

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE Shri A.T. Varkey, JM & Dr.A.L.Saini, AM

ITA No.1930/Kol/2016

(A.Y: 2010-11)

D.C.IT, Cir-10(1), Kolkata	Vs.	M/s. Indian Oil Petronas Pvt. Ltd. PAN: AAACI5573R
(अपीलार्थी /Assessee)	..	(प्रत्यर्थी / Respondent)

Assessee/Revenue by : Shri P.K. Srihari, CIT, ld. DR

Respondent/Assessee by : ShriD. S Damle, FCA, ld.AR

सुनवाईकीतारीख/ Date of Hearing : 18/12/2018

घोषणाकीतारीख/Date of Pronouncement: 15/03/2019

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the orders passed by the Commissioner of Income-tax (Appeals)-4, Kolkata in Appeal No.1132/CIT(A)-4/Circle-10/Kol/14-15, dated 18-07-2016, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3)/144Cof the Income-Tax Act, 1961 (in short, the 'Act'), dated29-03-2014.

2. Grounds of appeal raised by the Revenue are as follows:-

1. *Whether the Ld. CIT(A) was correct in deleting addition of the Rs.8,65,69,694/- claimed by the assessee without going to the fact that the amount of sale tax of Rs.8,65,96,694/- out of total collection during the period by the assessee was not deposited within the due date of filing return?*
2. *Whether the Ld. CIT(A) was correct in deleting the disallowance on expenditure of Repairs & Maintenance to the Plant & Machinery to the extent of Rs.1,16,13,324/- for which no bills and vouchers were produced u/s.37(1)of the Act?*
3. *Whether the Ld. CIT(A) was correct in deleting the disallowance on additional depreciation claimed by the assessee to the extent of Rs. 42,17,995/- without going to the fact that the assessee is not engaged in*

manufacturing activity in terms of section 2(29BA) of the I.T. Act, 1961 ?

4. *Whether the Ld. CIT(A) was correct in deleting the disallowance Rs. 46,66,208/- claimed under the head "Repair & Maintenance" u/s.37(1) of the Act since the assessee could not produce sufficient documentary evidences to substantiate his claim?*
5. *Whether the Ld. CIT(A) was correct in deleting the disallowance Rs.2,61,600/- u/s. 40(a)(ia) of the Act due to failure in deduction of taxes under section 194I of the Act?*
6. *That the assessee craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.*

3. Ground No. 1 raised by the assessee reads as follows:

1. Whether the Ld. CIT(A) was correct in deleting addition of the Rs.8,65,69,694/- claimed by the assessee without going to the fact that the amount of sale tax of Rs.8,65,96,694/- out of total collection during the period by the assessee was not deposited within the due date of filing return?

4. Brief facts qua the issue are that the assessee has received Rs.8,65,96,694/- as an incentive for blended LPG (Butane/Propane), according to the eligibility certificate issued vide no.INC(99)/EC-87(B) date of issue: June 4, 2002, Date of Effect: May 20, 2002, by West Bengal Industrial Development Corporation Limited (WBIDCL) under the West Bengal Incentive Scheme,1999 which was initially offered for tax as revenue receipt in original income tax return filed on 11.10.2010. But later on, the assessee has withdrawn the offer of incentive received for Rs.8,65,96,694/-, without allowing any set off with the capital assets purchased for the unit and stating the same is not taxable, through the revised return filed on 27-03-2012. Naturally, the total income of the assessee as per revised return was reduced by Rs. 8,65, 96,694/-. The assessee has made its revised claim following the orders of jurisdictional High Court and some other High Courts as well as, the orders of ITAT also.

However, the copy of the scheme obtained and placed on record. The scheme is perused and the option exercised by the assessee to take the benefit of the said scheme is considered and observed as follows:

(i) As per clause 10 to the West Bengal Incentive Scheme 1999 (page no.17 of the scheme declared by WBIDC Ltd.) under the head Sales Tax, there are two ways to avail the incentive scheme. The assessee has opted the benefit available vide Clause-10.1.1 to the West Bengal Incentive Scheme 1999 which is reproduced as under:

"A new unit for its approved project shall be eligible for deferred payment of sales tax due for payment by it or alternatively for remission of sales tax due for payment by it for the period and subject to ceiling as mentioned below depending on location of the unit."

Out of said two ways, the assessee has finally agreed to avail the benefit of remission of sales tax due for payment by the unit below the caption "Group-B" under Clause 10.1.1. The period and quantum of incentive was initially for 9 (nine) years and limited to 100% ceiling in terms of the gross value of Fixed Capital Assets of the approved project which was extended further for another two years i.e up to eleven (11) years instead of nine years and the ceiling of incentive is also extended 125% of the gross value of the fixed capital assets vide no. INC(99)/EC-87(B) date of issue: June 4, 2002 Date of Effect; May 20, 2002.

Thus, the assessee has been benefited regularly since inception of the scheme and received the incentive by way of sales tax remission on the amount which was collected and payable to the sales tax authority by the assessee but not deposited due to remission of sales tax. In this way the sales tax collected but not included as income and also not offered for income u/s.43B of 1. T. Act, 1961 on account of non-payment of collected sales tax of Rs.8,65,96,694/- for this year (period 01.04.2009 to 31.03.2010) before the due date of filing of return or forever. The assessee due to offered for taxation payable account is reduced by Rs.8,65,96,694/- and the assessee is benefited by the said amount which is covered by revenue in nature. Therefore, the diminution of revenue expense is tantamount to revenue receipts and a show-cause notice was issued by the assessing officer to the assessee to explain the same.

5. The assessee in response to the above show-cause letter, replied on 18-02-2014 stating that the incentive was granted for setting up new industrial unit but the mode

of paying/disbursing of the incentive were by way of sales tax collection. It is also stated that in the present case the object of the incentive is to promote industrial projects in the backward areas of the state. Incentive is a part to motivate the company, to take risk by setting up a new project in the industrially less developed state or district. The subsidy in the form of remission of VAT and CST is collected with the clear intention of promoting industrialization in the state of West Bengal.

However, the assessing officer rejected the claim of the assessee and held that the amount of sales tax of Rs.8,65,96,694/- out of total collection during the period 01.04.2009 to 31.03.2010 (assessment year: 2010-11) by the assessee and not deposited before the due date of filing of return and never deposited was liable to be taxed as revenue item u/s.43B of I. T. Act, 1961. But due to the benevolent scheme of the state government, the assessee has not deposited which ultimately helped the assessee to reduce the trading liability by way of remission following the provision as laid down in section 41(1)(a) of I. T. Act, 1961. Without prejudice to the above the benefit allowed to the assessee in the garb of remission of sales tax, convertible into money and is arisen from business in consequence of sale proceeds is covered by the term and conditions laid down in section 28(iv) of I. T. Act, 1961 and to be taxed accordingly. In this way the claim of the assessee was rejected and added back Rs.8,65,96,694/- in the return of income of the assessee.

6. Aggrieved by such order of the AO, the assessee preferred an appeal before the Id. CIT(A), who deleted the addition. Aggrieved, the Revenue is in appeal before us.

7. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Whereas, Id Counsel relied on the order passed by the Id CIT(A).

8. We have heard both the parties and perused the material available on record. We note that the assessee had claimed the amount of incentive of Rs.8,65,96,694/- as a capital receipt, which was received in the form of sales tax remission from the West Bengal Government under the "West Bengal Incentive Scheme. 1999". The assessee

company had received incentive of Rs.8,65,96,694/- in the form of sales tax remission under the 'West Bengal Incentive Scheme, 1999' and which was credited to the profit and loss account. Under the said scheme, West Bengal Industrial Development Corporation Limited issued an "Eligibility Certificate" to the assessee being No. INC(99)/EC-S7(B) dated 4th June 2002. The Eligibility Certificate was issued for assessee's project at Block-Sutahata Block-I. Post Office Haldia- 721602, Police Station Bhabhanipur District Midnapur (E) for the manufacture of blended LPG having capacity of 6,00,000 tonnes. As per the scheme the West Bengal Industrial Development Corporation Ltd sanctioned the incentive in the form of remission of sales tax on sale of finished goods due for payment by it for a period of 9 years subject to ceiling of 100% of the gross value of fixed capital assets of the approved project or Rs.75 crores whichever is less, as per para 10.1.1 (ii). 10.1.7 of the scheme. It is therefore appears that the incentive in the form of sales tax remission was for setting up of a new industrial unit. Before the AO, the assessee relying on several decisions of Apex Court as well the Calcutta High Court and ITAT, Kolkata had thus claimed that the subsidy received from State Government was a capital receipt and therefore not liable to tax under the normal computational provisions as well as deeming provisions of section 115JB of the Act.

9. We note that the AO rejected the claim of the assessee on the premise that the subsidy received was revenue in nature and taxable u/s. 28(iv) of the Act. The AO observed that the remission of sales tax amounted to cessation of trading liability and hence the provisions of Section 41 also attracted and therefore, AO rejected the claim of the assessee. We note that on examination of the relevant facts and on perusal of West Bengal Incentive Scheme, 1999, notified on 22.06.1999, it was observed that the Scheme-1999, was announced for promotion of industries in the State of West Bengal with various incentives and subsidies. As per Scheme, the incentives were to be given for setting up of new units or expansion of the existing units and the same was not to facilitate the trade or business of the industries. It was noted that the West Bengal Industrial Development Corporation Ltd. vide letter no. INC(99)/EC-87(8) dated 4th June 2002 had issued Eligibility Certificate to the assessee for setting up a new unit

for the manufacture of blended LPG at Block - Sutamata Block- Post Office Haldia 721602, Police Station Bhabhanipur District Midnapur (E). As per the approval letter, the assessee company was granted incentives in the form of remission of sales tax and waiver of electricity duty for setting up the unit at Haldia. As per the Scheme. the incentive was provided for setting up of new unit, but the mode of calculation of incentive was sales tax paid/collected by the assessee. In view of the facts and circumstances, we note that the subsidy/incentive was not given to the assessee for the purpose of assisting in carrying on business or trade by way of refund of sales tax nor was there any cessation of liability on account of payment of sales tax attracting the provisions of section 41(1) of the Act. We note that the method of calculation of incentive/subsidy is collection of sales tax but the purpose of giving the incentive was expansion of industries in the backward areas of the State of West Bengal. Since the assessee was not given the incentive for facilitating its business or trade, the amount received by the assessee on account of sales tax remission, was held to be capital in nature. For that we rely on the following judgments, Viz:(i) CIT vs. Rasoi Limited (2011-TIOL-320HC-KOL-IT) (Cal HC) (ii) Balaji Alloys Limited vs. CIT (333 ITR 335) (J&K HC) ,(ii) CIT vs. Siya Ram Garg (HUF) (49 OTR 126) (P&H HC) (iv) OCIT vs. Reliance Industries Ltd (88 ITO 273) (Mum ITAT). That being so, we decline to interfere in the order passed by Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

10. Now, we shall take ground No.2 and ground No.4 which are identical and common, read as follows:

2. *Whether the Ld. CIT(A) was correct in deleting the disallowance on expenditure of Repairs & Maintenance to the Plant & Machinery to the extent of Rs.1,16,13,324/- for which no bills and vouchers were produced u/s.37(1)of the Act?*
4. *Whether the Ld. CIT(A) was correct in deleting the disallowance Rs. 46,66,208/- claimed under the head "Repair & Maintenance" u/s.37(1) of the Act sincethe assessee could not produce sufficient documentary evidences to substantiate his claim?*

11. Briefly stated, the facts of the grounds taken by the Revenue are that the AO alleged that the assessee did not furnish original bills for verifying the genuineness of the claim of these expenses viz: Repairs & Maintenance to the Plant & Machinery and other repairs, therefore AO made the impugned addition of Rs.1,16,13,324/- on account of Repairs & Maintenance to the Plant & Machinery and Rs.46,66,208/- on account of Repairs & Maintenance.

12. Aggrieved by such order of the AO, the assessee preferred an appeal before the Id. CIT(A), who deleted the addition. Aggrieved, the Revenue is in appeal before us. Before us, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Whereas, Id Counsel relied on the order passed by the Id CIT(A).

13. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. Counsel, we find that the issue involved in the present two grounds raised by Revenue is no longer res integra. We note that the AO could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses. While scrutinizing the expenditure if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrance of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the AO; and item-wise the AO could have disallowed the expenditure rather than going for adhoc disallowance. Therefore, we note that action of the AO is arbitrary in nature and cannot be sustained.

14. We note that the AO discussed his reasons for making disallowance of repairs expenses amounting to Rs.1,16,13,324/-. The AO alleged that the assessee did not furnish original bills for verifying the genuineness of the claim. In absence of these

bills, the AO observed that he could not also verify whether Section 40(a)(ia) had any application. Accordingly the AO disallowed the entire expenditure of Rs.1,16,13,324/-. On perusal of the impugned order it thus transpired that on 07.02.2014, the AO had required the assessee to furnish its explanation as to why the repairs expenses should not be disallowed on the ground of being capital in nature. It thus appeared that even by AO's own admission he had required the assessee to explain the nature of the expenditure i.e. whether capital or revenue. We note that nowhere the AO stated that he had required the assessee to produce original bills & vouchers but had required the assessee to explain the nature of expenditure, whether these are being revenue or capital. Hence, disallowance on ad-hoc basis without any cogent reasons is not justifiable. That being so, we decline to interfere in the order passed by Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

15. Regarding disallowance of Rs.46,66,208/- made under the head 'repairs & maintenance, we note that in Para 6 of the impugned order of the AO where he noted that the assessee had made provision of Rs.46,66,208/- under the head 'Repairs & Maintenance'. According to AO despite opportunity given, the assessee failed to provide any proof of genuineness as business expenditure. According to AO, the assessee had only replied that provision was nothing but expenditure where payment was due as on 31.03.2010 and per the 'nomenclature' used, the expenditure remaining payable on 31.03.2010 was shown as 'provision' till approval was received from the appropriate authority. The AO however claimed that the assessee failed to bring any cogent material or proper evidence in support of such claim. The AO therefore disallowed the sum of Rs.46,66,208/-.

We note that in the accounting parlance, unpaid expenditure for which liability has accrued is described as 'provision' under mercantile system of accounting. Copies of the bills produced by assessee during the assessment stage for verification also established that the amount shown as provision for repairs & maintenance related to services which were performed for and upto March 2010 and therefore under the mercantile system of accounting, the assessee was entitled to claim deduction since

expenditure pertained to the previous year ending on 31.03.2010. Therefore, we note that there was no justification for the AO to disallow Rs.46,66,208/-. That being so, we decline to interfere in the order passed by Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

16. Ground No. 3 raised by the Revenue reads as follows:

3. *Whether the Ld. CIT(A) was correct in deleting the disallowance on additional depreciation claimed by the assessee to the extent of Rs. 42,17,995/- without going to the fact that the assessee is not engaged in manufacturing activity in terms of section 2(29BA) of the I.T. Act, 1961 ?*

17. Brief facts qua the issue are that during the assessment proceedings, the AO noted that the process employed by the assessee in producing blended LPG did not conform with the expression manufacture as defined in Section 2(29BA) of the Act. In the impugned order the AO has extracted the information allegedly available in the public domain with regard to liquefied petroleum gas ('LPG'). According to AO, LPG is simply propane or butane which is flammable mixture of hydrocarbon gases used as fuel in heating appliances and vehicles. According to AO his study of the material downloaded from the internet confirmed that LPG was not exactly a new article which satisfied the condition prescribed in Section 2(29BA) of the Act. According to AO the raw materials, butane & propane used in manufacture of LPG can function like LPG individually and separately. According to AO sometimes both the materials blended together also form LPG where the items remain unchanged with a sealed container. According to AO chemical change, changing of name & production of new article or thing as claimed by the assessee does not occur. The AO therefore held that since the assessee did not manufacture or produce any new article or thing, it was not entitled to any deduction for additional depreciation under Section 32(1)(iia) of the Act and disallowed the claim of the assessee.

18. Aggrieved by the stand so taken by the assessing officer, the assessee carried the matter in appeal before the Id CIT(A) who deleted the addition. Aggrieved the Revenue is in appeal before us. Before us, the Ld. DR for the Revenue has primarily

reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Whereas, Id Counsel relied on the order passed by the Id CIT(A).

19. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. Counsel, we note that the contentions put forth by the AO are not well founded and the AO did not bring on record any sufficient material or technical information to dislodge the submissions made by the assessee. From the assessee's audited accounts and other materials reported in the audited accounts, we find that in production of LPG: propane & butane are principal raw materials. From the audited accounts, we note that during the relevant year, the assessee was engaged both in trading and manufacturing activities. The assessee had purchased propane & butane both for trading purposes as well as for manufacturing LPG. The assessee made disclosures in its accounts in respect of its trading activities and manufacturing activities separately. Even in the Tax Audit Report as well as in the audited financial statements, the assessee had made separate quantitative disclosures with regard to its trading & manufacturing operations and in the impugned order the AO has not disputed or disapproved these audited figures. The Id Counsel had explained in detail the production process employed for production of LPG. The Id Counsel has explained that the propane and butane are stored in special conditions which are heated separately through various stages. These two materials which exist in gas form are then processed in manner where they are condensed and are reduced from gas to liquid form in scientific manner. For undertaking the transformation of butane & propane into liquid form and then to obtain Liquefied Natural Gas, the assessee has to employ scientific methods and it also utilizes sophisticated plant & machinery. From the assessee's audited profit & loss account, we find that the assessee owns substantial block of plant & machinery and as per the records the WDV of plant & machinery employed exceeded Rs.141 crores as on 31.03.2010. Therefore we note that the process employed by the assessee in production of LPG is considered as a "manufacture" under the provisions of the Central Excise Act, 1944 and on production of LPG, the assessee pays excise duty. If under the

provisions of the Central Excise Act, 1944, the production of LPG is considered to be a manufacturing activity then it does not appeal to logic that the same activity does not amount to manufacture under the Income-tax Act. 1961.

20. We note that raw materials, butane & propane have different chemical compositions and the end uses for butane & propane are much different from the LPG. Butane / Propane are primarily used as a source of energy for industrial purpose whereas blended LPG facts primarily as fuel for operating commercial vehicles or used as cooking gas. We note that both in terms of chemical composition as also with regard to its commercial use and application as also as a commercial product: propane, butane & LPG are regarded as different & distinct products. Merely because all the three products in themselves are considered as source of energy or power and these are consumed by different end users for providing energy, such fact in itself does not lead to conclusion that all three products are one and the same. Had that been the case then both scientifically as well as commercially these three products would have been known by three distinct & different names or chemical terminologies. The question as to whether the blending of two different gases i.e. propane & butane for producing LPG constitutes 'production' or 'manufacture'. For that we rely on the judgment of the Hon`ble Supreme Court in the case of CIT Vs Sesa Goa Ltd (271 ITR 331) and CIT Vs India Cine Agencies Ltd (308 ITR 98). In the latter judgment, the Hon'ble Supreme Court referred to its earlier judgment and the findings of the Apex Court having bearing on the assessee's case was as follows:

"3. In Black's Law Dictionary (5th Edition), the word "manufacture" has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus by process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. (See Dy. CST (Law), Board of Revenue (Taxes) Coca Fibres [1992] Supp. 1 SCC 290).

4. *Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.*

8. *The aforesaid aspects were highlighted in Kores India Ltd. v. CCE [2005] 1 SCC 385 in the background of Central Excise Act, 1944 (in short the Excise Act) and Central Excise Rules, 1944 (in short the 'Excise Rules') and Central Excise Tariff Act, 1985 (in short the 'Tariff Act'). The stand of the revenue was that it amounted to "manufacture", contrary to what has been pleaded in these cases. This Court held that it amounted to manufacture*

9. *The matter can be looked at from another angle. In CIT v. Sesa Goa Ltd [2004J 271 ITR 3311, this Court considered the meaning of word 'production'. The issue in that case was whether the extraction and processing of iron ore amounted to manufacture or not in view of the various processes involved and the various processes would involve production within the meaning of section 32A of the Act. It was inter alia observed as under:*

" ... There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and WDS installed after 31-3-1976, in the assessee's industrial undertaking for excavating, mining and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. The issue had arisen before different High Courts over a period of time. The High Courts have held that the

activity amounted to 'production' and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in CIT v. Singareni Collieries Co. Ltd. [1996J 221 ITR 48, the Calcutta High Court in Khalsa Brothers v. CIT [1996] 217 ITR 185 and CIT v. Mercantile Construction Co. [1994]74 Taxman 41 (Cal.) and the Delhi High Court in CIT v. Univmin .) Ltd. [1993] 202 ITR 825. The Revenue has not questioned any of these decisions, at least not successfully, and the position of law. therefore, was taken as settled.

The reasoning given by the High Court, in the decisions noted by us earlier, is in our opinion, unimpeachable. This Court had as early as in 1961, in Chrestian Mica Industries Ltd. v. State of Bihar [1961] 12 STC 150, defined the word 'production' Albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning 'amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort. From the wide definition of the word 'production', it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word 'production' since ore is 'a thing', which is the result of human activity or effort. It has also been held by this Court in CIT v. N .C. Budharaja & Co. (1993] 204 ITR 412 that the word 'production' is much wider than the word 'manufacture'. It was said (page 423):

The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterised as production, every production need not amount to manufacture

The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which mayor may not amount to manufacture. It also takes in all the by-products, intermediate products and reside rodeos which emerge in the course of manufacture of goods.”

21. We also note that the assessee's process of production of LPG is subjected to levy of Central Excise Duty and the Excise Department which also falls under the Department of Revenue collects substantial amount of excise duty on the footing that the assessee is engaged in manufacture of an article or product. In the context as to whether the definition of 'manufacture or production' employed for levy of Central

Excise should also be employed under the Income-tax Act, 1961, as it was examined by the Supreme Court in the case of ITO Vs Arihant Tiles & Marbles Ltd (320 ITR 79). We note that in the process of blending of butane & propane which is carried out in scientific manner with use and aid of sophisticated plant & machinery, transformation is brought about and entirely new product by the name LPG is obtained. The said object or product i.e. LPG is known to the trade and commerce by its separate distinctive commercial name and it has a different character and its end use is also different. Accordingly provisions of Section 2(29BA) of the Act and also the ratios laid down by the Supreme Court in several decisions, we have no hesitation in holding that the assessee was engaged in manufacture or production of an article or thing and therefore it was eligible for claiming additional depreciation u/s 32(1)(ii) of the Act. That being so, we decline to interfere in the order passed by Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

22. The Last effective ground is relating to deletion of disallowance of Rs.2,61,600/- made by AO u/s. 40(a)(ia) of the Act.

23. The brief facts qua the issue are that during the course of scrutiny proceedings it was noticed by AO that the assessee company has failed to deduct the tax on total payment of Rs.2,61,600/- on account of rent made to Sri Nihar Ranjan Dhar (Rs.87,204/-), Smt. Ruby Dhar (Rs.87,204/-) and Sri Sandip Dhar (Rs.87,204/-) for hiring the flat no.1B at 1/393, Gariahat Road (South), Kolkata-700068 (Office and Parking Space). The assessee has explained that the liability for deduction of tax under section 194I of I.T. Act, 1961 is not attracted in this case due to co-ownership of the property and all of the co-owners is individually paid the amount, lower than the amount of rent earmarked for non-deduction of tax i.e. Rs.1,80,000/- per year @Rs.15,000/- p.m. as per section 194I of I. T. Act, 1961. However, the assessing officer rejected the claim of the assessee and made addition of Rs.2,61,600/-.

24. Aggrieved by the stand so taken by the assessing officer, the assessee carried the matter in appeal before the Id CIT(A) who deleted the addition. Aggrieved, the

Revenue is in appeal before us. Before us, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Whereas, Id Counsel relied on the order passed by the Id CIT(A).

25. We have heard both the parties and perused the material available on record. We note that the AO has set out his reasons for disallowing payment of rent under Section 40(a)(ia) of the Act. The facts involved in the issue are in narrow compass and they are not in dispute. Admittedly, the assessee had paid rent of Rs.2,61,600/- in respect of a property at Gariahat Road (South), Kolkata which was owned by three persons equally. Since the property in question was owned by three persons jointly, in terms of Section 27 of the Act: the owners did not constitute an AOP but they had to be regarded as co-owners of the house property, each having one-third defined share or rights in the property. Accordingly the assessee had paid rent of Rs.87,204/- to each of the three co-owners namely. Mr. N.R Dhar. Mrs. Ruby Dhar and Mr. Sandip Dhar respectively. We note that since the rent paid in respect of one property does not exceed Rs.1,80,000/- annually, hence provisions of Section 194I of the Act does not apply to the assessee under consideration, hence Id CIT(A) has rightly deleted the addition. That being so, we decline to interfere in the order passed by Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

26. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 15/03/2019.

Sd/-

(A.T Varkey)

JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated: 15/03/2019

Sd/-

(A. L. Saini)

ACCOUNTANT MEMBER

**PP, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee/Revenue: DCIT, Cir-10(1), Kolkata
Aaykar Bhawan, 3rd floor, P-7 Chowringhee Square, Kolkata-700 069.
2. प्रत्यर्थी/ The Respondent/Assessee.- M/s. Indian Oil Petronas Pvt. Ltd
1/393, Gariahat Road, Kolkata-700 068.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file. //True Copy/ By Order

Assistant Registrar

I.T.A.T, Kolkata Benches,Kolkata.