

**IN THE INCOME TAX APPELLATE TRIBUNAL "H"
BENCH, MUMBAI**

**BEFORE SHRIR. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

**आयकरअपीलसं./ I.T.A. No. 2233/Mum/2016
(निर्धारणवर्ष / Assessment Year:2011-12)**

Oil Field Instrumentation (I) Pvt. Ltd. 3 rd floor, Liberty Bldg, Sir Vithaldas Thackersey Marg, New Marine Line, Mumbai-400020.	<u>बनाम/</u> Vs.	ACIT RG. 1(2)& CIT (OSD), Mumbai, Pin-
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**आयकरअपीलसं./ I.T.A. No. 3167/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)**

ACIT 1(2)(2) Room No. 535, 5 TH Floor Aayakar Bhavan, M. K. Road, Mumbai-400020.	<u>बनाम/</u> Vs.	Oil Field Instrumentation (I) Pvt. Ltd. 3 rd floor, Liberty Bldg, Sir Vithaldas Thackersey Marg, New Marine Line, Mumbai-400020.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACO4870H		

अपीलार्थीकीओरसे/ Appellant by	:	Sh. M. C. Omi Ningshen, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Dr. K. Shivaram & Shri Aditya Ajgaonkar, AR

सुनवाईकीतारीख/ Date of Hearing	:	06/02/2018
घोषणाकीतारीख / Date of Pronouncement	:	28/02/2018

आदेश / ORDER

Per Shri Sandeep Gosain, Judicial Member:

These two appeals filed by the revenue as well as assessee are against the order of Commissioner of Income Tax(Appeals) – 2, Mumbai dated 23.02.16for AY2011-12.

2. Since all the issues involved in these two appeals are common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

ITA No. 2233/Mum/2016 (AY 2011-12)

3. First of all we take up assessee's appeal in ITA No. 2233/Mum/2016 for assessment year 2011-12 as lead case. The ground of appeal are mentioned herein below:-

1. "Whether on facts and in the circumstances of the case and in Law, the Ld. CIT(A) failed to appreciate that the assessee was a manufacturer engaged in the business of manufacturing mud-logging units which was a tangible article /thing and hence was entitled to claim additional depreciation u/s 32(1)(iia) of the Act.

2. Without prejudice to the above, the Ld. CIT(A) failed to appreciate that the activity of data processing through the use of computers also amounts to 'manufacture' and hence the assessee was a manufacturer entitled to additional depreciation.

3. The appellant cravaes leave to add, amend, alter or delete any of the grounds of appeal.

4. As per the facts of the present case, the assessee company is engaged in the business of manufacture of Mud Logging Units (MLUs), Data Acquisition Systems, Gas Chromatographs and related software. The assessee e-filed its return of income on 26.09.2011 for A.Y.2011-12 declaring total income of Rs.16,68,27,696/-. An assessment order u/s. 143(3) of the Income-tax Act, 1961 was passed on 24.03.2014 and total

income was determined at Rs. 18,26,30,074/-. In the assessment order, AO made disallowance u/s 40A(2) (a) of Rs. 55,00,000, disallowance of claim of additional depreciation of Rs. 58,01,774, disallowance u/s 14A of Rs. 603 and disallowance of payment of retainer fee of Rs. 1,00,00,000/-.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee by upholding the disallowance on account of additional depreciation u/s 32(1) (iia).

Aggrieved by the order of Ld. CIT(A), both i.e. assessee as well as the revenue have filed their respective appeals before us. However at present we are dealing with the appeal filed by the assessee on the grounds mentioned herein above.

Ground No. 1& 2

5. These ground grounds raised by the assessee are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in upholding the order of AO in disallowing the claim of assessee for additional depreciation u/s 32(1)(iia) of the

I.T. Act , therefore we thought it fit to dispose of by this common order.

6. Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by the assessee before Ld. CIT(A). The Ld. AR further submitted that the assessee being a private limited company is professionally run, family owned and managed business enterprises with over six decades of steadfast growth. Ld. AR also submitted that assessee provides mud logging services to corporate establishments which are engaged in oil well drilling, exploration and development including deep waters and Coal Bed Methane (CBM). The Assessee manufactures its own Mud Logging Units (MLUs) and also provides rig instrumentation services for accurate, reliable and global accessible online real time drilling data using pressure indicators, diaphragms, drillers console, recorder, etc. and assessee also provides real time gas evaluation systems consisting of FID/TCD Gas Chromatograph (GC) with sensitivity in PPM.

Ld. AR further submitted that assessee has a factory in Navi Mumbai from where it manufactures mud logging units (MLUs). It also manufactures data acquisition systems, gas chromatographs and related software. The manufacturing activity carried on by it constitutes a separate business distinct from its service business for which the assessee even has a factory license and this activity satisfies all the prerequisites so as to constitute a separate business. It was submitted by Ld. AR that these activities are also specified in the ROI of the Assessee and have not been controverted by the AO and also certified by the Tax Auditors in their Audit Report. The Assessee is also assessed to excise duty on its manufacturing activity and this fact ipso facto, reveals that the Appellant is a manufacturer of MLU's and have also sold the MLUs manufactured by it in subsequent years. It was further submitted by Ld. AR that during the F. Y. 2010-2011, the Assessee acquired and installed plant and machinery worth Rs. 4,18,14,726/-. On this amount, the Assessee claimed additional depreciation of Rs. 58,01,774/- under section 32(1)(ia) of the Act.

7. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

8. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the AO has disallowed the claim of additional depreciation on the ground that assessee is not a manufacturer or production of any article or thing and the Mud Logging Units manufactured by the assessee are for captive use and not for sale in the open market.

We have also gone through the legal proposition in the case of **CIT Vrs. HLS India Ltd. (2011) 335 ITR 292 (Delhi)** wherein on identical facts, it was held that the production of mud logging reports and analysis given the process involved tantamounts to '**Manufacture or production of article or thing**' as held by the High Court of Delhi observed as under:-

Having analyzed the submissions of/learned counsel of both the parties and the material available for our perusal and the cited case law, we find force in the submissions of Mr. Vohra, learned counsel for the assessee. No doubt, the raw material i.e., the primary

input in the impugned activity is the 'information' but can we equate this 'information' with something which is being copied from there in tow. Whether the characteristics regarding which the information is being sent back to computers on surface from logging tools working inside the down hole can be compared to a characteristic which is available and readable without conducting highly technical scientific tests and calculations down inside the borehole. Even after the geophysical and petro-chemical properties of the rocks have been measured, further scientific processing is required to be done by dedicated software on the computers. It is only after the above said process, the readable and usable data in the form of logs is provided to technical experts to determine the potentiality and other technical and commercial characteristics of the oil well in we say. when latent physical property of the rocks, which was otherwise unreadable and thus unusable, has been changed by way of sophisticated scientific tests and calculations into scientific data which subsequently has been further changed into logs printed on the papers or recorded on the magnetic tapes, that the character and identity of end product and final product is not distinct. We are unable to uphold such a proposition. It is a clear case where the legal proposition that "If an

operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/process falls within the meaning of the word "manufacture" applies."

"Even from another perspective, which forms the second limb of the assessee 's argument, the case tilts in the favour of assessee. Mr. Vohra has tried to draw an analogy between the production of logs by using wireline logging equipments on the one hand and the production of X-Ray and ultrasound report sheets using X-Ray and Ultrasound machines on the other hand which have been held to be eligible for investment allowance under section 32A in various judicial pronouncements. Various High Courts of India have held that X-Ray machine is qualified for investment allowance under section

The Hon'ble Delhi High Court relied upon the case of CIT v. Dr. S. Surender Reddy [2000] 243 ITR 110 (AP)(HC), Gauhati High Court in UT v. Down Town Hospital (P.) Ltd. [2004] 267 ITR 439 and Kerala High Court in CIT v. Upasana Hospital [1997] 225 ITR 845. Considering these Judgements, the Hon'ble Court held that 'The issue, which we are concerned with, is a fiscal issue which is concerned with a central statute. It is desirable that in such a matter there

should be uniformity of the judicial opinion. Even on merits, the analogy has some substance. We, therefore, in the light of aforesaid, decide this issue in the favour of the assessee and against the revenue."

9. On the above proposition, we have also considered the orders passed by the Coordinate Delhi Bench of Hon'ble ITAT in the case of **Triveni Sperry Sun Ltd. Vrs. ACIT** wherein it has been held that *the activity of the assessee namely, production of the mud- logging reports, after processing of the data collected by the Mud Logging Units, constituted article or thing as per the statutory requirement for grant of deduction u/s 80-I.*

10. We have also considered the judgment cited by Ld. DR in the case of **Shiva Cargo Movers Ltd. Vrs. DCIT (2012) 82 DTR 246 (Chennai Trib) and Clover Developers Pvt. Ltd. Vrs. ACIT (ITA No. 6422/Mum/2011) (ITAT Mumbai).** However, the facts contained in both the judgments are different from the facts contained in the present case. In the case of **Shiva Cargo Movers Ltd**, wherein the assessee was engaged in the

business of transport of spirit and molasses and it acquired a new windmill in the year and had claimed additional depreciation.

So far as the case **Clover Developers Pvt. Ltd** is concerned, wherein, the assessee was engaged in the business of construction. Hence, in both case, assessee was not engaged in the business of manufacture or production and had set a new lines of manufacturing /production. However, in the present case, assessee was already in the line of producing mud logging for the purpose of oil exploration.

Considering the facts and circumstances of the present case, discussions as well as judgments cited above, we hold that the activities of the assessee is mainly production of mud logging reports after processing of the data collected by the mud logging units and thus constitutes an 'article or thing' as per the statutory requirement for grant of deduction u/s 80-I of the I.T. Act.

As per the facts of the present case, the assessee has processed the data collected and the report prepared by the technical personnel amounts to production of an article or thing. We fortify our conclusion on the basis of decision rendered by the Coordinate Delhi Bench of Hon'ble Tribunal in the case of

CIT Vrs. HLS India Ltd. (2011) 335 ITR 292 (Delhi), wherein on identical facts, the similar findings have been recorded by the Tribunal. Hence we direct the AO to allow additional depreciation to the assessee. Resultantly, these ground raised by the assessee stands **allowed**.

ITA No. 3167/Mum/2016 for AY 2011-12.

11. Now we take up revenue's appeal filed in ITA No. 3167/Mum/2016 for AY 2011-12 on the grounds mentioned herein below:-

1. "Whether on facts and in the circumstances of the case and in Law, the Ld.CIT(A) erred in deleting the disallowance of retainership fees of Rs. 1,00,00,000/- made by the Assessing Officer, without appreciation the fact that there is nothing on record to show that the director in question has provided an special service during F. Y. 2010-11 that could justify such a high expense suddenly, as there was no such expenditure in the previous years?"

Further, the services attributed to the director by the assessee were being provided for over a decade but the fees had been provided as expenditure only this year,

hence the Assessing Officer rightly made the disallowance."

2. "Without prejudice to the above, the Ld. CIT(A) has erred in not upholding the disallowance u/s. 40A(2)(b) of the Act of Rs. 55 lacs."

Ground No. 1 & 2

12. These ground grounds raised by the revenue are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in deleting the disallowance of retainership fees of Rs. 1,00,00,000/- made by the Assessing Officer and Rs. 55 lakhs u/s. 40A(2)(b) of the Act, therefore we thought it fit to dispose of by this common order.

13. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 6

of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 6.1 & 6.2 of its order and the same is reproduced below:-

6.1 The AO is of the opinion that payment of Rs.1 Crore as Retainership fees pad to promoter Director viz Shri F. D. Neterwala is not justifiable as he is held as a Director in 11 companies and further if the Retainership fees allowed by the appellate authority, the AO has also given a finding that under the provision of Section 40A(2)(a) an appropriate disallowance should be made of Rs.55,00,000/As against this, the AR of the appellant company argues that Mr. Neterwala is only preparing budget out of six Directors of the company and he is the only Director regularly attending Board Meeting and with his wide contacts, the company used to get liquidity from various quarters and with his caliber he is able to contact Directors of the company for day to day affairs and accordingly the role of Mr. Neterwala is also important and helpful to run the company in day to day manner and further the AR of the company also argues that AO was not justified in stepping into the shoes of the Appellant and further erred in sitting in judgement as to whether the payment of Rs. 1 Crore to, Mr.

Feroze D. Neterwala was justified, without appreciating that commercial expediency is to be looked at from the point of view of the Appellant and not the Department.

6.2. Further, it is seen that Mr. F.D. Neterwala is assessed to tax at the maximum marginal rate of 30%. Accordingly, there is no revenue loss. Hence, considering the above fact on record, I am in agreement with the AR of the appellant company that the AO cannot restrict the Retainership fees paid to any Directors and further the retainership fees received by the Promoter Director Shri F.D. Neterwala is found to be assessed to tax at the maximum marginal rate of 30% and therefore it can be concluded that there is no revenue loss to the department. Hence, I direct the AO to allow the retainership fees of Rs.1,00,00,000/-. Accordingly, appeal is allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find from the facts of the present case that during the Financial Year 2010-2011, the assessee paid a sum of Rs. 1 crore to Mr. Feroze D. Neterwala (FDN), a director of the Assessee-company and this payment was

to be paid as ‘retainership fee’. As per the assessee, this amount was expended wholly and exclusively for the purpose of Assessee's business and with FDN's efforts, the Assessee was able to successfully enter the oil and gas sector. In the case of **CIT Vrs. Chandri & Co. Pvt. Ltd. (1995) 212 ITR 63**, it is held that the expression ‘wholly and exclusively’ used in section 37(1) does not mean ‘necessarily’. So long as there is a reasonable nexus between the expenditure and the business, the expenditure will be regarded as having been incurred for the purpose of the business. In the case of case **J. K. Wollen Manufacturers Vrs. CIT (1972) 72 ITR 612 (SC)**, it is held that commercial expediency should be seen from the businessman’s point of view and in the case of **CIT Vrs. Sales Magnesite (P) Ltd. (1995) 214 ITR 1 (Bom HC)**, it is held that where the director was assessed to tax at the maximum marginal rate and there is no evasion of tax by the assessee, then there is no reason for disallowance.

As per the facts of the present case, the Ld. CIT(A) has observed that Mr. F. D. Netrawala to whom the retainership fee

has paid, is assessed to tax at the maximum marginal rate, hence there was no revenue loss.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed**.

14. In the net result, the appeal filed by the assessee stands **allowed** and the appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 28th Feb. 2018.

Sd/-

Sd/-

(R. C. Sharma)
लेखासदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated :
Sr.PS. Dhananjay

(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

28.02.2018

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai