideration. The ground no. 6 of appeal is thus allowed for statistical purpose, for parity of reason.

20. The ground no. 8 of appeal is against deleting disallowance u/s 14A of the Act. A perusal of the impugned order shows that the CIT(A) has deleted disallowance u/s 14A of the Act while computing Book Profit u/s 115JB of the Act. Following the decision of the Special Bench in the case of ACIT vs. Vireet Investments, 165 ITD 27. We see no infirmity in findings of the CIT(A) on this issue. Hence, ground no. 8 of appeal is dismissed, being devoid of merit.

21. **In the result, appeal of the Revenue is partly allowed for statistical purpose.**

Order pronounced in the open court on Friday the 30th day of June 2023.

Sd/-	**Sd/-**
(OM PRAKASH KANT)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई/Mumbai,
दिनांक/Dated: 30/06/2023
Mahesh R. Sonavane

प्रतिलिपी अग्रेषित Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant
2. प्रतिवादी/The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai