

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2056/MUM/2015  
Assessment Year: 2010-11**

M/s Antony Waste Handling Cell Pvt. Ltd., Plot No. 515, Maria Plaza, Pokhran Road, No. 2, Maji Wade Thane (W)-400601. <b>PAN No. AACCA9772C</b>	Vs.	ACIT-Circle-I Thane
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 5566/MUM/2015  
Assessment Year: 2011-12**

M/s Antony Waste Handling Cell Pvt. Ltd., Dev Corpora, Shree Ganesh Mandir Mare, Cadbury Junction Eastern Express Highway, Thane (W)-400601. <b>PAN No. AACCA9772C</b>	Vs.	JCIT-Range-1, 6 <sup>th</sup> Floor, Ashar I.T. Park, Road No. 16-Z, Wagle Industrial Estate Thane-400604.
<b>Appellant</b>		<b>Respondent</b>

Assessee by : Mr. Madhur Agrawal, AR  
Revenue by : Mr. Michael Jerald, DR

Date of Hearing : 08/09/2020  
Date of Pronouncement: 04/12/2020

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-I, Mumbai [in short 'CIT(A)'] and arise out of the assessment order u/s 143(3) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience. We begin with the assessment year (AY) 2010-11.

2. The effective grounds of appeal filed by the assessee read as under:

- 1) On the facts and circumstances of the case Ld. CIT(A) has erred in confirming the addition made by the Assessing Officer of Rs.8,57,95,998/- being the deduction claimed under section 80-IA(4) of the Act being works contract under section 80-IA(13) of the Act.
- 2) On the facts and circumstances of the case Ld. CIT(A) has erred by rejecting the submission of appellant that as no new material was brought on record by AO before disallowing the claim of deduction under section 80-IA(4) of Act, it tantamounts to change of opinion, further also rejecting the appellant's submission of the principle of consistency as deduction being allowed for last several years consistently by overlooking the principle of natural justice and tax jurisprudence.
- 3) On the facts and circumstances of the case Ld. CIT(A) has erred by denying the claim of the appellant as a work contract.

**I**

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2010-11 on 27.09.2010 declaring gross total income of Rs.8,79,35,190/- and after claiming deduction of Rs.8,57,95,998/-, the total

income was shown at Rs.21,39,190/-. During the course of assessment proceedings, it is observed by the Assessing Officer (AO) that the main issue involved is whether the assessee is eligible for claiming deduction u/s 80IA(4) of the Act or not. In response to query raised by the AO to explain the above claim, the assessee filed a reply which is extracted at para 4.3 (page 4-6) of the assessment order. The AO was not convinced with the said reply of the assessee on the ground that there is one major contract with Municipal Corporation of Greater Mumbai (MCGM) and this contract is for supply of vehicles for lifting the garbage at different points and paid as per weight lifted. Therefore, the AO arrived at a finding that it was purely hiring of vehicles for collection and transportation of municipal solid waste including common house gully materials and also materials removed from the slums of various zones. As per the AO, the management of the system is with MCGM ; even penalty clause also refers to the supply of vehicles and this is purely a works contract for supply of vehicle as per rate contract agreed upon and not a solid waste management system developed/operated/maintained by the assessee. Therefore, the AO disallowed the claim of deduction of Rs.8,57,95,998/- made by the assessee u/s 80IA of the Act.

## II

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 30.01.2015, the Ld. CIT(A) made an analysis of the following contract :

- 1) Ulhasnagar Municipal Corporation - The contractor has to carry out the work of solid waste collection, transfer and transportation to the site allotted by the

corporation for processing and final disposal - Here the work of contractor is limited, to collect, transfer and transport the solid waste from various parts of the cities to the disposal site. Accordingly, the appellant was required to provide vehicles with operators, drivers for collection and transportation of solid waste to the distance of 15-20 k.mts. away from the city. At the disposal site, there is another contractor, who is processing the solid waste, dumped by the contractor, by developing, operating and maintaining the solid waste. Accordingly, the person, who is processing, operating and maintaining the solid waste, at collected site, is only entitled for deduction u/s. 80IA(4) of the I.T. Act, 1961.

- 2) Greater Noida Industrial Development Authority - The Contractor / appellant has to sweep the metalled portion of the main carriageway and service roads with the mechanized sweeper with minimum 3 mt. wide sweeping brush. For this the contractor has to procure and operate two new machines for the mechanized sweeping work, under this contract. The contractor shall complete mechanical sweeping of main roads by 9.00 a.m. every day. The contractor shall also segregate to collect waste into bio-degradable and non bio-degradable waste and hand over the waste collected to another contractor, appointed by GNIDA for further processing.
- 3) Ahmedabad Municipal Corporation - The Contractor / appellant has to supply and maintain the hydraulic dumper placer units and matching M.S. containers at about 350 locations, in the city and the Municipal corporation will pay on monthly basis to the contractor, on tones / k.mtr. basis, for disposing of waste from cities to the waste storage depots. The contractor has to lift the container when they are about to fill, carry the same by respective hydraulic unit and empty the same at specified treatment or disposal site and again has to put the container back to its original location.

The above contract work reveals that the appellant has to only collect / lift the container filled with the waste and upload to the processing / treatment sites.

The work of processing / treatment, has been awarded to another contractor, who, in real sense, is entitled for deduction u/s. 80IA(4), as the processing / treatment of waste, is done after creating proper infrastructure, processing units and disposal of them, by generating various useful product such as compost, electricity, hygienic water, brick etc.

- 4) Bhiwandi Nizampur City Municipal Corporation – The Contractor/appellant has to carry out door to door collection and transportation of solid waste to final disposal site. The contractor has also to set up compost plant at operation site and hand over to the corporation, as per their requirements.
- 5) Kalyan Dombivli Municipal Corporation - The Contractor /appellant has to do the work of lifting of sweeping of MSW from all roads, side lanes and the interior roads, slums, residential area, commercial area, door to door collection of MSW in the tender area, providing community. Collection / placer bins, as required in the residential as well as commercial area and the transportation of the same to the collection sites. Collection and transportation of MSW from the collection site to the disposal area and unloading the same.

The above contract reveals that the appellant has to organize house to house collection of MSW, providing collection/placer bins, lifting of bins, sweepings and drain cleaning, collection of waste from slums, commercial area, slaughter house, meat and fish market, vegetable market, fruit market, house wastes and transport the same to the disposal site. At disposal site, another contractor has to carry out the work of processing / treatment of the waste, by creating the necessary infrastructure, who shall be eligible for deduction u/s. 80IA(4).

- 6) Greater Noida Industrial Development Authority - The Contractor / appellant has to carry out the work of door to door collection of waste from household, market place, Institutions, commercial establishments, shops, banks, offices, restaurants, hotels, industries etc. Sweeping of internal roads and streets,

collection of waste from marriage halls, banquet halls, community centres etc. and transportation thereof, to the disposal site.

- 7) CIDO area of Navi Mumbai - The Contractor /appellant has to carry out the work of collection, transfer and transportation of Municipal solid waste upto the site of processing and final disposal and operation and maintenance of the system. Again, the above work indicate that the actual work of processing and final disposal of waste, by operation and maintenance of the system, has to be done by another contractor, by creating necessary infrastructure and installing the required plant and machinery. Accordingly, he shall only be entitled for deduction and not the appellant, who is doing only contract work, for collecting, transferring and transporting of solid waste to the final disposal sites.
- 8) Navi Mumbai Municipal Corporation (residence)- The Contractor /appellant has to do cleaning, collection and transportation of MSW i.e. waste generated in the residential area. The contractor has to do collection of waste from bins/containers placed in the societies (Apartment and other community centres) by using refuse compactor/skip loaders, including debris / construction material. The contractor has to regularly lift and transport all above waste including garden waste, to the final disposal site, by deploying the necessary vehicles, specially designed for the work.
- 9) Navi Mumbai Municipal Corporation (MIDC) The Contractor /appellant has to carry out the work of cleaning, collection and transportation of waste from residential areas, debris / construction sites, lifting of waste bins / containers to the final disposal site.
- 10) Amritsar Municipal Corporation - The Contractor /appellant has to carry out the work of door to door collection / segregation, storage and transportation of solid waste to the final disposal site by deploying the necessary vehicles.
- 11) Poonamallee Municipal Corporation - The Contractor /appellant has to carry out the collection and transportation of garbage etc., as above, from residential area, commercial area etc. to the final disposal site.

- 12)** Tamparam Municipal Council - The Contractor /appellant has to create awareness regarding solid waste management among the public and collection of solid waste, dead animals, cleaning of drainage, street, collecting waste and transporting the same to the final disposal site.
- 13)** Delhi Cantonment Board / Area - The Contractor /appellant has to carry out the work of hiring of conservancy vehicles for transportation of garbage / solid waste from Delhi Cantonment area, at the quoted rate of Rs.4075/- per day for two assured trips per compacter, per day, for a period of 5 years.

4.1 Analyzing the above contract works, the Ld. CIT(A) arrived at a finding that the assessee-company has not done the work of waste treatment/processing/development/maintenance of waste, by creating the necessary infrastructure, as has been provided in the provisions of section 80IA(4) of the Act. Accordingly, he held that :-

“The purpose of tax benefit, has all along been, for encouraging Private sector participation, by way of investment in development of infrastructure, for processing / treating the waste and not for the person, who merely execute the contract work. The incentive has all along been intended to benefit developers, who undertake entrepreneurial and investment risk and not contractors, who only undertake business risk. Accordingly, it has been clarified by inserting an explanation that the provision of section 80IA, shall not apply to a person, who execute a works contract, entered into with the undertaking or enterprise, referred to into that section. Therefore, if, a person, who enters into a contract with another person, includes Government or an undertaking or enterprise, referred into section 80IA, for executing contract work, will not be eligible for tax benefit.”

Further, relying on the order of the Tribunal in the case of *Anthony Motors (P.) Ltd. v. ACIT* 64 DTR 470, the Ld. CIT(A) affirmed the disallowance of Rs.8,57,95,998/- made by the AO.

**III**  
**A**

5. Before us, the Ld. counsel for the assessee explains that (i) the deduction u/s 80IA(4) is allowable for a consecutive period of 10 assessment years ; accordingly, when there is no change in the facts, if deduction has been allowed in the initial assessment years, the same cannot be withdrawn in the subsequent years without making the disallowance in the initial years; in the present case, deduction has been allowed for all the earlier assessment years and the AO has now sought to disallow the deduction for the last two years, (ii) deduction has been allowed in some of the earlier assessment years by the AO after carrying out complete scrutiny and passing the assessment order u/s 143(3) of the Act ; in the said order, the AO after considering the issue of claim of deduction u/s 80IA of the Act, held that the assessee is eligible for deduction being engaged in the activity of 'Solid Waste Management'; for AY 2003-04, the AO specifically raised the issue as to whether the assessee is engaged in 'Solid Waste Management' activity or is merely a contractor who has been awarded a contract by the Government ; the AO gave a specific finding that the assessee is engaged in 'Solid Waste Management' and hence, eligible for deduction u/s 80IA(4) of the Act ; similar findings have been given by the AO for AY 2004-05, 2005-06 and 2009-10.

Thus it is stated by the Ld. counsel that neither the AO nor the CIT(A) has pointed out any change in facts in the present years as compared to earlier years. Relying on the decision by the Hon'ble Bombay High Court in *CIT v. Western Outer Interactive Pvt. Ltd.*, 349 ITR 309, *Simple Products Food Pvt. Ltd. v. CIT* 84 taxmann.com, 239 and *CIT v. Paul Brothers*, 216 ITR 548, it is argued



that once a deduction has been allowed to an assessee in the initial assessment years, the deduction cannot be disallowed in the subsequent years unless the deduction is so withdrawn from the initial years. It is further explained that the above decisions have been followed by the Tribunal in *CIT v. Gateway Distriparks Ltd.* (ITA No. 5371/M/2012), *Rahul Mucha v. CCIT* (ITA No. 1154/PUM/2015) and *Ygyan Consulting Pvt. Ltd. v. CCIT* (ITA No. 65/PUM/2015).

Also it is submitted that to be eligible for deduction u/s 80IA(4) of the Act the assessee must be engaged in the business of developing, operating or maintaining infrastructure facilities ; the term 'infrastructure facility' has been defined in the *Explanation* to the said section to, *inter alia*, include 'Solid Waste Management System' and the assessee is clearly engaged in solid waste management system.

The Ld. counsel explains that the scope of work to be carried out by the assessee under the Agreement dated 25.05.2007 between the assessee and Navi Mumbai Municipal Corporation is provided as under:

- a. The Municipal Corporation has appointed the M/s. Antony Waste Handling Cell Pvt. Ltd., as the Contractor, to collect dry and wet garbage from within the Municipal Area of the Municipal Corporation (excluding TTC MIDC area) and transporting the same up to Land Fill site as specified by Municipal Corporation from time to time. The contract work includes collection of Wet and dry garbage from individual household as well as cooperative housing society through primary collection method by use of handcart, tricycle/three wheelers and HDPE bins. The contract work also includes positioning/ deployment of HDPE dustbins having capacity of 240 litres, 660, litres &

1100 litres as specified in the tender. The said work also includes use of Refuse Compactors, Hook, Container/Dumper Place/Side Loader as well as use of Hydraulic vehicle of a compact body having capacity of 1 to 1.5 ton.

- b. The contractors agree and undertake to collect wet and dry municipal solid waste through door to door collection from the above mentioned area of the Municipal Corporation and the same to be transferred from the premises where it is collected at the site of Land fill site as may be specified by Municipal Corporation.

Similarly, it is stated that the scope of work, as per Agreement dated 04.10.2005 between the assessee and Bhiwandi Nizampur Municipal Corporation is provided as under :

- a. Door to door collection, transfer and transportation of solid waste of four categories viz. Biodegradable, Recyclable, Debris and Sill at source from the streets and public places within the area of Bhiwandi-Nizampur City covering all Kilometers roads and lanes in the entire area of the Corporation on Build / Own, Operate, Maintain and Transfer of immovable infrastructure basis, and
- b. Setting up compost plant for the Organic waste for the organic waste collected from slaughterhouse, cow dung's, vegetable and fish market and solid waste which has 90% organic waste.

Thus it is stated that the assessee is clearly engaged in development, operation and maintenance of 'Solid Waste Management' as it is responsible for collection, segregation of dry and wet waste, transportation and disposal of the said waste at the disposal site; for carrying on the business, the assessee is required to utilize its own plant and machinery in the form of handcart, tricycle etc. for primary collection of waste ; the assessee is further required to use refuse compactors, hook containers / dump placers / slide loaders and

hydraulic vehicles for collection of transportation of the dry and wet waste garbage ; the assessee is also required to deploy and position the dustbins at various locations for collection of garbage ; the assessee is further required to utilize its own manpower for carrying out all the aforesaid activities.

Thus the Ld. counsel explains that the assessee is clearly engaged in the activity of 'Solid Waste Management' and the finding by the AO that the assessee merely providing vehicle as a contractor, is clearly contrary to records and is unsustainable in law. It is thus stated that the assessee is not acting as a contractor but is engaged in development, operation and maintenance of solid waste management system and, accordingly, eligible for deduction u/s 80IA of the Act.

Further, it is submitted that the term 'Solid Waste Management System' is not defined in the tax Act or any other Act ; however, the Government has issued a manual for 'Municipal Solid Waste Management' which explains the term 'Effective Waste Management' to include one or more of the following options :

- 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.

Thus the Ld. counsel submits that even waste collection and transportation, by itself, is solid waste management system. In this regard, reliance is placed by him on the decision of the Hon'ble Bombay High Court in the case of *ABG Heavy Industries Ltd.* 322 ITR 323 wherein it is held that to be eligible for deduction, the assessee need not develop the entire infrastructure and even if the assessee is developing part of the infrastructure, the assessee would be eligible for deduction u/s 80IA of the Act.

Finally, the Ld. counsel explains that as because the contract has been awarded by respective municipal authorities does not make the assessee ineligible for claim of deduction u/s 80IA of the Act, as whole work of 'Solid Waste Management' is carried out by the assessee and not the Municipal Authorities; further, section 80IA(4)(i)(b) of the Act requires the assessee to enter into an agreement with the Government for carrying out such an activity and, therefore, the assessee fulfils all the conditions of section 80IA of the Act to be eligible for deduction under the said section.

## **B**

6. On the other hand, the Ld. Departmental Representative (DR) submits that deduction u/s 80IA was allowed in scrutiny assessment for the first time in AY 2003-04 ; AO erroneously accepted that assessee's work of collection and segregation and providing manpower and deploying specialized, mechanized vehicles to transport the municipal solid waste qualified for deduction u/s 80IA; subsequently, in the assessment years, deduction u/s

80IA was allowed u/s 143(3) merely by stating that it was allowed in the previous years.

Explaining that collection, segregation and disposal of waste alone will not qualify for deduction u/s 80IA for solid waste management ; there must be an infrastructure facility to treat the waste or produce something out of the waste ; the assessee's contract ends with disposal alone, the Ld. DR draws our attention to the following paragraphs of the order of the Tribunal in *Antony Motors (P.) Ltd.* (supra), a sister concern of the assessee :

“The intention of the legislature is to give a fillip to any enterprise or an undertaking which is engaged in the field of operating infrastructure facilities such as solid waste management system. The expression 'management' — technically understood — is not confined to the mere manual or mechanical operations to complete a work assigned to it but it involves planning and operations to achieve the ultimate objective of maintaining a pollution free environment. In order to accomplish the ultimate objective mere cleaning of garbage and dumping at a site stipulated by the Municipal Corporation is not sufficient. Rather that is the basic activity and not the dominant purpose in the scheme of things....

However, under the Income Tax Act such benefit is extended to solid waste management system only. The legislature has consciously not extended the benefit to agencies who are merely 'handling' a part of the activity such as collection and storage at the stipulated place.”

The Ld. DR explains that in *Antony Motors Pvt. Ltd.* (supra), the assessee was collecting garbage from the beach and transporting them to disposal site; in assessee's case, garbage is collected from different places and disposed ;

there is no difference in activity and hence, denial of deduction u/s 80IA is an order.

Referring to the 'Manual on Solid Waste Management' prepared by the Ministry of Urban Development which include waste collection and transportation, the Ld. DR argues that the counsel for the assessee omitted to read the following points which are crucial :

"An effective waste management system includes one or more of the following options:

- 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."

Thus it is stated by him that the assessee is involved only in one activity, namely, waste collection and transportation and no evidence has been produced regarding resource recovery, waste transformation etc. which are post disposal activities; the assessee was not maintaining any infrastructure facility towards resource recovery and waste transformation; therefore, the action of the AO and Ld. CIT(A) in denying deduction u/s 80IA is in order.

Finally, the Ld. DR relies on the decision in *Hindustan Lever Ltd. v. JCIT* 104 taxmann.com 215 (Calcutta) and *Covanta Samalpatti Operating Ltd. v. ACIT* 93 taxmann.com 38 (Madras).

### C

7. In the rejoinder, the Ld. counsel explains that *Antony Motors Pvt. Ltd.* (supra) is not applicable to the present case on the ground that (i) from paragraph 3 of the decision, it is clear that the Tribunal in that case was concerned with claim of deduction in first/initial assessment years and not the subsequent assessment years, as in the present case, (ii) the facts in that case are completely different from the instant case – in the decision on *Antony Motors* (supra), from the last three lines of Para – 3, it is clear that the assessee therein was merely engaged, assigned the task of collection of the waste on the beach and to dump it in notified sites on the beach which in turn would be collected by the Municipal Authorities ; therefore, in the said case, the assessee was merely engaged in cleaning the beaches which activity, the Tribunal held would not come within the ambit of solid waste management system ; the Tribunal, while concluding at paragraph 28, specifically notes the activity of the assessee of cleaning the beaches without being involved in the generation, disposal and policy making cannot be said to be solid waste management ; in the present case the scope of the work of the assessee as explained before is quite distinct from the scope of work in the case of *Antony Motors* (supra) ; the Tribunal in the case of *Antony Motors* (supra) has not considered the manual issued by the Central Government for ‘Municipal Solid

Waste Management' as referred to above and hence the decision of the Tribunal is not applicable to the present case.

Regarding the decision in *Hindustan Lever* (supra) relied on by the Ld. DR, the Ld. counsel explains that in that decision the AO has sought to rectify the claim of deduction in the initial assessment year and hence, the issue as to whether in subsequent years, the deduction can be withdrawn or not was not raised before the High Court and hence, has no relevance to the present case.

Referring to the decision in *Covanta Samalpatti Operating Ltd.* (supra), relied on by the Ld. DR, the Ld. counsel submits that the issue before the High Court was whether the assessee therein was engaged in the activity of generation, or generation and distribution of power and on the facts of the case, the High Court concluded that the assessee therein was not engaged in the activity of generation of power and hence, not eligible for deduction u/s 80IA of the Act. In the present case, it is argued that the issue is as to whether the assessee is engaged in the activity of solid waste management or not and hence the above decision has not application whatsoever to the present case.

#### **IV A**

8. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below. To appreciate the rival contentions, it is pertinent to refer to the agreements.

The assessee entered into an 'Agreement for Garbage Collection and Transportation' dated 25.06.2007 with Navi Mumbai Municipal Corporation,



Belapur Bhavan, CBD Belapur, Navi Mumbai. The scope of work delineated therein is reproduced below:

“1. The Municipal Corporation has appointed the M/s Antony Waste Handling Cell. Pvt. Ltd., as the Contractor to collect dry and wet garbage from within the Municipal Area of the Municipal Corporation (excluding TTC MIDC area) and transporting the same up to Land Fill Site as specified by Municipal Corporation from time to time. The contract work includes collection of wet and dry garbage from individual household as well as cooperative housing society through primary collection method by use of handcart, tricycle/three wheelers and HDPE bins. The contract work also includes positioning / deployment of HDPE dustbins having capacity of 240 litres, 660 litres & 1100 litres as specified in the tender. The said work also includes use of Refuse Compactors, Hook Container/Dumper Placer/Side Loader as well as use of Hydraulic vehicle of a compact body having capacity of 1 to 1.5 ton.

2. The contractor agrees and undertake to collect wet and dry municipal solid waste through door to door collection from the above mentioned area of the Municipal Corporation and the same to be transported from the premises where it is collected at the site of Land Fill Site as may be specified by Municipal Corporation.

3. The areas from where the garbage is to be collected and the distance between it and the Land Fill Site is inspected by the contractor and the same is accepted by the parties hereto and will not be disputed in any event.

4. The Municipal Corporation shall pay to the contractor charges at the following rates for the collection and transportation of garbage and debris.

<b>Sr. No.</b>	<b>Nature of Garbage</b>	<b>Rates per ton including dustbin</b>
1.	Wet Garbage	Rs. 770/-
2.	Dry Garbage	Rs. 805/-
3.	Debris	Rs. 200/-

5. The contractor agrees and undertakes to collect and transport the garbage and debris within the area of Municipal Corporation strictly as per the Municipal Solid Waste Rules 2000 framed under the Environmental Protection Act 1986. This is an essence of the contract.

6. The garbage and debris collected, by the contractor within the above mentioned area of Municipal Corporation will be the property of Municipal Corporation and the contractor will not have any right, interest over it.”

8.1 Similarly, the assessee entered into an agreement dated 13.10.2005 with Bhiwandi Nizampur Municipal Corporation wherein it is stated that –

“A. The public health, sanitation department of Corporation being desirous of revamping the present set-up of its solid waste management services by integrating (i) Door to door collection and transportation of solid waste to final disposal site and (ii) setting up compost plant and its Operation at the site to be given by corporation on Build, Own, Operate, Maintain and Transfer of immovable infrastructure created for the project for a new period of ten years, to meet the requirements of Municipal Solid Waste (Management and Handling) Rules 2000 invited tenders from competent contractors in prescribed form.”

8.2 Similarly, the assessee entered into an agreement dated 08.08.2003 with Ulhasnagar Municipal Corporation for “Transportation of solid waste processing and final disposal site” for a period of 10 years. The preamble to “Instructions to Bidder” states that :

“The Ulhasnagar Municipal Corporation therefore, intends to revamp entirely its collection, transfer, and transportation system of solid waste. The prime approach in the tender aims at providing the services in an integrated manner for all types of wastes -garbage recyclable , debris and construction waste, silt, green waste, carcass

etc. The prime goal of Ulhasnagar Municipal Corporation in taking the steps forward and introducing state of art system and technology for the services are:

- Ensure health and hygiene for the entire population in Ulhasnagar, citizens, visitors, workers in solid waste management.
- Improve productivity, man, material and equipments (adapted proven efficient system and equipments)
- Promote economic operations of the services.
- Promote and protect quality and substantiality of the urban environment.”

8.3 In the agreement dated 05.07.2004 entered between the assessee and Greater Noida Industrial Development Authority it is mentioned that “the contractor (the present assessee) shall segregate the collected waste into bio-degradable and non-bio-degradable waste and hand over the waste collected to the contractor appointed by GNIDA for collection of solid waste at places specified by GNIDA.”

8.4 In the agreement dated 23.09.2004 entered between the assessee and Ahmedabad Municipal Corporation, it is stated that –

“A. The Corporation being desirous of improving its level of Solid Waste management services to meet the requirements of Municipal Solid Waste (Management & Handling) Rule 2000, by involving private sector participation inter-alia in lifting, transporting, emptying of garbage containers (7 Cu. m.) by providing their own M. S. containers & Hydraulic dumper placer units, invited tenders from competent Contractors in prescribed form.”

Also it is stated therein that :

“4. The scope of work shall be supplying and maintaining 50 (Fifty) numbers 7 cum containers as per tender specification and design at different sites as directed by

respective department of the Corporation from time to time, to lift on mutually agreed schedule and carry the containers by hydraulic unit, empty the same at specified treatment or disposal site, put the same back to its original location and maintain hygienic condition at the site where container it placed.”

8.5 In the agreement dated 13.10.2005 entered between the assessee and Bhiwandi Municipal Corporation, the scope of work is delineated as under :

“3. The Scope of work comprises of:

(a) Door to door Collection transfer and transportation of solid waste of four categories viz.; Biodegradable, Recyclable; Debris and Silt at source from the streets and public places within the area of Bhiwandi-Nizampur City covering all Kilometers roads and lanes in the entire area of the Corporation on Build / Own, Operate, Maintain and Transfer of immovable infrastructure basis; and

(b) Setting up compost plant for the Organic waste for the organic waste collected from slaughter house, cow dungs, vegetable and fish market and solid waste which has 90% organic waste.”

The work specification of the project/work therein is stated below:

“The work is required to be performed on Build/Own, Operate, Maintain and Transfer of only immovable infrastructure and facilities created by the successful bidder for carrying out the work under this tender/contract for a period of 10 years.”

8.6 In the agreement dated 05.09.2005 entered between the assessee and Kalyan Dombivali Mahanagar Palika, the project scope stipulates the following:

“2.1 Project Scope

2.1.1 The Project shall include the following:

a) Primary Collection: Lifting of Sweeping of MSW from the all Roads, By lanes and the interior Road, slums, residential area, commercial area, door to door collection of MSW in the Tender Area, providing community, collection/placer bins as required in residential as well as commercial areas and transportation of the same to the collection points, if any.

b) Secondary Collection: Collection and transportation of the MSW from the Collection Points to the Disposal Area and unloading of the same.”

8.7 In the agreement dated 31.08.2006 entered between the assessee and Greater Noida Industrial Development Authority, we find similar nature of work.

8.8 In the work order dated 11.05.2006 given to the assessee by CIDCO of Maharashtra Ltd., the work specifications are stipulated as under :

“Collection, Transfer and Transportation of Municipal Solid Waste up to the site of processing and final disposal and operation & maintenance of the system/process on build, own and operate (B-O-O) basis, for the entire area of CIDCO in Navi Mumbai.

The work specifications outline work coverage, quantum of work, timing & frequencies of work, method of work, vehicles, equipment, accessories, systems & materials to be used, methodology of work plan & its implementation, and process of measuring performance of the work for carrying it out in an integrated manner.”

8.9 In the agreement dated 08.10.2008 entered between the assessee and Amritsar Municipal Corporation, it is stated that :

“A. The Ministry of Environment and Forests (MoEF), Government of India (Gol), has formulated the Solid Waste (Management and Handling) Rules 2000, which makes it mandatory for every Municipal Authority to implement a scientific solid waste management system in conformity with the above rules wherein the Municipal Solid Waste is duly collected, processed to recover all biodegradable components and the inert process remnants to be disposed in an Engineered Sanitary Land Fill.

B. Amritsar Municipal Corporation is responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Municipal Solid Waste generated in the city. AMC is required to undertake the MSW management as per the MSW Rules 2000.”

8.10 In the agreement dated 23.06.2009 entered between the assessee and Poonamallee Third Grade Municipality, the nature of work was “collection, transfer and transportation of Municipal Solid Waste upto the site of processing and disposal”. It also stipulates that –

“7. Bio-degradable waste shall be transported and delivered at Vermicomposting yard situated at Viswerapurama. Recyclable waste and the non-biodegradable wastes shall be delivered at the place assigned by the Municipality. Garbage shall not be delivered at any other place other than the place assigned.”

Also it is stated that the assessee has to execute an agreement with the Municipality complying with the scope of work mentioned in the RPF document and other terms and conditions as mentioned below:

“(1) IEC Activities:

(a) For creating awareness regarding Solid Waste Management among the public. You have to conduct street meetings, ward meetings with the

concerned street committee members, ward councilors and concerned public health staffs. The report of it has to be submitted along with every month bill for payment.

(b) The IEC activities should promote the ecological management of solid waste in compliance with the philosophy of Reduce, Reuse, Recycle, Recover and safe disposal.

(c) The ultimate effect of IEC activities should protect public health, the environment and natural resources (Water, land, air) as per MSW Rules 2000 with the aim of making the town ; "garbage - free".

(d) The IEC activities conducted by you should promote the awareness about waste management principles among citizens and other stake holders.

(e) IEC activities should be insisted to your staff also to ensure minimizing the multiple and manual handling of waste."

8.11 In the agreement dated 11.05.2009 entered between the assessee and Delhi Cantonment Board, the nature of work was hiring of Conservancy Vehicles (4 refuse compactors) for transportation of solid waste from Delhi Cantonment Area.

## **B**

9. A perusal of the Manual on 'Municipal Solid Waste Management' by Central Public Health & Engineering Organization clearly indicates that an effective waste management system includes one or more of the following options :

(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.

It is also stated therein that the activities associated with the management of municipal solid wastes from the point of generation to final disposal can be grouped into the six functional elements : (a) waste generation; (b) waste handling and sorting, storage, and processing at the source; (c) collection; (d) sorting, processing and transformation; (e) transfer and transport ; and (f) disposal.

10. A perusal of the Municipal Solid Waste (Management & Handling) Rules, 1999 stipulates *inter alia* organizing house to house collection of municipal solid wastes through any of the methods, like community bin collection (Central Bin), house to house collection etc.

11. An examination of the agreement entered into by the assessee with the various authorities such as Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation etc. extracted at length hereinabove clearly indicate that the assessee is required to collect wet and dry garbage and debris from individual household as well as co-operative societies and dispose off the same at the designated site. The garbage is collected through primary collection method such as use by handcraft, tricycle etc. The assessee is also



required to deploy dustbins in different capacities of 240 litres, 660 litres etc. as specified in the agreement. The assessee is further required to utilize specified hydraulic vehicles for the purpose of collection, transportation and disposal of solid waste.

The assessee has been claiming deduction u/s 80IA(4) of the Act on the income earned by it from the activity of solid waste management. There is no dispute that 'Solid Waste Management System' is one of the infrastructure facilities as defined in Explanation to the section 80IA(4) of the Act, which entitles the assessee to claim deduction for the consecutive period of 10 years.

Functional elements of a 'Municipal Solid Waste Management System' as drawn in the 'Manual on Solid Waste Management' by Central Public Health & Engineering Organization is enclosed herewith as *Annexure - 1*.

In *M.O.H. Uduman and Ors. v. M.O.H. Aslum*, AIR 1991 SC 1020, the Hon'ble Supreme Court has held that :

"It is settled canon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to ascertain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. It is seldom that any technical or pedantic rule of construction can be brought to bear on their construction. The guiding rule really is to ascertain the natural and ordinary sensible meaning to the language through which the parties have expressed themselves, unless the meaning leads to absurdity."

**C**

12. In *ABG Heavy Industries Ltd.* (supra), relied on by the Ld. counsel, the assessee was a company registered in India, which had started its operations after 1-4-1995. It had entered into two contracts on 2-9-1994 and 16-10-1995 with a local authority *i.e.*, a port for supply, installation, testing, commissioning and maintenance of the cranes on lease for a period of ten years at the container terminal of said port. The assessee claimed that as it was operating infrastructure facility at port, it would be entitled to claim deduction under section 80-IA and, therefore, book profits were required to be reduced by the profits derived from the aforesaid industrial undertaking in terms of the provisions of clause (vi) of the *Explanation* to section 115JA. The Assessing Officer however, rejected the claim of the assessee under section 80-IA observing that the said cranes did not constitute port and also for the reason that the said cranes were not being operated by the assessee. According to him, the assessee was only providing the said cranes to the port on lease basis. He, therefore, did not reduce the deduction under section 80-IA while computing book profit under section 115JA. On appeal, the Commissioner (Appeals) held that the assessee had entered into an agreement with the port under the BOLT scheme, *i.e.*, built, own, lease and transfer scheme in respect of the said cranes supplied to the port. In holding so the Commissioner (Appeals) had relied on the Circulars No. 793 dated 3-6-2000, in which it has been clarified that structures at ports for storage, loading and unloading etc. will be included in the definition of Port for the purpose of section 10(23) and section 80-IA provided such structures have been built under BOT or BOLT scheme and at the expiry of the lease agreement such

equipment would be transferred to the port authorities. The Commissioner (Appeals) thus, held that supply, commissioning and operation of cranes/equipment by the assessee were done under the BOLT scheme and accordingly, directed the Assessing Officer to allow deduction under section 80-IA and reducing it from book profit under section 115JA.

On Revenue's appeal, the Tribunal held that:-

"The issue for consideration in the instant case was as to whether the agreement entered into between the assessee and the port for the supply, installation, testing, commissioning and maintenance of the cranes on lease for a period of ten years at the container terminal of said port was an infrastructure facility operated by the assessee entitled for the claim of deduction under section 80-IA. The term 'infrastructure facility' is defined under section 80-IA(12)(ca). Applying the definition of 'infrastructure facility' as defined under section 80-IA(12)(ca) to the facts of the instant case it was found that 'port' and the facilities provided at port were covered by the definition of infrastructure facility. Reading the section 80-IA in harmony, it transpired that the assessee in order to be entitled to the claim deduction under section 80-1A had to fulfil the following conditions:

- (a ) whether it was an infrastructure facility falling within the definition provided in section 80-1A(12)(ca);
- (b)whether the operations had started on or after 1-4-1995;
- (c)whether the assessee had entered into an agreement with Central / State Govt., local authority for the development, maintenance and operation of any new infrastructure facility;

In the facts of the instant case, the assessee was a company registered in India, which had started its operations after 1-4-1995. The assessee had entered into an agreement with a local authority, i.e., the port in question for the development, maintenance and operation of infrastructure facility being a Port.

The definition of 'Port' for the purpose of section 80-IA has been enlarged by the Circular No. 793 dated 23-6-2000 issued by the CBDT. As per said circular structures at ports for storage, loading and unloading etc. would fall under the definition of 'Port' for the purposes of sections 10(23G) and 80-IA, if the following conditions are fulfilled:

- (a )the concerned port authority has issued a certificate that the said structures form part of the port, and
- (b )such structures have been built under BOT or BOLT schemes and there is an agreement that the same would be transferred to the said authority on the expiry of the time stipulated in the agreement.

Thus, in order to be considered as 'port', the assessee had to fulfil the above conditions as mentioned in the circular. In the instant case, the port had issued a Certificate dated 31-5-2004 confirming that it had entered into an agreement dated 2-9-1994 and another agreement dated 16-10-1995 with the assessee for the supply, installation, test, commissioning and maintenance of container holding equipment i.e., 1 No. rail mounted quay crane, rubber tyres gantry cranes, and rail mounted gantry crane, on lease for a period of ten years. The certificate further specified that the agreement with the assessee was under the BOLT Scheme and on the expiry of ten years contract period in accordance with the terms of the agreement, the said cranes would be transferred to the port. The BOLT Scheme has been clarified by Circular No. 733 dated 31-1-1996, which provided that one of the conditions to be fulfilled by the enterprises is that it should develop, maintain and operate a new infrastructure facility, which shall be transferred to the Central Govt./State Govt./local authority within the period stipulated in the agreement.

Taking into consideration the definition of 'infrastructure facility' provided under section 80-IA and the conditions to be fulfilled under sub-section (4A) to section 80-IA it was clear that the assessee was an 'infrastructure facility' and the operations carried out by the assessee fell within the extended definition of 'Port' as provided by the CBDT Circular No. 793. The assessee entered into an agreement with the port

for the supply, installation, testing, commissioning and maintenance of the cranes under the BOLT Scheme, wherein it had been agreed upon by the parties that on the expiry of term of agreement, i.e., period of ten years, the said cranes would be transferred to the port at no extra cost.

In the Certificate dated 31-5-2004, the port had admitted that the said cranes after its erection and installation, formed an integral part of the port and the contracts were under BOLT Scheme, under which the cranes would be transferred to the port at no cost on the expiry of ten years contract period. One of the clause of the Agreement dated 2-9-1994 provided that the equipment would be operational round the clock and the staff shall be deployed by the assessee round the clock for the maintenance of the equipment. In the indemnity clause, it had been provided that in case any damage occurs to the existing structures due to assessee's operation, the same would be made good by the assessee at its risk and cost. The Insurance for maintenance and operation was to be provided by the assessee. One of the clause (xxix) of the agreement stipulated the assessee to comply with all the provisions of labour laws, with regard to the employees deployed for erection, testing, commissioning, operation and maintenance of the equipment.

The assessee had also filed the list of personnel deployed at port for overall operation and maintenance of the infrastructure facilities during the assessment year 1997-98. The perusal of the said list provided that the assessed had employed the senior manager (operations), manager (operations), asstt. manager (operations) and five deputy manager (operations), in addition to the assistant engineers employed by the assessee and officer (technical) and operators-cum-technicians with checker-cum-helper and trainees. During the course of assessment proceedings, in reply to a query raised by the Assessing Officer, the assessee had submitted the copy of letter issued by the port, wherein the port clarified that the assessee was having overall responsibility for ensuring round the clock operations as per the contract conditions. In the said letter the port had also confirmed that a consideration of Rs. 40 lakhs per annum, which included salary, wages and other

emoluments of the operators provided by the port. The said letter also provided that assessee was having the overall responsibility for ensuring round the clock operations.

It was clear from the list of employees provided by the assessee that the control and operations was under the supervision of the assessee though operators were provided by the port at a cost. The provisions of the Act does not talk of the extent of operation and control required. In these circumstances, it was fair and reasonable to hold that the assessee was entitled to the relief in the light of the circular No. 793 which was binding on the departmental authorities. Accordingly, the assessee was a 'infrastructure facility' entitled to the claim of deduction under sub-section (4A) of section 80-IA . The said such deduction under section 80-IA would be considered while calculating the book profits under section 115JA."

It is apposite to mention here the following observation of the Tribunal in the above case:-

**29.** The Mumbai bench of Tribunal in *Patel Engg. Ltd. v. Dy. CIT [2004] 84 TTJ (Mum.) 646* had held that the statutory provision as contained in section 80-IA provides for 'development of infrastructure facility, but it nowhere provides that the entire infrastructure project is to be developed by one enterprise'. It has been further held in the facts of that case that the assessee had developed the infrastructure facility for part of the project and is entitled the claim of deduction under section 80-IA(4) of the Act, so long as the nature of development falls within the ambit of 'infrastructure facility'.

*[Emphasis, by underlining, supplied by us]*

On appeal by the Revenue, the Hon'ble Bombay High Court held:

"15. At this stage, it would be necessary to note that on 31st May 2004, JNPT issued a certificate confirming the award of contracts to the assessee on 2nd September 1994 and 16th October 1995 for supply, installation, testing, commissioning and

maintenance of Container Handling equipment on lease for a period of ten years for loading and unloading of containers at the Port and that the cranes that were to be supplied by the assessee form an integral part of the Port. JNPT clarified that the contracts have been executed under the BOLT Scheme and in accordance with its directions, the cranes would be transferred to the Port Trust at no cost on the expiry of a period of ten years of the commencement of the contract.

16. Now, it is in the background of the evolution of the law that the controversy in the present case would have to be considered. The contention of the Revenue is that the assessee was not engaged in developing the facility at all and that under the Contract that was entered into between the assessee and JNPT all that the assessee was required to carry out was to supply and install cranes at the Port. The submission cannot be accepted. The expression 'development' has not been artificially defined for the purposes of Section 80IA of the Act and must, therefore, receive its ordinary and natural meaning. Under the terms of the contract between the assessee and JNPT, the assessee undertook an obligation for supplying, installing, testing, commissioning and maintenance of Container Handling equipment namely, the cranes in question. JNPT has a dedicated Container Handling Terminal. The case of the assessee is that the only activity at the Terminal consists of the loading, unloading and storage of containers. Under the contract, the assessee was obligated to provide the equipment in question in an operable condition. The contract envisaged two different options; the first being one under which the assessee would carry out operation and maintenance of the equipment while the second consisted of an option to JNPT to carry out operations. The terms of the contract however made it clear that it was the obligation of the assessee to make the equipment available for operation for a stipulated minimum number of days during the year and made the assessee liable to liquidated damages in the event that this was not possible. JNPT by its letter dated 27th March 2000 clarified that the difference between the two options that had been given to the assessee consisted of a payment of Rs.40,00,000/- which was to be retained by JNPT in the event that the

operators were provided by the Port for operating the cranes. At the same time, JNPT clarified that it was the responsibility of the assessee to guarantee the availability of the equipment; to ensure that the equipment is in operation on a round the clock basis; to provide for repairs and to ensure the operation and availability of the equipment in accordance with the terms of the contract.

17. The obligations which have been assumed by the assessee under the terms of the contract are obligations involving the development of an infrastructure facility. Section 80IA of the Act essentially contemplated a deduction in a situation where an enterprise carried on the business of developing, maintaining and operating an infrastructure facility. A Port was defined to be included within the purview of the expression infrastructure facility. The obligations which the assessee assumed under the terms of the contract were not merely for supply and installation of the cranes, but involved a continuous obligation right from the supply of the cranes to the installation, testing, commissioning, operation and maintenance of the cranes for a term of ten years after which the cranes were to vest in JNPT free of cost. An assessee did not have to develop the entire port in order to qualify for a deduction under Section 80IA. Parliament did not legislate a condition impossible of compliance. A port is defined to be an infrastructure facility and the circular of the Board clarified that a structure for loading, unloading, storage etc. at a port would qualify for deduction under Section 80IA. The condition of a certificate from the Port Authority was fulfilled and JNPT certified that the facility provided by the assessee was an integral part of the port. The assessee developed the facility on a BOLT basis under the contract with JNPT. On the fulfillment of the lease of ten years, there was a vesting in the JNPT free of cost.

*[Emphasis, by underlining, supplied by us]*



12.1 In the light of the ratio laid down in the above decision, we are of the considered view that the assessee is entitled to claim of deduction u/s 80IA(4) of the Act. We may mention here that in view of the above decision of the Hon'ble Bombay High Court, the instant case is distinguishable from the decision in *Antony Motors (P.) Ltd.* (supra) relied on by the Ld. DR. Another distinguishing feature is that in *Antony Motors (P.) Ltd.* (supra), we come across the following observations by the Tribunal:-

“During the previous year relevant to the year under consideration, the Company appears to have entered into an agreement (renewal) with the Municipal Corporation for removal and transportation of solid waste generated on sea beaches at Mumbai.”

In the present case, deduction has been allowed for all the earlier assessment years and the AO has now sought to disallow the deduction for the last two years, whereas the deduction u/s 80IA(4) is allowable for a consecutive period of 10 assessment years.

In the instant case, as there is no change in the fact, if deduction has been allowed in the initial assessment years, the same cannot be withdrawn in the subsequent years without making disallowance in the initial assessment years as held in *Paul Brothers* (supra), *Western Outer Interactive Pvt. Ltd.* (supra) and *Simple Products Food Pvt. Ltd.* (supra).

12.2 To recapitulate, an examination of the agreement entered into by the assessee with the various authorities such as Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation etc. extracted at length hereinabove clearly indicate that the assessee is required to collect wet and dry garbage and debris from individual household as well as co-operative

societies and dispose of the same at the designated site. The contract work also includes positioning/ deployment of HDPE dustbins having capacity of 240 litres, 660, litres & 1100 litres as specified in the tender. The said work also includes use of Refuse Compactors, Hook, Container/Dumper Place/Side Loader as well as use of Hydraulic vehicle of a compact body having capacity of 1 to 1.5 ton.

Again to recapitulate in brief, in the agreement dated 08.10.2008 entered between the assessee and Amritsar Municipal Corporation, it is stated that :

“A. The Ministry of Environment and Forests (MoEF), Government of India (Gol), has formulated the Solid Waste (Management and Handling) Rules 2000, which makes it mandatory for every Municipal Authority to implement a scientific solid waste management system in conformity with the above rules wherein the Municipal Solid Waste is duly collected, processed to recover all biodegradable components and the inert process remnants to be disposed in an Engineered Sanitary Land Fill.

B. Amritsar Municipal Corporation is responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Municipal Solid Waste generated in the city. AMC is required to undertake the MSW management as per the MSW Rules 2000.”

The fact that the contract has been awarded by respective Municipal Authorities does not make the assessee ineligible for claim of deduction u/s 80IA of the Act, as substantial work of ‘Solid Waste Management’ is carried out by the assessee and not the Municipal Authorities. Further section 80IA(4)(i)(b) of the Act requires the assessee to enter into an agreement with

the Government for carrying out such an activity and, therefore, the assessee fulfils all the conditions of section 80IA of the Act to be eligible for deduction under the said section.

The assessee has been claiming deduction u/s 80IA(4) of the Act on the income earned by it from the activity of solid waste management. There is no dispute that 'Solid Waste Management System' is one of the infrastructure facilities as defined in Explanation to the section 80IA(4) of the Act, which entitles the assessee to claim deduction for the consecutive period of 10 years.

13. In seeking the purpose of a contract, one should treat the contract as a whole. A contract is an integrative framework. Its different parts are entwined. Its different parts are intermingled. In interpreting a contract, one should view it holistically, as a whole. One should evaluate the connections between its various parts in an attempt to arrive at parties' joint intent.

In view of the factual matrix and position of law delineated at para 8 to 12 hereinabove, we hold that the assessee is eligible for deduction u/s 80IA(4) of the Act. Thus the order of the Ld. CIT(A) is set-aside. Facts being identical, our decision for AY 2010-11 applies *mutatis mutandis* to AY 2011-12.

14. In the result, the appeals are allowed.

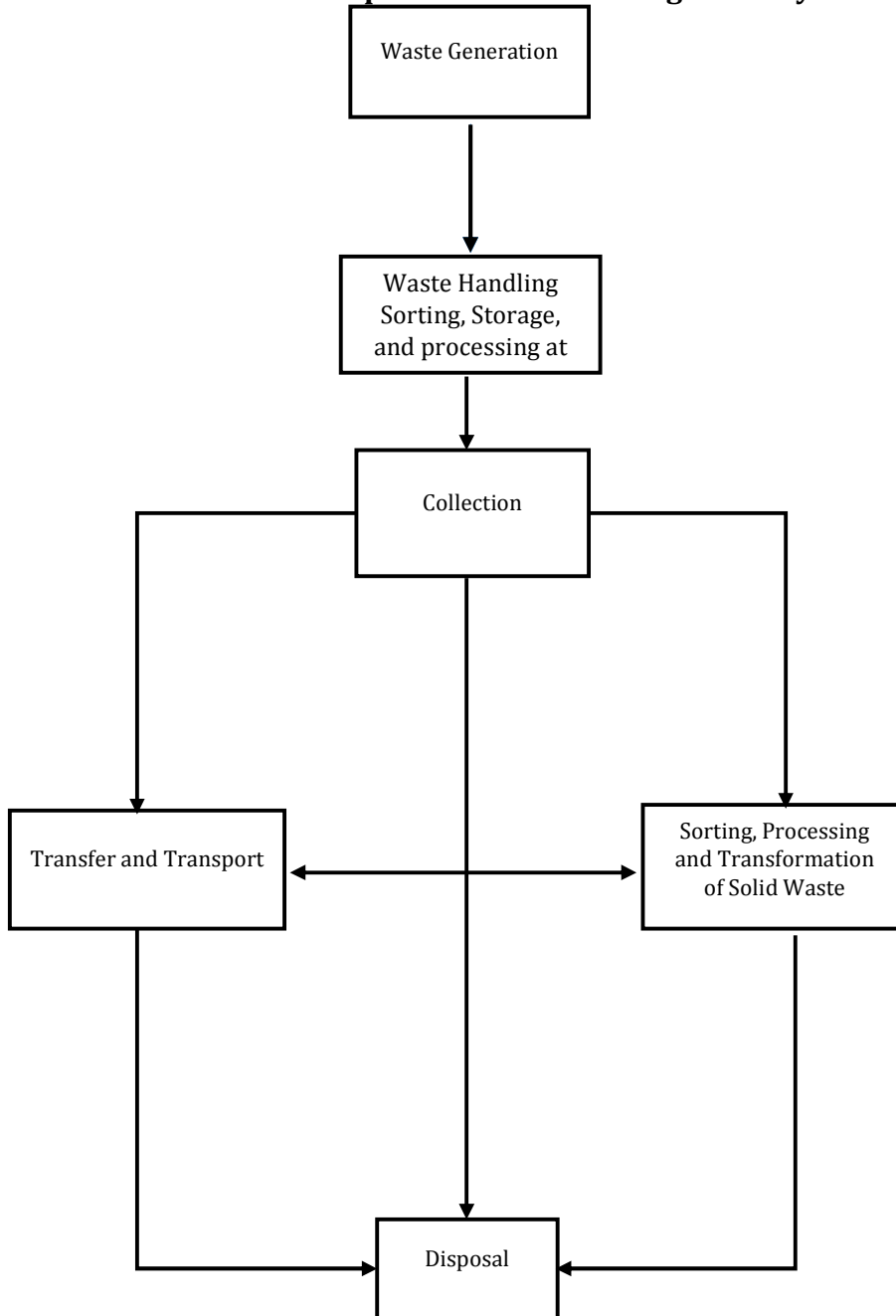
**Order pronounced in the open Court 04/12/2020.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

**Annexure - 1**

**Functional elements of a 'Municipal Solid Waste Management System'**



Mumbai ;

Dated: 04/12/2020.

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy/Asst. Registrar)  
**ITAT, Mumbai**