

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 771/Ahd/2023
(Assessment Year: 2014-15)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Vadodara	Vs.	Enviro Technology Ltd., Plot No. 2413/14 GIDC Estate, Ankleshwar, Gujarat-393002
[PAN No. AAACE4126G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Bandish Soparkar, A.R.
Respondent by:	Shri Sudhendu Das, CIT D.R.
Date of Hearing	11.01.2024
Date of Pronouncement	17.01.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the Department against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1054949267(1) vide order dated 08.08.2023 passed for Assessment Year 2014-15.

2. The Department has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,33,46,119/- made on account of deduction claimed by the assessee u/s 80IA(4) of the Income-tax Act without appreciating the fact the assessee did not satisfy the conditions prescribed in section 80IA(4)(i)(b) of the Income-tax Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating the project of the assessee as covered in the definition of “New

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Infrastructure facility” which was first included in the definition of the water treatment system vide CBDT’s Circular No.01/2006 dated 12.01.2006 when there was no mention of its retrospective effect.

3. *The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal. It is prayed that the order of the CIT(A) on the above issues be set-aside and that of the Assessing Officer be restored.”*

3. Before us, at the outset, the Counsel for the assessee submitted that the issue under consideration is non-granting of deduction under Section 80-IA of the Act and the said issue is directly covered in favour of the assessee by the order of ITAT in assessee’s own case for Assessment Years 2008-09 and 2009-10 in ITA No. 2018/AHD/2014. Further, it was submitted that the Ld. CIT(Appeals) while allowing the appeal on this issue also placed reliance on the aforesaid order. Accordingly, it was submitted that relief may be granted accordingly.

4. It would be useful to reproduce the relevant extracts of the order passed by ITAT in assessee’s own case for Assessment Years 2008-09 and 2009-10 for ready reference:

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

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effect from 01.04.2001, by new sub-clause so as to include Solid Waste Management System within the meaning of infrastructure facility, the assessee-company is covered under the amended definition of "Infrastructure Facility" and fulfills all the conditions as specified in sub-clause (a) to (c) of section 80IA(4) (i). Accordingly the assessee is eligible for claim of deduction under section 80IA of the Act. Thus, the assessee succeeded on both the counts. The assessing officer is directed to allow the deduction under section 80IA claimed by the assessee.

5. In view of aforesaid order passed by ITAT in assessee's own case as reproduced above on the issue regarding eligibility of claim of deduction under Section 80-IA of the Act and also the observations made by Ld. CIT(Appeals) at Page 17 of his order, we find no infirmity in the order of Ld. CIT(Appeals) so as to call for interference.

6. In the result, the appeal of the Department is dismissed on this issue.

This Order pronounced in Open Court on	17/01/2024
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/01/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad