

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2744/MUM/2023**  
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, CC-6(3), 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai- 400021. <b>PAN No. AAJCS7647D</b>	Vs.	Shivalik Solid Waste Management Ltd. Village Majra, P.O., Dhabhota, Teh. Nalagarh, Solan- 174101, Himachal Pradesh- 174101.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Kirit Kamdar – CA  
Revenue by : Shri Prashant Mahajan – Sr. AR

Date of hearing : 16.04.2024  
Date of pronouncement : 30.04.2024

**ORDER**

**PER RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER:**

This appeal has been filed by the Deputy Commissioner of Income Tax Central Circle– 6(3), Mumbai against the order of the Ld. CIT Appeal-54 Mumbai and following grounds of appeal were raised: -

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.2,11,13,042/- in respect of provision for Pit covering expenditure made in the assessment order despite the fact*

*that no such expenditure was incurred during the year and estimation is not ascertained liability?"*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs 2,80,32,480/- in respect of provision for Post closure expenditure made in the assessment order despite the fact that no such expenditure was incurred during the year and estimation is not ascertained liability?"*
3. *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in allowing provision for pit covering expenses and provision for post closure expenses despite the fact that the assessee had not provided details of actual expenditure made in respect of provisions made during earlier years and hence could not establish basis of computation of provision?"*
4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the Assessing Officer in the assessment order relying on the decision of his Ld. Predecessor vide order dated 05.05.2022 in the same case for A.Y 2015-16 & 2016-17 despite the fact that Revenue had not accepted the decision of the Ld CIT(A) in the same case for A.Y 2015-16 & 2016-17 on merit but did not file appeal before Hon'ble' ITAT as the tax effect was lower than monetary limit as per CBDT Instruction No. 03/2018 dated 11.07.2018 and the case does not fall under exception clauses mentioned in Para 3 of the said circular and Para 10 of the Circular No. 3/2018*

*as amended vide F.No.279/Misc. 142/2007-ITJ(Pt.) dated 20.08.2018 & Circular No.23/2019 F.No.279/Misc-/M-93/2018-ITJ(Pt.) dated 06.09.2019?”*

2. The fact of the case is that the assessee had filed original return of Income u/s. 139 of the IT Act, 1961 on 01/09/2018 and subsequently revised the return declaring the income at Rs.2,14,24,220/-. The return was processed u/s. 143 (1) of the IT Act. The case was selected for scrutiny and notice u/s. 143 (2) of the IT Act dated 22/09/2019 was issued and duly served on the assessee. Further, statutory notices were issued and served on the assessee from time to time before the assessment was finally completed u/s. 143 (3) of the Income Tax Act by making following additions: -

1. Provision of pit covering expenses	Rs. 2,11,13,042/-
2. Provision for Post closure expenses	Rs. 2,80,32,480/-
3. Total	Rs. 4,91,45,522/-

3. The above additions were made by the Assessing Officer on the ground that since the assessee was following mercantile system of accounting, the expenditure debited to the Profit & Loss Account was neither accrued nor paid during the year and only provisions for these expenses were made. When the Assessing Officer asked the assessee to explain why the provisions for these expenses should not be disallowed, the assessee submitted that the expenditure claimed as above was to be incurred in future out of income received during the year. Not convinced with the explanations offered by the assessee, the Assessing officer disallowed the provisions for these expenses on the ground that assessee has failed to establish that the provisions made were ascertained liability. The Provisions for these expenses were made by the assessee on the basis of a number of assumptions, namely, the

annual amount of expenditure is likely to be incurred after closure of the side which was estimated without any basis, the funds required to generate this amount was made on estimate basis and not based on actual figure of cost or quantity, etc. Further, the said expenditure was not incurred wholly and exclusively for the purpose of business as defined u/s. 37(1) of Income Tax Act. Under this provision only those expenses are allowed which are expended for earning the income accrued or received or deemed to have been accrued or received during the year under consideration.

4. Aggrieved by the order of the AO, the assessee filed appeals before the Ld. CIT Appeal who decided the appeal in favour of the assessee vide its Order No. 2744 dated 02/05/2023 on the ground that identical findings were given by his Ld. Predecessor in the assessment year 2015-16 and 2016-17 and there was no reason to deviate from the stand taken by his Ld. Predecessor.
5. Aggrieved by the order of the Ld. CIT Appeal, the present appeal has been filed. During the appellate proceedings before us, the Ld. Sr. DR of the department submitted that the Ld. CIT Appeal wrongly allowed the provisions for Pit covering expenses and Post closure expenses were by following the decision of his predecessor in the same case in the assessment year 2015-16 and 2016-17. He further submitted that though, the department did not file second appeal before the Ld. ITAT in the assessment year 2015-16 and 2016-17 and accepted the decision of the Ld. CIT Appeal on merit because the quantum involved in the appeal was lower than the monetary limit prescribed as per CBDT instruction no. 03/2018 dated 11/07/2018 and this case did not fall under the explanation clause as mentioned in that CBDT circulars but, in principle, these expenses cannot be allowed because provision of any kind is not allowed u/s. 37(1) of the IT Act.



6. We have carefully considered all aspects involved in this case and found that various coordinate benches of the Hon'ble ITAT have already decided this issue in following cases:
1. Copy of decision of the Mumbai Tribunal in case of Bharuch Enviro Infrastructure Limited vs. DCIT for A.Y. 2012-13 (ITA No. 586/Mum/2017).
  2. Copy of decision of the Mumbai Tribunal in case of Kerla Enviro Infrastructure Limited for A.Y. 2015-16 (ITA No. 7333/Mum/2019).
  3. Copy of decision of the Surat Tribunal in case of Bharuch Enviro Infrastructure Limited for A.Y. 2007-08 to 2011-12 (ITA No. 500 to 504 & 1935/Ahd/2007).
  4. Copy of decision of the Ahmedabad Tribunal in case of Bharuch Enviro Infrastructure Limited vs. DCIT for A.Y. 2002-03 to A.Y. 2004-05 (ITA No. 733/Ahd/2007).
  5. Copy of decision of the Ahmedabad Tribunal in case of Bharuch Enviro Infrastructure Limited vs. DCIT for A.Y. 2007-08 (ITA No. 2223/Ahd/2010).
7. Thus, respectfully following the decisions of the coordinate benches stated as above, we also hold that these provisions are allowable expenditure and there is no reason to interfere with the order passed by the Ld. CIT Appeal.
8. In result, the appeal is dismissed.

**Order pronounced in the open court on 30.04.2024.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 30.04.2024.  
*Snehal C. Ayare, Stenographer*



Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.