

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD òCö BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 3628/Ahd/2015
Assessment Year 1997-98**

The Deputy Commissioner of Income Tax, Gandhinagar Circle, Gandhinagar (Appellant)	Vs	Gujarat Gas Company Ltd. 2, Shanti Sadan Society, Nr. Parimal Garden, Ellisbridge, Ahmedabad-380006 PAN: AAACG5600M (Respondent)
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**ITA No. 72/Ahd/2016
Assessment Year 1997-98**

Gujarat Gas Company Ltd. 2, Shanti Sadan Society, Nr. Parimal Garden, Ellisbridge, Ahmedabad- 380006 PAN: AAACG5600M (Appellant)	Vs	The Deputy Commissioner of Income Tax, Circle-4, Ahmedabad (Respondent)
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**Revenue by: Shri O.P. Sharma, CIT-DR. &
Shri L.P. Jain, Sr. D.R.**
**Assessee by: Shri S.N. Soparkar, A.R. &
Shri Nishit Shah, A.R.**

Date of hearing : 16-07-2019
Date of pronouncement : 29-07-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by revenue and assessee for A.Y. 1997-98, arise from order of the CIT(A)-2, Ahmedabad dated 30-10-2015, in proceedings under section 143(3) r.w.s. 254 of the Income Tax Act, 1961; in short the Act.

2. Since same assessment year is involved in both the appeals, so, both appeals are adjudicated together for the sake of convenience.

3. The assessee has filed return of income on 30th Nov, 1997 declaring total income of Rs. 9,68,90,030/- . The scrutiny assessment u/s. 143(3) of the act was computed on 14th March, 2000 and the assessing officer has made various disallowances and total income was determined at Rs. 23,77,67,040/-. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee and assessing officer has determined total income at Rs. 21,77,67,040/- after giving effect to CIT(A)'s order dated 26th May, 2004. The assessee has preferred appeal before the ITAT and ITAT has restored the issue in the appeal back to the assessing officer for fresh adjudication after providing adequate opportunity to the assessee. In consequent, the assessing officer has passed order u/s. 143(3) r.w.s. 254 of the act on 28th March, 2014 and determined the total income of the assessee at Rs. 21,73,86,404/- after sustaining various disallowances made in the case of the assessee. The further fact of the case

are discussed while adjudicating the various grounds of appeal filed by the Revenue and Assessee as under.

Ground No. 1 of Revenue: erred in allowing deduction u/s. 80IA of Rs. 6,25,89,028/-

4. During the course of assessment, the assessing officer noticed that assessee has claimed deduction u/s. 80IA to the amount of 6,25,89,028/-.

The assessee has replied as under:-

“It is submitted that the assessee engaged in manufacturer and/or producing articles not specified in ninth schedule and fulfills all the conditions laid down for relief u/s.80I & 80IA. The issue is squarely covered in favour of the assessee by the Appellate Tribunal's order, in its own case in A.Y.1993-94, 94-95 to 96-97, 98-99 and 2000-01...”

The assessing officer has not accepted the reply of the assessee on the ground that revenue has not accepted the decision of the ITAT, and appeal has been filed against the decision of ITAT before Honøble Gujarat High court for assessment year 1999-2000. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee following the decision of ITAT Ahmedabad. Relevant part of the decision of Id. CIT(A) is reproduced as under:-

2.3. Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the disallowance of the claim of deduction u/s. 80I / 80IA of the I. T. Act

amounting to Rs.6,25,39,028/- stating that although the Hon'ble ITAT, Ahmedabad Bench has decided the issue in favour of the appellant, but the revenue has filed the appeal before the Hon'ble Gujarat High Court and in A. Y. 1999-00, vide Tax Appeal No. 06 of 2014, the Hon'ble Court has admitted the ground. The AO further held that since the matter has not reached to the finality and pending before the Hon'ble Gujarat High Court, thus to follow the consistency in the views of the revenue, no relief is granted and the deduction u/s. 80I / 80IA is not allowed being issue sub-judice.

2.4. In the appellate proceedings, the appellant submitted that the appellant has claimed the deduction in respect of Surat and Ankleshwar Unit which has been allowed by the Hon'ble ITAT, Ahmedabad in appellant's own case in A, Y. 1993-94, 1994-95, 1995-96, 1996-97, 1998-99 and 2000-01. Also submitted the copies of the ITAT's order for reference. It is worth here to mention

that the Hon'ble ITAT vide its order dated 28/02/2011 in ITA No. 221 I/Ahd/2004 for A. Y. 1998-99 (Ground No.1) & ITA No. 36/Ahd/2005 for A. Y. 2001-02 (Ground No. 2) has decided the issue in favour of the appellant with the following observations:-

"2.1 Likewise the claim for deduction of Rs. 14,03,18,552/-u/s 80IA of the Act was disallowed in the AY 2001-02 .

3. On appeal, the learned CIT(A) upheld the action of the AO in the AY 1998-99 in the following terms: -

"4. [I] Claim u/s.80I & 80IA:- The said claim was made for A.Y. 93-94 to 95-96 and the same was disallowed by the A.O. and the CIT(A) has also confirmed for all the three years. Therefore, the appellant has not offered any further explanation in view of the detailed discussion made in their own case in the appellate order for A.Y. 93-94. To claim deduction u/s.80I/80IA, there are conditions to be fulfilled. As per section 80I (2) like the assessee should be an industrial undertaking, not formed by splitting or reconstruction of existing business, not formed by transfer of new business of plant and machinery or previously used for the purpose, the industrial undertaking manufacture or produce any article or thing not being an article or thing specified in 11th Schedule and an industrial undertaking who manufacture or produce a thing or an article having 10 or more workers where the manufacturing process is carried on with the help of power or with 20 or more workers in case of a manufacturing unit carried on without the aid of power. There is detailed discussion in their own case in the order passed by the CIT(A) for A.Y. 93-94, 94-95 & 95-96. Relying on the same the claim u/s.80I & 80IA is hereby rejected."

3.1 Likewise, in the AY 2001-02, the Id. CIT(A) upheld the action of the AO.

4. The assessee is now in appeal before us against the aforesaid findings of the learned CIT(A) in these two assessment years. The learned AR on behalf of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision dated 6-10-2006 in the assessee's own case for the AY 1993-94 in ITA no. 1895/And/2002. Following this decision, the ITAT vide their order dated 2.1.2007 in ITA nos.2606 to 2608/Ahd /2002 for the AYs 1994-95 to 1996-97 as also in order dated 30-01-2009 in ITA no.3446/Ahd/2004 for the AY 2000-01, allowed the claim of the assessee. The learned BR on the other hand, did not dispute these submissions of the Id. AR.

5. We have heard both the parties and gone through the facts of the case as also the aforesaid decisions of the ITAT. We find that the ITAT vide their order dated 6-10-2006 in ITA no.1895/Ahd/2002 for the Assessment Year 1993-94 held as under:

"2.7(vii) After examining the issue from various angles, now keeping in view all that discussion we return back to main issue whether the assessee is engaged in producing any article or thing. The natural gas is a product of oil extraction activity. This occurs in natural form along with other fossil fuel. As such the gas in this natural form is crude and cannot be used by industrial or domestic consumers. The Gas is supplied by Gas Authority of India Ltd, (GAIL) as it is extracted by ONGC from oil wells. At assessee company's stage the process of making gas consumable for industrial or domestic purposes takes place. Such process is a highly technical, controlled and regulated process as the gas is very inflammable and hazardous. For this purpose the plant is maintained as per American National Standard Institute and British standard. The crude gas is as much distributable but the same cannot be put to industrial commercial use. This is evident from the fact that GAIL supplies crude gas without making it decontaminated odor/zed suitable for consumption. The assessee company is processing gas for removing chemical and physical impurities such as water, dust particles and oil odorizing and optimally pressurizing through filtration and depressurizing that makes the raw gas a sale/able commodity which has distinct functional attributes. Thus the assessee company is engaged in producing the decontaminated, odor/zed and optimally pressurized gas with the help of high precision instruments, in rigid atmospheric and pressure conditions which are of great importance in ensuring the final quality of the gas which has to confirm the quality standards. At every stage of the process, there have to be

rigid quality standards and even a very minute variations or defect could render the gas totally worthless. It, therefore, follows that the assessee company is an industrial undertaking engaged in producing the decontaminated, odorized and optimally pressurized gas satisfied the condition of producing article or thing for being entitled to deduction u/s 801/801A."

5.1 Following the aforesaid decision, the IT AT allowed the claim in the AYs.1994-95 to 1996-97 and in the Ay 2000-01 also.

5.2 Indisputably, since the facts obtaining in the years under consideration are similar to the facts in the aforesaid years, following the view taken by the ITAT in their aforesaid decisions in the assessee's own case for the earlier years, we have no hesitation in allowing the claim for deduction u/s 801 /801A in the years under consideration. Therefore, ground no. 1 in the appeal of the assessee for the AY 1998-99 & ground no.2 in their appeal for the AY 2001-02 are allowed."

2.5. Since, the issue is already decided by the jurisdictional ITAT, Ahmedabad Bench 'A' in favour of the appellant by granting the deduction u/s. 801 / 801A in respect of Surat and Ankieshwar Units from A. Y. 1993-94, 1994-95 to 1996-97 and further A. Y. 1998-99 and 2001-02 of which relevant para of the order of the ITAT has been reproduced above. Hence, respectfully, following the said decision, the deduction is granted to the appellant in the year under consideration in respect of the above two units also. The AO's mere objection that the matter is sub-judice before the Hon'ble High Court, hence cannot be granted the deduction is not accepted at present. On finality of the issue by the Hon'ble Gujarat High Court / Apex Court in favour of revenue, the necessary measures as required can be taken by the AO after receipt of such order. Thus, the ground of appeal is allowed."

Ground No. 2 of Revenue: Relief on account of expenses of Rs. 2,11,402/- under the head family and staff welfare expenses

5. During the course of set aside proceedings with regard to disallowance of out of office expenses of Rs. 4,26,489/- the assessee has submitted that these expenses includes expenses for staff accompanying the guest to which provision of section 37(2) are not applicable. It was also submitted that the issue was squarely covered in favour of the assessee by the appellate tribunals order in its own case in assessment year 1994-95 to 1996 to 1997. The assessing officer has not accepted the reply of the assessee and stated that the ITAT in the order referred by the assessee has stated that the family meeting and inauguration expenses have to be considered as entertainment expenditure, therefore, the same were not allowed as business expenditure. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) after following the decision of ITAT has partly

allowed the claim of the assessee. The relevant part of decision of Id. CIT(A) is reproduced as under:-

3.5. Following the aforesaid decision of the Hon'ble ITAT which is binding upon this office, the issue is decided as under-

(i) The family meet expenses are disallowable as per the provisions of section 37(2) of the I. T. Act at Rs.1,21,402/- as same are held to be entertainment expenses of nature. AO may work out the disallowance accordingly.

(ii) Out of the staff welfare expenses, the disallowance on lumpsum basis of Rs.90,000/- is estimated for the year under consideration following the trend of estimation made by the Hon'ble ITAT in the preceding years.

*3.6. All the aforesaid disallowance of expenditures are over and above to the expenses suo moto disallowed by the appellant in its return of income, if any. Thus, the ground of appeal is **partly allowed.**"*

Ground No. 3 of Revenue: reducing rental income to the amount of Rs. 1548935/- and Ground No. 1 of the Assessee: disallowance of depreciation of Rs. 49,36,938/- on assets leased to Rajender Steel Ltd

6. Regarding issue of disallowance of depreciation on leased assets to Rajendra Steel Ltd. of Rs. 4936938/-, the assessee has submitted that it had purchased various assets from different companies in earlier years and leased to Rajendra Steel Ltd., and the assets were used for business purpose, therefore, it was entitled for depreciation on the leased assets. The assessee has also submitted that in case the leased transactions were not accepted as genuine, then lease rent of Rs. 27,25,192/- received from Rajendra Steel Ltd should be excluded from its income while computing the total income. On the basis of information received from the DDIT (Inv.), Kanpur that the leased assets were not found to be available of the premises of the lessee i.e. Rajindra Steel Ltd, the assessing officer has rejected the claim of depreciation of Rs. 49,36,938/- on machinery to the extent which was leased out to the Rajendra Steel Ltd. The assessing officer has also taxed the lease rent income received by the assessee to the amount of Rs. 27,25,192/- from Rajendra Steel Ltd. The assessee has filed appeal before the Id. CIT(A).

The Id. CIT(A) has confirmed the disallowance on depreciation made by the assessing officer, however, the Id. CIT(A) has directed the assessing officer to reduce the principal amount of lease rent income to the amount of Rs. 2725192/- received from Rajendra Steel from the total income of the assessee.

7. During the course of appellate proceedings before us, the Id. counsel has filed paper book comprising details, copies of various details and documents furnished before the assessing officer and Id. CIT(A) during the course of assessment and appellate proceedings. The Id. counsel has also furnished copy of judicial pronouncements on the basis of which the issue was decided in favour of the assessee. On the other hand, Id. departmental representative has supported the order of lower authorities.

8. We have heard rival contentions and perused the material on record. In respect of first ground of appeal of the revenue regarding allowing deduction u/s. 80IA of Rs. 6,25,89,028/- as reported above in the finding of the Id. CIT(A), the issue has been decided by the ITAT in favour of the assessee for assessment years 1993-94, 1994-95 to 1996-97 and further in assessment year 1998-99 and 2001-02. During the course of appellate proceedings, the Id. counsel has brought to our notice that Honøble Jurisdictional High Court of Gujarat vide Tax Appeal No. 06/2014 has adjudicated the issue in favour of the assessee. With the assistance of Id. representatives, we have gone through the above cited decision of the Honøble Jurisdictional High Court of Gujarat and noticed that the impugned

issue has been decided in favour of the assessee. The relevant part of the decision is reproduced as under:-

"5.1 In view of above, the learned counsel for the assessee has contended, that the decision of the Tribunal is required to be upheld.

6. We have heard counsel for the parties. We perused the order of the Tribunal and gone through the evidence on record. The Tribunal while allowing the claim of the assessee has observed as under:

"2.7(vii) After examining the issue from various angles now keeping in view all that discussion we return back to main issue whether the assessee engaged in producing any article or thing. The natural gas is a product of oil extraction activity. This occurs in natural form along with other fossils fuel. As such the gas in this natural is crude and cannot be used by industrial or domestic consumers. The gas is supplied by Gas Authority of India (AIL) as it is extracted by ONGC from oil well. At assessee, company's stage the process of making as consumable for industrial or domestic purpose takes place such process is a highly technical, controlled and regulated process as the gas is very inflammable and hazardous. For this purpose plant is maintained as per American National Standard Institute and British Standard. The crude gas is as such distributable but the same cannot be put to industrial commercial use. This is evident from the fact that GAIL supplies crude gas without making it decontaminated odorized suitable for consumption. The assessee company is processing gas for receiving chemical and physical impurities such as water, dust particles and oil, odorizing and optimally pressuring through filtration and depressurizing that makes the raw gas an unsaleable commodity which has distinct functional attributes. Thus the assessee company is engaged in producing the decontaminated odorized and optimally pressurized gas with the help of high precision instruments, in rigid atmospheric and pressure conditions which are of great importance in ensuring the final quality of the gas which has to confirm the quality standards. At every stage of process, there have to be rigid quality standards and even a very minute variations or defect could render the gas which has to confirm the quality standards and even a very minute variations or defect could render the gas totally worthless. It, therefore, follows that the assessee company is an industrial undertaking engaged in producing the contaminated, odorized and optimally pressured gas satisfied the condition of producing article or thing of being entitled to deduction u/s. 80-I/80-IA."

6.1 Taking into account the observations made by the Tribunal while allowing the claim of the assessee, that there is a process of altering gas for making tis consumable for industrial or domestic purpose or making it more user friendly for the industrial undertaking. In that view of the matter, we are of the opinion that the Tribunal has rightly taken the view that the assessee carries out manufacturing activity. No interference is called for with the order of the Tribunal. Therefore, we answer the question in favour of the assessee and against the revenue."

Respectfully following the decision of Co-ordinate benches of the ITAT in the case of the assessee itself and decision of Honøble Jurisdictional High Court as cited above, we do not find any substance in the appeal of the revenue, therefore, this ground of appeal of the revenue is dismissed.

9. In respect of second ground of appeal of the revenue regarding allowing relief on expenses to the extent of Rs. 2,11,402/- by the ld. CIT(A),

it is clear from the finding of Id. CIT(A) that the relief of expenses was allowed on the basis of trend of estimation of expenses decided by the ITAT on similar issue on identical facts in the preceding assessment years therefore, we consider that the Id. CIT(A) has rightly allowed the expenses after treating seminar and staff training, education and staff welfare expenses as business expenses. Therefore, we do not find any error in the decision of Id. CIT(A). Accordingly, this ground of appeal of the revenue is dismissed.

10. Ground No. 1 of the assessee regarding confirming disallowance of depreciation of Rs. 49,36,938/- on asset leased to Rajendra Steel Ltd. and ground no. 3 of revenue in allowing rental income of Rs. 1548935/-, the assessee has claimed depreciation on leased assets to Rajendra Steel Ltd. to the amount of Rs. 4936938/-. The assessing officer has disallowed the claim of depreciation on the basis of information obtained from DDIT Investigation, Kanpur that the asset on which depreciation was claimed either did not exist or real worth of the assets was only 10 to 20% of the value recorded in the books. During the course of appellate proceedings, it is brought to our notice that on identical issue and facts, the Id. CIT(A) has allowed the claim of the assessee on depreciation on the same asset during assessment year 1996-97. With the assistance of Id. representatives, we have gone through the order of CIT(A) passed for assessment year 1996-97 dated 5th October, 2015 wherein the Id. CIT(A) has held that the assessee had filed all documents to prove its contention and on going through the bills of purchase, insurance documents, inspection report, agreement for lease, the transaction of the assessee with the M/s. Rajendra Steel Ltd was found

genuine and the Id. CIT(A) has held that the report of DDIT Investigation Unit-2 Kanpur was vague and there was no specific mention of the status of the machinery leased by the assessee. We have further noticed that during the course of original assessment proceedings for assessment year 1996-97, the assessee has submitted the following documents to substantiate his claim of depreciation:-

- “a. Invoice for purchase of equipments*
- b. Receipt issued by supplier of payment made for purchase of equipment*
- c. Copy of lease agreement*
- d. Copy of certificate issued by the Rajinder Steels Limited for installation of equipments*
- e. Copy of insurance policy taken from United India Insurance Co Limited*
- f. The appellant himself, carried out the inspection about the installation of the Air Pollution Control & Dust Collector at Kanpur. Copy of the inspection report has also been submitted to the assessing officer vide our letter dated 22 March 1999.*
- g. United Indian Insurance Co Limited, a wholly owned Government Company has granted an insurance policy after due verification of the equipment and condition of the same.”*

It is also noticed that the United Indian Insurance Co. Ltd. has also granted an Insurance Policy after due verification of the equipment and condition of the assets. With the assistance of the Id. representatives, we have gone through the material on record and noticed that identical issue on similar facts was thoroughly considered by the Id. CIT(A) during the assessment year 1996-97 and has categorically held after considering the material and supporting evidences as cited above that the transaction of leasing of assets to be Rajendra Steels Ltd was genuine.

In the light of the above facts and circumstances, we observe that Ld. CIT(A) has failed to controvert the aforesaid material facts on the basis of which the transactions of the assessee with M/s. Rajinder Steel Ltd was found to be genuine. Therefore, the assessing officer is directed to allow the claim of depreciation and assess the rental income shown by the assessee

of Rs. 27,25,192/- as leased rental income. Accordingly, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

11. In the result, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 29-07-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 29/07/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलअ अधकरण,
अहमदाबाद