

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A No.2869/Mum/2023
(Assessment Year: 2015-16)**

| | | |
|---|-----------|--|
| KL Envitech Pvt Ltd 1403, Dev Corpora Building Opp. Cadbury Junction Eastern Express Highway Thane (W)-400 601 PAN :AADCK7587N | vs | ITO, Ward 1(3), Thane Ashar I.T. Park Wagle Industrial Estate Thane, Mumbai-400604 |
| APPELLANT | | RESPONDENT |

Assessee by : Shri Gaurav A Potdar, CA
Respondent by : Shri P.D.Chougule (Addl.CIT) SR DR
Date of hearing : 26/08/2024
Date of pronouncement : 28/08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, date of order 07/08/2023. The impugned order is emanated from the order of the Id. Income Tax Officer, Ward-1(3), Thane, (for brevity the Id. AO) the order passed U/s 143(3) of the Act, date of order 25/12/2017.

2. The assessee has taken the following grounds: -

“The learned assessing officer had erred in disallowing the claim of Rs.2,17,94,593/- under section 80IA(4) of Income Tax Act 1961 considering the activities carried out by the assessee as Works Contract and CIT(A), Pune 11 has confirmed the order of the assessing officer.

The appellant craves leave to add, amend, alter and vary any grounds of appeal either before or at the time of hearing of appeal.”

3. The brief facts of the case are that the assessee is a solid waste management company and provides infrastructure to the different local & Government authorities. During the impugned assessment year, the assessee claimed deduction under section 80IA(4)(c) of the Act amounting to Rs.2,17,94,593/-. Considering the activities of the assessee, the Ld.AO rejected the deduction claimed by the assessee under section 80IA and passed the order accordingly. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR filed a written submission which is kept in the record (in short APB). The Ld.AR argued that the issue is squarely covered in favour of assessee in assessee's own case in **ITA No.767 & 768/Mum/2023**, date of pronouncement **23/08/2023**. The co-ordinate Mumbai Bench “H” covered the issue, and the entire solid waste management issue is properly carried out as per section 80IA(4)(i)(b). The assessee filed the copies of the agreement appearing in **APBpages 12-30**. The same agreement is also considered and covered in the order passed by the co-ordinate bench of ITAT. There is no change in the scope of

work and activity of the assessee. The Ld.AR respectfully relied on the order of the Hon'ble **High Court of Bombay** in the case of **CIT vs ABG Heavy Industries Ltd & Others (2010) 322 ITR 323 (Bom)**. The relevant paragraphs are reproduced as below: -

"In view which we have taken, all the assessment years in question to which this batch of appeals relates would be governed by the same principle. The subsequent amendment of s. 80-1A (4A) of the Act to clarify that the provision would apply to an enterprise engaged in (1) developing, or (ii) operating and maintaining, or(iii) developing, operating and maintaining an infrastructure facility was reflective of a position which was always construed to hold the field. Before the amendment that was brought about by Parliament by the Finance Act of 2001, we have already noted that the consistent line of circulars of the Board postulated the same position. The amendment made by Parliament to s. 80-1A(4) of the Act set the matter beyond any controversy by stipulating that the three conditions for development, operation and maintenance were not intended to be cumulative in nature.

23.1 In view of the aforesaid observations, the question the assessee and against the Revenue. of law shall accordingly stand answered in favour of the assessee and against the Revenue.

24. For all these reasons, we are of the view that there is stand dismissed. There shall be no order as to costs."

5. The Ld.DR argued and invited our attention in relevant page of appeal order (para 7 & 8) which is reproduced as below: -

"7. I have considered the facts of the case and the submissions made by the appellant. In the present case, the appellant has claimed that it is operating and

maintaining an Infrastructure Facility for Solid Waste Management System. A perusal of Section 801A(4) of the Act suggests that what will constitute an Infrastructure Facility for Solid Waste Management System has not been defined therein, Neither, this has been defined at any other place in the Income Tax Act, 1961. However, the term solid waste management refers to the entire process of collecting, transporting, treating and disposing of solid waste. An effective waste management system essentially constitutes following activities:-

- a) Waste collection and transportation.*
- b) Resource recovery through sorting and recycling i.e. recovery of materials (such as paper, glass, metals) etc. through separation.*
- c) Resource recovery through waste processing i.e. recovery of materials (such as compost) or recovery of energy through biological, thermal or other processes.*
- d) Waste transformation (without recovery of resources) i.e. Reduction of volume, toxicity or other physical/chemical properties of waste to make it suitable for final disposal.*
- e) Disposal on land i.e. environmentally safe and sustainable disposal in landfills.*

It may be mentioned that all the above activities are essential to constitute a solid waste management system and if a person is taking any single activity on stand-alone basis, same cannot be said as "solid waste management system".

8. It may also be mentioned that vide Notification S.O. 908(E) dated 25th September, 2000, the Government of India. Ministry of Environment and Forest have issued Rules to regulate the management and handling of municipal solid wastes. At clause 2(xvi) of these Rules, the term 'operator of facility' has been defined as under:-

xvi "operator of facility" means a person who owns or operates a facility for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes and also includes any other agency appointed as such by the municipal authority for the management and handling of municipal solid wastes in the respective areas"

The above definition further clarifies that in order to be qualified as operator of a solid waste management facility, a person is required to carry out all the activities of collection, segregation, storage, transportation, processing and disposal of municipal solid wastes. Therefore, if a person is undertaking a single activity on stand-alone basis, he cannot be categorised as 'operator of solid waste management facility'."

6. The assessee has carried out the business of solid waste management. The scope of work was duly covered in the agreement which was filed in APB pages 12-30. The issue is squarely covered by the order of the assessee's own case (supra). The Hon'ble High Court of Bombay also liberated the issue related to the deduction under section 80IA for development, operational and maintenance which are the three activities but should not be read to be in cumulative in nature. The nature of activity was not changed, and the assessee was continuing same agreement and same scope of work from A.Y. 2013-14 onwards. We find that the appeal order passed by the Id. CIT(A) is unjustified and unreasonable. Accordingly, the deduction claimed during impugned assessment year under section 80IA by the assessee is allowed.

7. In the result, the appeal of the assessee bearing **ITA No.2869/Mum/2023** is allowed.

Order pronounced in the open court on 28th day of August 2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 28/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai