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

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No. 104/Ahd/2024
(Assessment Year: 2016-17)

M/s. Bodal Chemicals Limited, Plot No. 123, 124, Phase-I, GIDC, Vatva, Ahmedabad, Gujarat-382445 [PAN : AAACD 5352 M]	Vs.	Deputy Commissioner of Income-tax, Central Circle-1(1), Ahmedabad
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri S.S. Nagar, AR
Respondent by:	Shri Alpesh Parmar, CIT (DR)

Date of Hearing	17.11.2025
Date of Pronouncement	13.02.2026

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal has been filed by the assessee against the order dated 23.10.2023 passed by the Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "Ld. CIT(A)" in short], under section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short] for the Assessment Year 2016-17.

2. The assessee has raised following grounds of appeal:-

"1.0 That on the facts and in the circumstances of the case, the disallowance, imposition of tax and interest with reference thereto, the quantification of taxable income and the tax liability, has been grossly unjustified, erroneous and unsustainable and necessary direction be given to the Ld. AO to give appropriate relief in accordance with law.

2.0 That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in confirming the addition of Rs.1,29,50,000/- made by the Ld. AO on account of donation made to 'Arvindo Institute of Applied Scientific Research Trust' considering it not to be genuine and thereby disallowing claim u/s 35(1)(ii) of the Act.

3.0 That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in not allowing the deduction u/s 80IA(4)(ia) of the Action respect of operating and maintaining infrastructure facilities viz. effluent treatment plant amounting to Rs. 14,64.32.441/-by applying the provisions of Section 80-IA(7) of the Act and on the contention that the relevant Form 10CCB was not filed with the return of income.

3.1 That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified the Ld. CIT(A) was not justified and grossly erred in not allowing the deduction u/s 80IA(4)(ia) of the Act in respect of operating and maintaining infrastructure facilities viz. effluent treatment plant amounting to Rs. 14,64,32,441/- by applying the provisions of Section 80A(5) of the Act and on the contention that the deduction was not claimed in the return of income.

4.0 That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in not allowing the deduction u/s 801A of the Act in respect of profit and gains derived by undertaking engaged in generation of steam amounting to Rs. 14.27,64,966/-by applying the provisions of Section 80-IA(7) of the Act and on the contention that the relevant Form 10CCB was not filed with the return of income.

4.1 That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in not allowing the deduction u/s 801A of the Act in respect of profit and gains derived by undertaking engaged in generation of steam amounting to Rs. 14,27,64,966/- by applying the provisions of Section 80-IA(7) of the Act and on the contention that the relevant Form 10CCB was not filed with the return of income.

Additional Ground No. 1

On the facts and circumstances of the case, the appellant wishes to lodge claim of Export Incentives availed in the form of FMS/FPS/IEIS/MEIS as capital receipt in computing tax liability under the normal & MAT provisions of the Act.

Additional Ground No. 2

That in view of the judgment of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. vs. CIT [1998] 97 Taxmann 358 (SC) and other judicial pronouncements, the appellant is entitled to raise the above additional grounds of appeal before ITAT, since ITAT has jurisdiction to consider new and/or additional claims/deductions subsequently which was not claimed in return of income &/or before the Ld. AO &/or before the Hon'ble CIT(A).”

3. The brief facts of the case, as culled out from the record, are that the assessee is a Public Limited Company engaged in the business of manufacturing and export of dyes and chemicals. It filed its return of income on 15.10.2016, declaring total income of Rs.1,17,51,95,340/-. The case was selected for scrutiny. During assessment, the Assessing Officer noted that the assessee had claimed weighted deduction of Rs.1,29,50,000/- u/s 35(1)(ii) of the Act against a donation of Rs.74,00,000/- to "Shri Aurobindo Institute of Applied Scientific Research Trust". Based on departmental information stating that the Trust was not approved, the Assessing Officer issued a show cause notice on 06.12.2018 asking for reply by 07.12.2018. Since no reply was allegedly received, the Assessing Officer disallowed the entire deduction and completed assessment u/s 143(3) on 14.12.2018.

3.1 The Assessing Officer also made the disallowance of Rs.3,32,755/- u/s 14A, being 1% of aggregate investments in absence of any reply by the assessee in this regard. The assessee contended that the time given for compliance was unreasonably short and that replies dated 14.12.2018 and 15.12.2018 were actually submitted, but not considered.

3.2 In appeal, the Ld. CIT(A) partly allowed the appeal. He confirmed the disallowance u/s 35(1)(ii), upheld the denial of deduction u/s 80-IA(4)(ia) & 80-IA(1) for want of Form 10CCB and non-claim in return, but granted relief on some other issues.

4. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal.

5. Ground No. 1 – General Ground

This ground is general in nature and requires no separate adjudication.

6. Ground No. 2 – Disallowance of deduction u/s 35(1)(ii) of the Act. Donation of Rs.1,29,50,000/-.

6.1 During the year under consideration, the assessee made a donation of Rs.74,00,000/- to Shri Arvindo Institute of Applied Scientific Research Trust and claimed weighted deduction of Rs.1,29,50,000/- u/s 35(1)(ii) being 175% of the amount donated. At the time of making the donation, the trust was duly approved under section 35(1)(ii) and all supporting documents such as approval, CBDT circular, recognition certificates and gazette notification were available. The Assessing Officer disallowed the deduction by relying upon CBDT letter dated 14.12.2018 and an RTI reply stating that the trust was never recognised and further made the addition by invoking section 68 of the Act. The disallowance was confirmed by the CIT(A).

6.2 Before us, the Ld. AR submitted that the deduction was claimed on the basis of valid approval and documentary evidence available at the time of making the donation. As per the Explanation to section 35(1), the deduction cannot be denied merely because approval of the institution is withdrawn subsequent to the payment. The reliance placed by the Assessing Officer on the CBDT clarification dated 14.12.2018, which is subsequent to the date of donation, is contrary to the statutory provision and principles of natural justice. It is further submitted that the addition under section 68 is wholly misconceived as no credit entry exists in the books of account and the issue relates to disallowance of expenditure and not unexplained cash credit. Reliance is placed on the decision of the Delhi ITAT in Feather Infotech (P.) Ltd. (161 taxmann.com 441), wherein it has been held that sections 68 and 69C are not applicable in such circumstances. Accordingly, the disallowance deserves to be deleted.

6.3 The Ld. DR, on the other hand, relied on the letter of CBDT dated 26.09.2018 stating the trust never had approval during the relevant period and also relied on the reply of DSIR under RTI confirming the trust was never

recognised as a SIRO. The Ld. DR also submitted that the notices issued u/s 133(6) to the trust went unserved or unanswered.

6.4 We have carefully considered the rival submissions and perused the material placed on record. It is an undisputed fact that the assessee had made a donation of Rs.74,00,000/- to Shri Arvindo Institute of Applied Scientific Research Trust during the previous year and claimed weighted deduction under section 35(1)(ii) of the Act. The assessee has placed on record copies of approval, notification, recognition certificates and other supporting documents which were available at the time of making the donation. The disallowance has been made on the basis of clarification issued by CBDT and information received under RTI indicating that the approval of the Trust had expired earlier. For the sake of ready reference, the Circular dated 14.12.2018 of the Board is reproduced as under:-

"F. No. 225/351/2018-ITA (II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
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Room No. 245A,
North Block, New Delhi

14th December, 2018

To

All Principal Chief Commissioners of Income Tax
All Director Generals of Income Tax (Investigation)

Sir/Madam

Subject: Information regarding bogus donation racket under section 35(1)(ii) of Income-tax Act, 1961-reg.-

2. In this connection, I am directed to state that Section 35(1)(ii) of the Income-tax Act, 1961 ('Act') prescribes a weighted deduction @ 150% (175% before 01.04.2018) to a donor for any sum paid to an approved 'research association having as its sole object the undertaking of scientific research or to a 'university, college or other institution' for carrying out scientific research. Very recently, Board has received several references from the field authorities for clarifying whether a Trust namely ***M/s Shri Arvindo Institute of Applied Scientific Research Trust (PAN:***

***AAFTS7349D) (Hereinafter 'the Trust'**) having offices at Mumbai & Puducherry is an entity specified by the Central Government through a Notification for purposes of section 35(1)(ii) of the Act or not. Presently, the trust is assessed with CIT(Exemption), Mumbai.*

3. In this regard, upon perusal of records, it emerges that the above Trust was earlier approved under section 35(1)(ii) of the Act ***which expired on 31.03.2006.*** *Thereafter, this entity, being not recognized for purpose of section 35(1)(ii) of the Act, is not eligible to raise donations for undertaking scientific research however, the Trust has raised substantial donations over the last six years on the basis of a forged certificate while the donors have irregularly claimed weighted deduction u/s. 35(1)(ii) of the Act on donations made to the Trust.*

4. In view of above, I am directed to state that the pending scrutiny assessment cases of donors who have claimed irregular weighted deduction u/s 35(1)(ii) should be handled in light of above facts. In case of donors whose cases are presently not under scrutiny, the Board desires that a list of donors who had provided funds to the Trust u/s 35(1)(ii) of the Act should be drawn by CIT (Exemption}, Mumbai for the period from A.Y 2012-13 to 2018-19 and circulated to the concerned field authorities expeditiously.

5. I am further directed to state that while handling investigations/ enquiries in these cases, the concerned Assessing Officer should examine the specific transactions related to the sum donated and cash trail should be clearly identified. Also, various provisions pertaining to enquiry and investigation under the Act should be effectively used and assessment orders should be passed under the monitoring of supervisory authorities.

6. This issues with approval of Member (IT&C), CBDT."

6.5 The Assessing Officer has denied such deduction mainly on the ground that above referred trust was not a registered trust in the year under consideration and last registration of the trust was up to 31/03/2006. The Assessing Officer has observed that such trust has issued bogus certificates thereafter and issued bogus donation receipts which were based upon CBDT Instruction. On this basis, the Assessing Officer has denied deduction claimed by the appellant. On the other hand, the assessee has claimed that donation is supported by receipts, payment is made through account payee cheque and there is no evidence that cash has been received against cheque payment hence the Assessing Officer was not justified in making impugned addition. The Ld. CIT(A) has relied on the judgment of the Co-

ordinate Bench of ITAT Chennai in the case of Sudhakar Natarajan in ITA No. 2205/Chny/2017 vide order dated 24/05/2019, wherein it was held as under:-

> *"11. In view of the above, it is obvious that Shri Arvindo Institute of Applied Scientific Research Trust was not recognized beyond 31.03.2006. Forged document has been filed before the authorities to misrepresent as if the said Trust was recognized beyond 31.03.2006. Moreover, it is also not the case of the assessee that the recognition was extended beyond 31.03.2006, Therefore, the CIT(Appeals) is not justified in allowing the claim of the assesses under Section 35(1)(ii)of the Act. When the Trust was not renewed beyond 31.03.2006, it is not known what made the assesses to make donation.*
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> *12. The assesses now claims that he is a science graduate connected with pharmaceutical research and consultancy, therefore, it has to be allowed as business loss / expenditure under Section 37(1) of the Act. This Tribunal is of the considered opinion that the claim of the assesses cannot be allowed under Section 37(1) of the Act also. The payment was admittedly said to be made as donation for scientific research and not for any business expenditure. When the approval was not available on the date of payment and admittedly forged document has been produced before the authorities below to claim that Shri Arvindo Institute of Applied Scientific Research Trust was approved under Section 35(1)(ii) of the Act, this Tribunal is of the considered opinion that this kind of claim cannot be appreciated. Once the recognition was not granted and the claim was made on the basis of forged and false document, including one of gazette notification, this Tribunal is of the considered opinion that the CIT(Appeals) ought not to have allowed the claim of the assesses. Since it is not a business expenditure and the claim is one of donation, it cannot be allowed under Section 37(1) of the Act also. Therefore, this Tribunal is unable to uphold the order of the CIT(Appeals). Accordingly, the order of the CIT(Appeals) is set aside and that of the Assessing Officer is restored.*
>
> *13. In the result, the appeal filed by the Revenue is allowed."*

Since the order of the Ld. CIT(A) is based on the order of the Co-ordinate Bench of the Tribunal, and in the absence of any change in the factual matrix of the case, we decline to interfere with the order of the Ld. CIT(A) on this issue.

The appeal of the assessee on this ground is thus dismissed.

7. Ground Nos. 3 & 3.1 – Deduction u/s 80-IA(4)(i) in respect of Effluent Treatment Plant – Rs.14,64,32,441/-

7.1 The assessee is operating and maintaining an effluent treatment plant, which qualifies as an infrastructure facility. It was argued that, due to lack of awareness at the time of filing the return, the assessee did not claim deduction under section 80-IA(4)(i). The claim was raised for the first time before the CIT(A) by way of an additional ground along with audit report in Form 10CCB. The CIT(A) admitted the additional ground and called for a remand report from the Assessing Officer. Though the CIT(A) was satisfied on the eligibility and merits of the claim, the deduction was denied solely on the ground that Form 10CCB was not filed along with the return of income and by invoking section 80A(5) of the Act.

7.2 Before us, the Ld. AR submitted that the ETP operated by it is an eligible infrastructure facility, and deduction under section 80-IA(4)(i) is allowable on merits, which has already been accepted by the Ld. CIT(A). The Ld. AR argued that the requirement of filing Form 10CCB along with the return of income is procedural in nature. Since the audit report was duly obtained and furnished during appellate proceedings, and no prejudice has been caused to the Revenue, the deduction cannot be denied on a technical ground. The Ld. AR placed reliance on the judgments of the Hon'ble Delhi High Court in the case of CIT Vs. Contimeters Electricals (P) Ltd (178 Taxman 422), Jaquar and Company P. Ltd. Vs. DCIT and Madhav Construction vs. Principal CIT.

The Ld. AR, therefore, prayed that the deduction under section 80-IA(4)(i) be allowed and the order of the Ld. CIT(A) denying the claim solely on the basis of section 80-IA(7) be set aside

7.3 The Ld. DR, on the other hand, supported the orders of the authorities below and contended that the Ld. CIT(A), after considering the submission, remand report and rejoinder filed by the assessee, rightly denied the claim of deduction u/s 80IA(4)(ia) of the Act. Ld. DR relied on t on the judgement of

Hon'ble Gujarat High Court in the case of Rachna Infrastructure Pvt. Ltd. Vs. PCIT [2022] 138 taxmann.com 416

7.4 We have considered the rival submissions and examined the record. It is evident that the assessee raised the claim of deduction under section 80-IA(4)(i) for the first time before the Ld. CIT(A) by way of an additional ground along with audit report in Form 10CCB. The Ld. CIT(A) admitted the additional ground, called for remand report and, on merits, did not dispute the eligibility of the effluent treatment plant as an infrastructure facility. The deduction was denied on the ground that Form 10CCB was not filed along with the return of income and by invoking section 80A(5) of the Act.

7.5 Section 80IA(7) reads as under:-

> *"*
>
> *.....*
>
> *(7) [The deduction] under sub-section (1) from profits and gains derived from an [undertaking] shall not be admissible unless the accounts of the [undertaking] for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288 [before the specified date referred to in section 44AB and the assessee furnishes by that date] the report of such audit in the prescribed form duly signed and verified by such accountant."*

In the case of the assessee, it is an undisputable fact on record that the assessee has neither furnished the audit report in Form 10CCB along with relevant annexures at the time of filing ITR nor during the assessment proceedings. **The Hon'ble Apex Court in the case of PCIT vs. Wipro Limited, 140 taxmann.com 223 (SC),** held that, in order to claim benefit under Income-tax Act, the twin conditions as provided as per the provisions of Income-tax Act have to be fulfilled. **The Hon'ble Apex Court in the case of Commissioner of Customs (Import), Mumbai Vs. M/S. Dilip Kumar And Company & Ors.** held that the fiscal statutes have to be interpreted strictly and where substantial

compliance is a pre-requisite, in the absence of substantial compliance no benefit can be accorded. For the sake of ready reference, the relevant portion of the judgment of the Hon'ble Apex Court is reproduced hereunder:-

> *"…….*
> *50 In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held – "The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd v. CCE and Customs)."*
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> *51. In Hari Chand Case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.*
>
> *52. To sum up, we answer the reference holding as under - (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification".*

In view of the above, since the conditions have not been fulfilled, the assessee is not eligible for the deduction u/s 80IA of the Act, and we find no error

in the order of the Ld. CIT(A) holding that the assessee was ineligible to claim the deduction u/s 80IA in respect of profits and gains derived from the business of effluent treatment plant.

Accordingly, the appeal of the assessee on this ground is dismissed.

8. Ground Nos. 4 & 4.1 – Deduction u/s 80-IA in respect of Steam Generation Unit – Rs.14,27,64,966

8.1 The assessee also claimed deduction under section 80-IA in respect of profits derived from its steam generation undertaking. Similar to the effluent treatment plant claim, the deduction was denied by the CIT(A) on the ground that Form 10CCB was not filed along with the return of income.

8.2 The assessee submits that the facts and legal position governing this ground are identical to Ground No. 3.

8.3 We have heard the rival contentions on this issue and perused the material available on record. We find that the facts and legal issues involved in this ground are identical to those adjudicated by us in Ground No.3. Following the reasoning and findings recorded above, we hold that the deduction under section 80-IA in respect of the steam generation undertaking is not allowable.

The appeal of the assessee on this ground is also thus dismissed.

9. Additional Ground No. 1 – Export Incentives treated as Capital Receipt – Rs.7,41,96,805/-

9.1 The assessee has raised additional grounds of appeal involving purely legal issues based on facts already available on record. The Ld. AR pleaded that additional grounds involving legal issues be admitted, for which reliance has been placed on the decisions of the Hon'ble Supreme Court in the case of Jute

Corporation of India Ltd. vs. CIT (1991) 187ITR 688 (SC) and NTPC Ltd. vs. CIT (1998) 229 ITR 383(SC), and on the decision of the Bombay High Court in Pruthvi Brokers & Shareholders Pvt. Ltd., 349 ITR 0336.

9.2 We have considered the rival submissions and perused the material on record. The additional ground raised by the assessee involves a pure question of law based on facts already available on record. Respectfully following the decisions of the Hon'ble Supreme Court in NTPC Ltd. and Jute Corporation of India Ltd., we admit the additional ground.

9.3 Facts relating to the additional grounds are that the assessee received export incentives in the form of FPS, FMS, IEIS and MEIS aggregating to Rs.7,41,96,805. Due to an inadvertent error, these incentives were treated as revenue receipts and offered to tax under both normal and MAT provisions. The incentives were granted under the Foreign Trade Policy 2009-14 and 2015-20 with the objective of promoting exports and offsetting infrastructural inefficiencies. It was submitted that in the assessee's own case for AY 2020-21, the Assessing Officer has accepted such incentives as capital receipts.

9.4 The Ld. AR submitted that the export incentives are capital in nature as they are granted as an incentive to promote exports and not as a reimbursement of operational profits. The Ld. AR submitted that the judicial precedents including the decision of the Rajasthan High Court in Nitin Spinners Ltd., affirmed by the Supreme Court, have held such incentives to be capital receipts not chargeable to tax. It is further submitted that capital receipts cannot be included in book profits under section 115JB, as held by the Calcutta High Court in Ankit Metal and Power Ltd. Therefore, the incentives deserve to be excluded from taxable income under both normal and MAT provisions.

9.5 The Ld. DR vehemently argued that since the matter involves primary adjudication of the issue, and since Revenue never had the opportunity to go through the issue, the Revenue adjudicating authority should be given an opportunity. We find strength in the argument of the Ld. DR and accordingly remand this issue to the file of the Assessing Officer for fresh adjudication in accordance with law.

The appeal of the assessee on this ground is allowed for statistical purposes.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

The order is pronounced in the open Court on 13.02.2026.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTITAL) **JUDICIAL MEMBER**	**(DR. B.R.R. KUMAR)** **VICE-PRESIDENT**

Ahmedabad; Dated 13.02.2026

***btk*

आदेश की प्रतिलिपि □ ग्रेषित/**Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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