IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 690/Ahd/2025
(**निर्धारण वर्ष /** Assessment Year : 2014-15)

Assistant Commissioner of Income Tax Circle-5(1), Hyderabad	**बनाम**/ Vs.	**Mytrah Vayu (Gujarat) Private Limited** 8th Floor, Q-City, Nanakramguda, Gachibowli, Hyderbad, Telangana-500032
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICM1268P		
(**Appellant**)	..	(**Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri Prathvi Raj Meena, CIT.DR
प्रत्यर्थी की ओर से/**Respondent by :**	Shri Ravi Bharadwaj V & Shri Venkatesh, A.Rs.

Date of Hearing	14/10/2025
Date of Pronouncement	28 /10/2025

(आदेश)/ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad (hereinafter referred to as "CIT(A), dated 20.01.2025 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") and relates to Assessment Year (A.Y.) 2014-15.

2. The Ground No.1 of appeal raised by the Revenue as under:

> *"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition made u/s 56(2)(vii)(b) of the Act without appreciating that the method adopted for determination of FMV of the equity share by the assessee is not as per the method prescribed under Rule 110A of the IT Rules."*

3. Revenue is aggrieved by the order of the Ld. CIT(A) deleting the addition made on protective basis in the hands of the assessee for an amount of Rs.50 Crores made u/s.56(2)(vii)(b) of the Act. The assessee during the impugned year had received share application money amounting to Rs.62.50 Crores. The said share application money was received in lieu of 1,25,00,000 shares issued in subsequent year at a premium of Rs.40/- per share. The AO found the assessee to have not justified the premium received and accordingly invoked the provisions of Section 56(2)(vii)(b) of the Act for making addition of excess amount received in comparison to the Fair Market Value ('FMV') of the shares, to the income of the assessee. However, noting that the shares were issued only in the subsequent year, he held that the substantive addition is to be made in the succeeding year and made protective addition in the impugned year.

The Ld. CIT(A) noted that in the succeeding year the ITAT had deleted the addition made on substantive basis on merits itself and accordingly, he found no case for confirming the addition made on protective basis in the impugned year.

4. Before us, Ld. DR was unable to point out as to why the addition made in the impugned year on protective basis was sustainable in the light of the fact as noted above that the addition made on substantive basis itself was deleted on merits by the ITAT in the subsequent years. He fairly admitted that the Revenue had no case on the issue in the light of the admitted facts as above.

In view of the same, we find no merit in the ground raised by the Revenue seeking confirmation of the addition of Rs.50 Crores made in the hands of the assessee on protective basis u/s. 56(2)(vii)(b) of the Act. Ground of appeal, therefore, is dismissed.

5. Ground of appeal No.2 to 5 raised by the Revenue reads as under:

> *"2. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in allowing the claim of reimbursement of expenses to AE by not appreciating the fact that the assessee has not demonstrated that these expenses are wholly and exclusively for the purpose of business of the assessee?*
>
> *3. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in allowing the claim of the reimbursement of expenses to AE by not appreciating the fact that the assessee has not demonstrated any tangible and measurable benefits derived by the assessee and thereby falling to satisfy the Need Benefit Test.*
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> *4. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in allowing the claim of the reimbursement of expenses to AE by not appreciating the fact that the assessee has not justified the allocation key i.e. project*

capacity which was not based on actual usage but on arbitrary and generic parameter.

5. Whether on the fact and circumstances of the case and in law, the CIT(A) is justified in stating that unless TPO proves that there is an error in nature of expenditure or apportioning the reimbursement of expenses cannot be made NIL, especially when the assessee has not satisfied the need benefit test which resulted in cost efficiency, Improved productivity or any tangible financial gains and onus related to expenditure is on assessee."

6. The grievance raised by the Revenue in the above ground relates to deletion of addition made to the income of the assessee on account of transfer pricing adjustment made to Specified Domestic Transaction ('SDT') entered into by the assessee with its Associate Enterprise. The quantum of adjustment so made being Rs.2.38 Crores and the nature of transaction with the Associate Enterprise being reimbursement of expenses.

7. The orders of the authorities below reveal that the assessee had reported SDT of reimbursement of expenses with its related party Mytrah Energy (India) Private Limited ('MEIPL') to the tune of Rs.2,83,00,139/- in Form 3CEB, audit report, benchmarking the transaction using the Comparable Uncontrolled Price ('CUP') method. The assessee had explained the nature of transaction contending that MEIPL was incorporated on 12th November, 2019 and its principal activity was to generate and sell electricity from wind energy farms by itself and through its subsidiaries and engaged itself in wind farm development and infrastructure maintenance services to its group entities. It was explained that generally for setting up of any wind/solar based projects MEIPL

floats a Special Purpose Vehicle ('SPV') and the respective project was housed in the said SPV. The purpose being to satisfy the lenders requirements since housing separate projects in separate SPVs resulted in limiting the lenders exposure. MEIPL acted as a sponsor of the project undertaken in each such separate SPV. As a sponsor MEIPL undertook responsibility to ensure that the project was executed on time and rendered host of other services to the SPVs. For all such services, which was directly or indirectly rendered for the benefit of SPV MEIPL allocated the expenditure based on Mega Watt ('MW') capacity of the projects of the respective SPVs. The assessee explained that during the impugned year expenses incurred by MEIPL were apportioned to two projects, namely, Mytrah Vayu (Indravati) Private Limited and Mytrah Vayu (Gujarat) Private Limited, the assessee before us ,on the basis of capacity of the project i.e. 150 MW to 50MW.It was contended that MEIPL was allocated professional consultancy amounting to Rs.8,11,56,04,668/- and salaries amounting to Rs.5,69,87,978/- to the two SPVs resulting in an allocation of Rs.2,83,00,139/- to the assessee. The assessee pointed out that the expenses allocated by MEIPL were only a portion of the professional fee and salaries paid by it and said expenditures were incurred for the direct and immediate benefit of the projects undertaken in the SPVs. The assessee further pointed out that the entire expenses so allocated to the assessee had been debited to capital work in progress and no portion of the same had been as an expense in the P&L account. The assessee contended the transaction to be capital in nature and not covered for the purposes

of transfer pricing as per provisions of Section 92BA r.w.s. 40A(2)(b) of the Act. However, he stated that out of abundant caution, the assessee had reported the transaction in Form 3CEB. It was also contended that the assessee was eligible for claiming benefit of deduction of profits under 80IA of the Act though it had not claimed any benefit during the impugned year, but, by virtue of allocation of said expense to the assessee, it had resulted in reduction of profits of the assessee and, therefore, business transacted between the assessee and MEIPL was not covered under 80IA(10) of the Act. The contention, therefore, was that the assessee did not qualify as a specified domestic transaction in terms of 92BA of the Act. The AO, however, noted that the assessee itself had disclosed the impugned transaction in Form 3CEB under the head SDT in the nature of any business transacted which has resulted in more than ordinary profits to an eligible business to which 80IA or Section 10AA of the Act is applicable. He, accordingly, rejected the contention of the assessee that the impugned transaction was not a SDT as per Section 92BA of the Act. He further found that allocation of expenses based on adopted allocation key i.e. the project capacity, failed the benefit test since he found the assessee to have derived no benefit from the same. He found that the allocation key i.e. project capacity was Nil and noting that the assessee had failed to explain how the reimbursement of expenses was wholly and exclusively connected with his business, he benchmarked the transaction at Nil. Accordingly, TP adjustment of Rs.2.83 Crores was made to the

income of the assessee by adding the same to the income of the assessee.

8. The Ld. CIT(A), however, noted that the TPO's disqualification of the expenditure stating the same to have not resulted in any benefit to the assessee was not correct since he found that the TPO had found no defect or fault either in the calculation of total cost or apportioning of the same between the parties. He noted that the assessee had submitted all details and documents and explained the nature of expenses and method of apportioning. He held that unless it is proved by the TPO that there was an error in either the nature of expenditure or in apportioning the same it could not be treated as Nil by the TPO saying no benefit was received. He further noted that the impugned expenses were not debited to the P&L account, but, were capitalized towards capital work in progress and accordingly, he directed the deletion of addition made to the income of the assessee on account of TP adjustment made. His finding in this regard are contained at page no.55 to 56 of his order as under:

> *"The TPO in his order disregarded the expenses allocation between the two SPV of the MEIPL based on the Project Capacity as on the date of finalizing the order and also in the subsequent years as per appellant own submission the Project Capacity was NIL. Further the TPO stated that the appellant failed to submit any cogent details as to how the reimbursement of expenses is wholly or exclusively connected with the appellant's business and that the appellant company has received corresponding benefit from such reimbursement of expenses.*
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> *However, in this regard the TPO without finding any defect / fault either in the calculation of total cost or apportioning between the parties, disqualified the expenditure stating that the same has not*

resulted in any benefit to the appellant and treated the same as NIL which is not correct. Firstly the appellant has submitted the details and documents and explained the nature of expenses and the method of apportioning. Unless it is proved by the TPO that there is an error in either in the nature of expenditure or in apportioning, the same cannot be treated as NIL by the TPO saying no benefit received. In view of the facts of the case that the TP adjustment amounting to Rs.2,83,00,139/- paid by the appellant to MEIPL towards reimbursement of expenses Professional Fees which was not debited to P & L Account of the appellant and was capitalized towards Capital Work in Progress does not hold merit and accordingly the AO is directed to delete the same. Hence, ground No 2 is allowed."

9. We have heard both the parties. The facts which are not disputed are that the impugned transaction is a SDT. The same relates to reimbursement of expenses to the associate entity of the assessee. The impugned amount has not been debited to the P&L account but has been capitalized as capital work-in-progress. The above facts are not disputed.

The transactions qualifying as SDT in law are listed in Section 92BA of the Act which is reproduced hereunder:

"Meaning of specified domestic transaction.

92BA. *For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—*

(i) [***]

(ii) any transaction referred to in section 80A;

(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or

(va) any business transacted between the persons referred to in sub-section (6) of section 115BAB;

> *[5][(vb) any business transacted between the assessee and other person as referred to in sub-section (4) of section 115BAE;]*
>
> *(vi) any other transaction as may be prescribed,*
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> *and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees."*

10. The contention of the assessee is that the impugned transaction does not qualify as SDT, since, it is not an expense which qualifies u/s.40A(2)(b) of the Act nor is it any transaction of the nature relating to Section 80IA of the Act as specified under the said Section. The case of the Revenue, however, is that the assessee itself had reported the transaction as qualifying u/s.80IA (10) of the Act referred to in Sub-Section (4) of 92BA of the Act. Section 80IA(10) of the Act reads as under:

> ***"Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.***
>
> ***80-IA.*** *(1).....*
>
> **.....**
>
> *(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:*
>
> ***Provided*** *that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F."*

A bare perusal of the above would reveal that where the AO finds that owing to close connection between the two entities the transaction is so arranged so as to increase the profit of the entity claiming deduction u/s.80IA of the Act, he is empowered to make

adjustment to the value of the transaction bringing it at Arm's Length Price ('ALP').The clinching factor for invoking 80IA(10) of the Act is that the **transaction should be so arranged so as to result in more than ordinary profits to the entity claiming deduction u/s. 80IA of the Act.** In the present case, the assessee is entitled to deduction u/s.80IA of the Act, though,has not claimed the same in the impugned year. The transaction entered into by the assessee pertains to claim of expenditure [though capitalized) to the extent of Rs.2.38 Crores. The AO, however, has contended that the fair value of the transaction is Nil. Clearly the case of the AO is not that of the assessee having transacted its business with the AE in such a manner so as to result in more than ordinary profits. In fact, the case of the AO is to the contrary that by claiming such expenses the assessee has reduced its profit and, therefore, he has computed the fair value of the transaction to be Nil as opposed to the assessee having claimed the expense to be to the tune of Rs.2.38 Crores. As per the Revenue's own case we find that the impugned transaction does not qualify u/s.80IA(10) of the Act, on the basis of which, the AO/TPO has identified the transaction to be a specified domestic transaction. Since, the impugned transaction, we have noted does not qualify as an SDT as per Revenue's case itself, there was no requirement for benchmarking the same at all. The adjustment, therefore, made by the TPO,we agree with the Ld. CIT(A) ,has wrongly been made by treating it as SDT. The order of the Ld. CIT(A), therefore, is confirmed directing the deletion of addition made to the income of

the assessee. Ground of appeal raised by the Revenue is, therefore, dismissed.

11. In the result, appeal filed by the Revenue is dismissed.

This Order pronounced on 28 /10/2025

Sd/-	Sd/-
(SUCHITRA KAMBLE)	(ANNAPURNA GUPTA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/10/2025