IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT&
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA NO.2732/MUM/2023
Assessment Year 2017-18
ITA NO.2729/MUM/2023
Assessment Year 2018-19

Deputy Commissioner of Income Tax,CC 6(3),
19th Floor, Air India Building,
Nariman Point, Mumbai 400 021. - Appellant

Vs.

BEIL Infrastructure Limited,
Plot No.117/118, GIDC Estate,
Ankeleshwar,
Ankeleshwar – 393 002.
PAN:AAACB-8075-F - Respondent

Appellant by	:	Shri S.Srinivasu, CIT-DR & Shri Ashok Kumar Ambastha, Sr.AR
Respondent by	:	Shri Kirit Kamdar & Ms. Saisudha Multani
Date of Hearing	:	25/04/2024
Date of Pronouncement	:	04/6/2024

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed these appeals challenging the orders passed by Ld CIT(A), NFAC, Delhi for assessment years 2017-18 and 2018-19. Since common issues are urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee was set up to create and operate a Centralised Secured Land fill facility for disposal of solid waste generated by the Industries in District Bharuch, Gujarat. The assessee has entered into agreement with Gujarat Industrial Development Corporation (GIDC) for this purpose. These

activities were executed through separate undertakings, viz., Land Fill and Incinerators. They are considered as "infrastructure facilities' eligible for deduction u/s 80IA(4) of the Act. Each of the Land fill and Incinerator is considered as separate undertaking for the purpose of claiming deduction u/s 80IA of the Act.

3. During the year relevant to assessment year 2017-18, the assessee has claimed deduction u/s 80IA(4) of the Act in respect of undertaking titled as "Land fill-II", "Incinerator-II" and "Landfill-Dahej". In the year relevant to AY 2018-19, the assessee claimed deduction u/s 80IA(4) of the Act for the undertaking titled as "Incinerator-II" and "Landfill-Dahej". The assessing officer noticed that the assessee has entered into agreement with GIDC only in the financial year 2012-13 for the project commenced earlier in respect of "landfill-II" undertaking. Accordingly, he disallowed the deduction claimed u/s 80IA(4) of the Act for Land fill –II and Incinerator –II in AY 2017-18. Similarly he disallowed the deduction for the undertaking titled as Incinerator-II in AY 2018-19. The AO, however, allowed deduction for the undertaking titled as "Landfill-Dahej" in both the years.

4. The assessee had also created provision for Pit covering expenses and Post closure expenses. The assessee claimed deduction of the provision for expenses so created by it claiming them as ascertained liability. However, the AO treated them as "contingent liability" and accordingly restricted the deduction to the amount of actual expenses incurred during both the years under consideration. Accordingly, he disallowed remaining amount of provision in both the years.

5. In the appellate proceedings, the Ld CIT(A) noticed that the ITAT has allowed the claim for deduction u/s 80IA(4) of the Act for undertakings titled as "Landfill-II", "Incinerator-II" in the earlier years. Following the said decisions, the Ld CIT(A) directed the AO to allow deduction u/s 80IA(4) of the Act for both the above said undertakings in both the years. The Ld

CIT(A) also noticed that the ITAT has held that the provision for Pit covering expenses and Post closure expenses are allowable as deduction. Following the decision of the ITAT, the Ld CIT(A) deleted the disallowance relating to Provision for Pit covering expenses and Post closure expenses. The revenue is aggrieved.

6. We heard the parties and perused the record. The first issue relates to the disallowance of deduction claimed u/s 80IA(4) of the Act in respect of undertakings titled as "Landfill-II" in AY 2017-18 and "Incinerator-II" in AY 2017-18 & 2018-19. We notice that this issue has been decided by the co-ordinate bench in favour of the assessee in AY 2012-13 (ITA No.586/Mum/2017 and 400/Mum/2017 dated 30-06-2023), wherein the Tribunal has followed the decision rendered by Surat bench of Tribunal in the assessee's own case in AY 2008-09 in ITA No.1849/Ahd/2014. For the sake of convenience, we extract below the decision rendered by the co-ordinate bench in AY 2012-13:-

> *" 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 ProjectII 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"

We notice that the Ld CIT(A), following the decisions rendered by ITAT in the assessee's own case in the earlier years, has decided these issues in favour of the assessee in both the years. Accordingly, we uphold the decision rendered by Ld CIT(A) on these issues in both the years under consideration.

7. The next issue urged by the revenue in both the years relates to disallowance of Provision for pit closure expenses. As noticed earlier, the AO restricted the claim of the assessee to the amount of actual expenses holding that the Provision for Post Closure expenses is a contingent liability. The ld CIT(A) allowed the claim of the assessee by following the decision rendered by the Tribunal. We notice that the co-ordinate bench has considered an identical issue in AY 2012-13 in the assessee's own case and has decided this issue in favour of the assessee with the following observations:-

> *" 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 Coordinate 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."*

We notice that the Tribunal is consistently holding that the Provision for Pit closure expenses is allowable as deduction. Since the Ld CIT(A) has followed the decision rendered by the Tribunal in the assessee's own case, we do not find any infirmity in the order passed by him on this issue.

8. The next issue urged by the revenue in AY 2017-18 relates to the disallowance of Provision for Pit covering expenses. Identical claim was examined by the co-ordinate bench in the assessee's own case, viz., Bharuch Enviro Infrastructure Ltd (Earlier name of the assessee) vs. DCIT (ITA No.733, 1424, 4389 & 4408/Ahd/2007 dated 28-11-2016) and it was decided in favour of the assessee with the following observations:-

> *"21.Common grievance no. 3 - Disallowance of provision for Pit Covering Expenses.*

22.The A.O. found that the assessee has debited expenses of Rs. 84,72,597/- under the head "Pit Covering Expenses". On further verification, the A.O. noticed that the assessee has incurred actual expenditure for pit covering at Rs. 66,92,900/- as against the provision of Rs. 84,72,597/-The assessee was asked to explain why the expenses of Rs. 17,79,697/- should not be disallowed. The assessee explained that the liability to incur expenditure on pit covering arises as soon as the pits were dug and the pits are required to be covered after each pit is completely filled as per guidelines issued by GPCB. The A.O. denied the contention of the assessed on the ground that the pit is closed immediately and, therefore, the difference between the provision and the amount actually spent could not be explained properly. The A.O. further added the excess provision to the book profit treating the same as unascertained liability for the computation of book profit u/s. 115JB of the Act The Hon'ble Rajasthan High Court in the case of Udaipur Mineral Development Syndicate Pvt. Ltd. 261 ITR 706 had held that "as soon as the assessee dig the pits its liability to refill them arose and it was entitled to deduction of the expenses incurred for filling those pits, as the assessee was following mercantile system of accounting". Similar view was taken by the Co-ordinate Bench of Hyderabad in the case of NMDC Ltd. 56 taxrhann.com 396. The Co--ordinate Bench at Ahmedabad in the case of Enviro Technology Ltd. in ITA No. 426, 734 to 736/Ahd/2007 following the order of the Hon'ble Rajasthan High Court (supra) allowed the claim of the assessee.

23. In the light of the aforementioned judicial decisions, we direct the A.O to allow the provision for pit covering expenses in totality."

We notice that the Tribunal is consistently holding that the Provision for Pit covering expenses is allowable as deduction. Since the Ld CIT(A) has followed the decision rendered by the Tribunal in the assessee's own case, we do not find any infirmity in the order passed by him on this issue.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 04 June , 2024.

Sd/-	Sd/-
[Justice (Retd) C V Bhadang]	(B.R. Baskaran)
President	Accountant Member

Mumbai, Date : 04 June, 2024

VM.

Copy to :

1) The Appellant
2) The Respondent
3) The PCIT/CIT concerned
4) The D.R, “B” Bench, Mumbai
5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai