IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'C' MUMBAI

BEFORE SHRI B.R. MITTAL (JUDICIAL MEMBER) AND
SHRI RAJENDRA SINGH (ACCOUNTANT MEMBER)

ITA No. 3523/Mum/2011
Assessment Year-2007-08

The ITO 10(3)(4), Aayakar Bhavan, Mumbai-400 020	Vs.	M/s. Common Effluent Treatment Plant, (Thane-Belapur) Association, MIDC, Khairane P.O. Kopar Khairane, Thane-Belapur Road, Navi Mumbai 400 709 PAN-AABCC 4712H
(Appellant)		(Respondent)

Appellant by: Shri V.V. Shastri
Respondent by: Shri Raja B. Singh

Date of Hearing :29.02.2012
Date of pronouncement:02.03.2012

O R D E R

PER B.R. MITTAL, JM :

The Department has filed this appeal for assessment year 2007-08 against order of Ld. CIT(A) dt. 10.2.2011 on following ground:

> *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to follow the decision of the Hon'ble ITAT for the A.Y. 2005-06 in the assessee's own case in respect of the computation of income u/s. 115JB(1). The decision of Hon'ble ITAT for the A.Y. 2005-06 holding that the provisions of Sec. 115JB are not applicable in the case of the assessee has been contested in an appeal u/s. 260A(2) to Hon'ble Bombay High Court."*

2. At the time of hearing, Ld. Departmental Representative relied on the order of Assessing Officer. However, Ld. AR submitted that department filed the appeal against order of ITAT in assessee's own case for assessment year

2005-06 before Hon'ble Bombay High Court being Income Tax Appeal No. 4604 of 2010 and the Hon'ble High Court by its order dt. 10.1.2012 confirmed the finding of ITAT that the surplus income generated under the mutual arrangement would not fall within the scope of Section 115JB of the I.T. Act. Therefore, Hon'ble Bombay High Court confirmed order of Tribunal that surplus receipt over expenditure generated as a result of mutual arrangement, did not constitute income for the purposes of the Act as its income is exempted on the principle of mutuality. To substantiate his submission, Ld. AR also filed a copy of order of Tribunal dt. 18.2.2010 for assessment year 2005-06 and copy of Hon'ble Bombay High Court dt. 10.1.2012.

3. Considering the issue involved in ground of appeal taken by department and order of ITAT in assessee's own case dt. 18.2.2010 and confirmation of said order by the Hon'ble Jurisdictional High Court, we uphold the order of Ld. CIT(A) and reject ground of appeal taken by department.

4. In the result, appeal filed by department is dismissed.

Order pronounced on this 2nd day of March, 2012

Sd/-	***Sd/-***
(RAJENDRA SINGH)	(B.R. MITTAL)
Accountant Member	Judicial Member

Mumbai, Dated 2nd March,2012
Rj

Copy to :
1. *The Appellant*
2. *The Respondent*
3. *The CIT-concerned*
4. *The CIT(A)-concerned*
5. *The DR 'C' Bench*

True Copy

By Order

Asstt. Registrar, I.T.A.T, Mumbai