

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 2387/Ahd/2015 &
ITA No. 2094/Ahd/2017
Assessment Year. 2011-12**

Vadodara Enviro Channel Ltd. (formerly Known as Effluent Channel Project Ltd.) 4 th Floor, Commerce Centre, Sayajigunj, Baroda-390005 PAN: AAACE8486B (Appellant)	Vs	The Assistant Commissioner of Income Tax, Circle-1(2), Baroda (Respondent)
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**Assessee Represented: Shri Manish J. Shah, A.R. &
Shri Rushin Patel, A.R.**

**Revenue Represented: Shri Hrishikesh Hemant
Patki, Sr. D.R.**

Date of hearing : 26-07-2024
Date of pronouncement : 25-10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against separate appellate orders dated 19.06.2015 and 16.06.2017 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad confirming the levy of Penalty under section 271(1)(c) of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. Brief facts of the case are that the assessee filed its return of Income for Asst. Year 2011-12 on 23-09-2011 declaring total loss of Rs.48,17,297/-. The assessment was finalized u/s.143(3) of the Act on 12-12-2014 determining total Income at Rs.2,63,69,155/-. While finalizing the assessment order, the AO made addition of Rs.3,11,86,450/- on account of Capital Contribution received from the members being treated as revenue receipt and initiated penalty proceedings u/s.271(1)(c). This addition was made because of the fact that in Asst. Years 2001-02 to 2007-08, the assessee had shown the initial subscription from members received during a particular financial year as revenue receipt and the same was being offered on deferred basis in the year of receipt and in four subsequent years. The revenue had assessed the entire receipt as income of the assessee in the year of receipt itself, but the same was deleted by ITAT, Ahmedabad Bench in its order vide which it upheld the assessee's treatment of offering to tax 1/5th of such amount in 5 years. But from AY.2008-09, the assessee stopped offering such amount to taxation and started treating them as Capital Receipt. Under such circumstances, the AO again added back the entire amount of receipt in particular year as assessee's income and initiated penalty proceedings u/s 271(1)(c) of the Act. In the current Asst. Year 2011-12 also, similar addition was made and the same was upheld by CIT(A)-1, Baroda. He also enhanced the income by an amount of Rs.39,19,848/- in respect of which penalty u/s 271(1)(c) was levied by him vide order dated 19-06-

2015 (which is subject matter of ITA No. 2387/Ahd/2015). Subsequently, the AO provided another opportunity of being heard to the assessee and then levied a penalty of Rs.1,03,59,360/- u/s.271(1)(c) of the Act against which assessee filed appeal, which is subject matter of ITA No. 2094/Ahd/2017.

3. At the outset, the Ld. Counsel Shri Manish J. Shah appearing for the assessee submitted that in assessee's own case for the very same Asst. Year 2011-12, the Co-ordinate Bench of this Tribunal quantum appeal restored the case back to the file of Assessing Officer to verify additional evidences filed for first time before this Tribunal and thereafter determine the amounts received by the assessee, whether they represent advance towards capital contribution or in the nature of capital contribution, for determining their taxability in the impugned year.

3.1. Following the same, the assessee placed on record additional evidences and requested to consider the same and proceed with the Penalty proceedings. The following are the additional evidences filed by the assessee for the first time before us.

Sr. No.	Nature of Document	Page No.
1	Director's Report along with Audit Report for the year ended 31.03.2008.	1-24
2	Minutes of 35th Board Meeting of Effluent Channel Project Ltd held on 15.12.2017.	25-31
3	User Agreement between the Appellant and Gujarat Refinery executed on 04.09.2012 along with annexure thereto.	32-49
4	Notes on tax planning from the Chartered Accountant M/s. Mahajan Doshi & Associates.	50-57

4. The Ld. Sr. D.R. strongly objected to the admission of additional evidences at this point of time.

5. We have given our thoughtful consideration and perused the materials available on record. In the quantum appeal in ITA No. 878/Ahd/2015 dated 26/05/2023 Co-ordinate Bench of this Tribunal after considering the additional evidences filed for the first time before Tribunal, set aside the quantum appeal to the file of Assessing Officer by observing as follows:

“The additional evidences, therefore, are admitted for adjudication, and the issue is restored back to the AO to verify the additional evidences and thereafter determine the true nature of the amounts of Rs.61.50 lakhs received by the assessee, and thus adjudicate the issue, whether they represent advance towards capital contribution or are in the nature of capital contribution, for determining their taxability in the impugned year. The AO is directed to adjudicate the issue in accordance with law after verifying the evidences filed by the assessee. Needless to add, the assessee be given proper opportunity of hearing by the AO in accordance with law.”

6. Following the same ratio, the penalty orders are also set aside to the file of Jurisdictional Assessing Officer to consider the additional evidences placed before this Tribunal and decide the penalty case on merits in accordance with the provisions of law and by affording proper opportunity of hearing to the assessee. Further Section 275(1A) provides as follows:

“275(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal³³[to the Joint Commissioner (Appeals) or] to the Commissioner (Appeals) under [section 246](#) or [section 246A](#) or an appeal to the Appellate Tribunal under [section 253](#) or an appeal to the High Court under [section 260A](#) or an appeal to the Supreme Court under [section 261](#) or revision under [section 263](#) or [section 264](#) and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of³³[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the

Supreme Court is received by the ³⁴[***] Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of ³³[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under [section 263](#) or [section 264](#):

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

- (a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;
- (b) after the expiry of six months from the end of the month in which the order of ^{34a}[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the ^{34b}[***] Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed:”

7. In the result, the appeals filed by the Assessee are allowed for statistical purposes.

Order pronounced in the open court on 25-10-2024

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 25/10/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद