

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1752/Mum/2022
(Assessment Year :2016-17)**

Dy. Commissioner of Income Tax Central Circle-2(2) Old CGO Building 806, 8 th Floor M.K.Road Mumbai – 400 020	Vs.	M/s. Viral Alkalys Ltd 11 th Floor Parinee Cresendo G Block, Plot No.C- 38/39, Behind MCA BKC, Mumbai – 400 051
PAN/GIR No.AAACV1364P		
(Appellant)	..	(Respondent)

Assessee by	Shri Siddharth Kothari
Revenue by	Ms. Vranda U Matkari
Date of Hearing	14/03/2023
Date of Pronouncement	15/05/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against the order dated 12/04/2022 passed by the Id. CIT(A)-48,Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2016-17.

2. The grounds raised by the Revenue reads as under:-

“1. Whether the Ld. CIT(A) has erred both in law and on facts in deleting the addition Rs. 5,67,13,974/- made by the assessing officer representing deduction claimed u/s 801A (4) of the IT Act.

2 Whether the Ld CIT (A) has erred both in law and on facts in deleting the addition Rs. 56,50,000/- made by the assessing officer representing disallowance out of business expenses from 'other expenses'.

3 Whether, the Ld CIT (A) has erred both in law and on facts in failing to appreciate the findings of the assessing officer and overlooking the finding made during the assessment proceedings

4 Whether the Ld. CIT (A) has failed to appreciate the details/justification given by the AO and therefore addition made and that the AO had established that transactions were not genuine and thus the addition made was correct by giving detailed clarification after through verification of the submission made by the assessee.

3. Apart from that Revenue has also raised additional grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that the assessee has got its accounts audited only on 19.02.2018 and the audit report in form no 10CCB has been filed by assessee along with its revised return only on 19.02.2018, hence deduction w/s 80IA(4) of the Act is inadmissible to assessee as per the provisions of section 801A(7) of the IT Act,

2 Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in ignoring that as per section 80AC of the IT Act no such deduction shall be allowed to assessee unless assessee furnishes a return of his income for such assessment year on or before the due date specified under sub section (1) of section 139 of IT Act.”

4. The brief facts are that assessee company is engaged in the business of treatment of effluent water sold waste and has received approval consent from Maharashtra Pollution Control Board vide letter dated 23/03/2007 for manufacture of 30 MT per month potassium carbonate by using waste water from Vinati Organics as raw material. The revised return of income filed on 19/02/2018. In the revised return the assessee has claimed deduction u/s.80IA(4) alongwith it, it has filed audit report in Form 10CCB electronically wherein the Auditors have quantified the deduction u/s. 80IA(4) at Rs.5,67,13,974/-. Ld. AO has denied the claim of deduction u/s.80IA(4) holding that assessee is not doing activities as defined in Section 80IA(4) which includes carrying out infrastructure project of water treatment project or effluent treatment plant. The relevant observation of the ld. AO reads as under:-

23.3. The assessee is not doing above activities and therefore it is not falling with in definition of Infrastructure facilities.

1) The assessee is not doing activity of removing harmful substances from water before it is discharged to the environment. Thus assessee cannot be said to be enterprise doing effluent treatment.

2) The assessee was asked to produce drawing and flow chart to explain how it received waste water from M/s Vinati Organics Ltd. How it processes it and how it discharges it to environment. No evidences could be produced by it to prove that there is any infrastructure through which it received waste water released by M/s Vinati Organics Ltd. Thus the most important thing that waste water is received by assessee could not be proved by assessee.

3) The assessee is not doing activity of removing harmful substances in order to turn it into a type of water that can be safely discharged into environment. The assessee is, neither removing harmful substances nor it is discharging water into environment

4) The assessee is into a business of manufacture of potassium carbonate and caustic potash and not into business of providing infrastructure facility which is prerequisite for claiming deduction u/s 801A(4) of the IT Act

5) P&L account of assessee shows revenue of assessee from sale of products and not from running effluent treatment plant. The relevant part of schedule 15 revenue from operation is reproduced below:-

Note 14(a)

Details of sales of products

Potassium Carbonate	Rs. 7,10,03,854/-
Caustic Potash Lye	<u>Rs. 2,45,10,097/-</u>
Total	<u>Rs. 9,55,13,951/-</u>

Since years assessee is in business of manufacturing above products and get revenue from sale of above products.

23.4. Thus the revenue of assessee is from various persons to whom Potassium Carbonate and Caustic Potash Lye is sold and is not from persons whose waste water is treated by assessee. Therefore the revenue of assessee is not eligible for deduction as it is not generated from eligible infrastructure activities.

23.5. There is no explanation as to how waste water is used to manufacture Potassium Carbonate and Caustic Potash Lye. What are the chemical contain of waste water and how this chemical contains are used to produce potassium carbonate and

Caustic Potash Lye. No authentic data is submitted to show what are the chemical components of waste water and what are the chemical components of above referred products. Whether waste water really has that components which can be used for manufacturing above products.

23.6. Thus it is clear that assessee is neither engaged in the business activities defined in section 801A nor it is earning revenue from the eligible business activities and therefore no deduction is allowable to assessee.

23.7. Without prejudice to above the assessee has not fulfilled other conditions also.

1) A certificate in Form 10CCB is not filed alongwith return, condition laid down u/s 801A(7) is not fulfilled.

2) Certificate issued by Maharashtra Pollution Board was available only upto 31.12.2011 No further extension was granted. Therefore the project is not approved as defined in section 801A(4)(1)(b) of the IT Act.

3) Details of incorporation of company and dates of start of business were not provided by assessee, Therefore condition laid down u/s 801A (4)(1)(C) of the IT-Act is not fulfilled.

4) Use of machinery purchased is not explained.

In view of the above facts of the case it is clear that assessee is not an eligible enterprise carrying on business of developing, or developing and maintaining or developing operating and maintaining infrastructure facility u/s801A(4) of the act and therefore deduction of Rs. 5,67,13,974/- claimed u/s 801A(1) of the IT Act is not allowed.

5. The ld. CIT(A) had allowed the claim of deduction after referring certificate of Maharashtra Pollution Board that assessee is engaged in the business of operating and maintaining effluent treatment plant which is an eligible business for provision of

Section 80IA(4). The scanned copy of certificate has been incorporated from pages 24-27 of the appellate order.

6. We have heard both the parties and also perused the relevant finding given in the impugned order as well as the material placed before us. The explanation below Sub-Section (4) to Section 80IA states that for the purpose of this clause “infrastructure facility” means “*a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system*”. It has been brought to our notice that CBDT vide Circular No.1/2006 dated 12/01/2006 have also clarified that effluent treatment plant shall be considered as part of water treatment plant and shall be eligible for tax u/s.80IA. The relevant portion of the CBDT Circular reads as under:-

3) In order to control environmental degradation, due to discharge of effluents into nearby rivers by industries, the Pollution Control Boards have prescribed norms for treatment and conveyance of effluents to a safe disposal point. As a result a number of plants have been set up for treatment of effluents and its conveyance system. In this context, a number of representations have been received seeking clarification as to whether the effluent treatment and conveyance system may be treated as an infrastructure facility for the purposes of tax benefit under section 80-IA.

(4) Under the treatment of effluents and its conveyance system, the effluents emanating from chemical industries are to be conveyed inside the sea through onshore pipeline and before discharging effluent through pipeline, entire load of effluent is to be treated to marine standards. Therefore, it is a part of water

treatment system and would accordingly qualify as an infrastructure facility for the purposes of tax benefit under section 80-IA. However, an enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining such infrastructure facility shall be eligible to the tax benefit under section 80-IA, subject to fulfilment of other conditions laid down therein.

7. Thus, it has clarified that the effluent water treatment shall be considered as water treatment plant eligible u/s. 80IA. Before us, it has been explained that the assessee gets effluent water and this water contains Potassium Carbonate, Sodium carbonate, Potassium Hydroxide in dissolved form. This aqueous stream containing the dissolved salts is received by the assessee. Then this stream is concentrated in multi-effect evaporator to remove the water contents. The concentrated stream is then crystallized using cooling water. During crystallization process Potassium Carbonate and Sodium carbonate crystals are formed as mixture. The Crystallized slurry is filtered in centrifuge. The wet cake is dried in dryer generate Potassium Carbonate & Sodium carbonate mixture. The mother liquor and wash liquids sold as Potash Lye contains Potassium Hydroxide. Thus, it is purely effluent treatment plant and process. Apart from that the assessee has obtained consent to set-up/consent to operate from the Maharashtra Pollution Control Board (MPCB) for setting up the ETP/WTP. Powers & by MPCB e governed by Water Prevention & Control of Pollution Act 1974 (Prevention & Control of Pollution Act 1981, Water (Cess) Act 1977 & other provision under Environmental Protection) Act, 1988.

8. Thus, assessee's effluent water treatment plan categorically falls within the ambit and scope of Section 80IA(4) as misinterpreted by the Id. AO so as to deny the claim of deduction u/s.80IA(4). Ld. CIT (A) has also noted the following facts:-

5.3 According to the appellant, the expression "Water Treatment System" is not defined under the Income Tax Act. As per the Water (Prevention and Control of Pollution) Act, 1974, Sec. 2(k) states "trade effluent to include any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any Industry, operation or process, or treatment and disposal system, other than domestic sewage. Moreover, CBDT vide Circular No. 1 of 2006 dated 12-01-2006 has clarified that the Effluent Treatment Plant shall be considered as a part of Water Treatment Plant and shall be eligible for Tax Holiday u/s.80-IA under the LT. Act, 1961 being an infrastructure facility, subject to the eligibility criteria being fulfilled.

5.4. It is further explained by the appellant that it treats effluent water which is received from various concerns including M/s Vinati Organics. This water contains various chemicals (salts) in the dissolved form viz., Potassium Carbonate, Sodium carbonate, Potassium Hydroxide etc. This polluted water is concentrated in Multi-effect evaporator to remove the water contents. The concentrated stream is then crystallized using cooling water. During crystallization process Potassium Carbonate and Sodium carbonate crystals are formed as mixture. The crystallised slurry is filtered in centrifuge. The wet cake is dried in dryer to generate Potassium Carbonate & Sodium carbonate mixture. The mother liquor and wash liquid are then sold as Potash Lye contains Potassium Hydroxide.

5.5 It is further stated that the appellant has obtained consent to set-up/consent to operate from the Maharashtra Pollution Control Board (MPCR) for setting up the ETP/WTP, Powers & by

MPCR e governed by Water Prevention & Control of Pollution Act 1974 d (Prevention & Control of Pollution Act 1981, Water (Cess) Act 1977 & other provision under Environmental Protection) Act, 1988. The copy of the same is also submitted for verification of the AO during assessment proceedings and it was prayed that the assessee shall qualify for deduction u/s 80-IA, being an infrastructure facility and eligible for deduction.

9. Based on these facts and the finding of the ld. CIT (A), we do not find any merits in the grounds raised by the department that assessee is not eligible for deduction u/s. 80IA(4). Apart from that, assessee has filed Form No.10CCB and working of claim of deduction u/s.80IA which according to additional ground is that same was filed alongwith revised return, hence, it is admissible as per the provision of Section 80IA(7). First of all this was not the ground and otherwise also 80IA (7) provides that deduction shall not be admissible unless the accounts of undertaking for which deduction has been claimed and added by the Accountant and has been furnished before the specified date as provided in Section 44AB. So, nowhere the Assessing Officer has pointed out as to what are the conditions laid down in Section 80IA(7) has not been fulfilled because assessee had filed and obtained the audit report alongwith revised return on 19/02/2018. Nowhere the Assessing Officer has held that revised return is invalid. In any case, the reason which was given before the ld. AO was that Form No.10CCB and working of 80IA was though obtained before the date, however, inadvertently it was deleted for the A.Y.2017-18 and once assessee realizes his mistake in Form 10CCB together with working of 80IA(4) were then correctly filed

electronically alongwith revised return of income. In these circumstances, it cannot be held that there is any violation of any provisions of law and in any case, if the claim and audit report was there before the ld. AO during the course of assessment proceedings and no fault has been pointed out therein; the same cannot be the ground for denial of deduction u/s.80IA. Accordingly, the additional ground raised by the department is dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced on 15th May, 2023.

-Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Mumbai; Dated 15/ 05/2023
KARUNA, *sr.ps*

-Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)