आयकर अपीलीय अधीकरण, **खंडपीठ गुवाहाटी** ,

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.120 to 123/Gau/2008
Assessment Years :2003-04 to 2006-07

ACIT, Circle-2, Dibrugarh, Kartickpara, Dibrugarh, Assam-786008	**V/s.**	Oil India Ltd., Duliajan Dist. Dibrugarh, Assam Pin-786602 [**PAN No. AAACO 2352 C**]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

ITA No.87/Gau/2010
Assessment Year :2007-08
ITA No.33/Gau/2018
Assessment Year:2008-09
ITA No. 325/Gau/2013
Assessment Year: 2009-10
ITA No.09/Gau/2014
Assessment Year: 2010-11

Oil India Ltd., P.O. Duliajan Dist. Dibrugarh, Assam-786602 [**PAN No. AAACO 2352 C**]	**V/s.**	ACIT, Circle-2, Dibrugarh, Kartickpara, Dibrugarh, Assam
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Gaurav Jain FCA & Shri Deepesh Jain, FCA
राजस्व की ओर से/By Respondent	Shri Sanjoy Sarma, Sr. S.C. Shri. H.B. Mahanta, Principal CIT Dibrugarh Mrs. Rinzee Lhamu Sherpa, ACIT
सुनवाई की तारीख/Date of Hearing	05-07-2019
घोषणा की तारीख/Date of Pronouncement	28-08-2019

<u>आदेश</u> /<u>O R D E R</u>

PER S.S.Godara, Judicial Member:-

These Revenue and assessee's eight appeal(s) arise against the Commissioner of Income Tax (Appeals)-Shillolng's common order dated 29.02.2008 for assessment year(s) 2003-04 to 2006-07 passed in case No.23,24-Dib/05-06, 28 & 29-Dib/2007-08 and separate orders dated 23.04.2010, 13.12.2017, 28.02.2013 & 06.11.2013 for latter as many assessment year(s) 2007-08 to 2010-11 in case Nos. DBR-8/2008-09, DBR-4/2010-11, DBR-33/2011-12 & DBR-14/2012-13 involved proceedings u/s 143(3) in all cases except in assessment year 2009-10 u/s 251 r.w.s. 154 of the Income Tax Act, 1961; in short as 'the Act'; respectively.

Heard Shri Sanjay Sarma, Senior Standing Counsel, Shri H.B. Mahanta, Principal CIT,Dibrugarh and Mrs. Rinnee Sherpa, ACIT present (incumbent Assessing Officer) representing the department and S/Shri Gaurav Jain and Deepesh Jain appearing for the assessee.

2. It transpires at the outset from a combined perusal of the Revenue and assessee's pleadings in their respective four cases each that the sole issue that arises for our apt adjudication is of the latter's eligibility to claim u/s 80IB deduction in former two and sec. 80IC deduction in the remaining six assessment year(s) involving corresponding deduction claims read amount(s) ₹62,07,27,070/-, ₹171,79,78,604/-, ₹369,60,15,777, ₹1174,87,15,092/-, ₹1,149,57,71,017/-, ₹1572,02,31,395/-, ₹1626,49,31,357/- and 186,677,04,350/-; assessment year-wise respectively.

3. Learned representative(s) inform us very fairly that the Revenue's four appeal(s) in assessment year(s) 2003-04 to 2006-07 arise against the CIT(A)'s common order holding the taxpayer as eligible for sec. 80IB deduction in relation to its profit derives from the eligible undertaking i.e. new oil wells taken on standalone basis. The Assessing Officer's identical four

folded reasoning in his separate assessment order(s) declined the same inter alia on the ground that the taxpayer's oil wells in issue were not new industrial undertaking(s) it did not comply with Rule 18BBB(2) of the Income Tax Rules, 1962 requiring a separate report accompanied by the profit and loss account and balance-sheet of the eligible undertaking as if it is a distinct entity, its plant and machinery used in the oil wells had been previously put to use for other purposes and Form 10CCB auditor report had not been field alongwith the return; respectively. All this resulted in disallowance(s) of assessee's above stated corresponding deduction claim(s) raised in former four assessment year(s).

4. The CIT(A)'s common order under challenge in these former four assessment year(s) reverses the Assessing Officer's action as follows:-

"(A) DISALLOWANCE OF DEDUCTION UNDER SECTION 80IB/80IC OF THE ACT
AY:2003-04, 2004-05, 2005-06 and 2006-07

*For the assessment years 2003-04, the Appellant based its claim as an allowable deduction under Section 80IB of the Act. For the subsequent assessment years viz. 2005-06 and 2006-07 the assessee claimed such deduction under Section 80IC of the Act. Such deduction was claimed in respect of each of the Oil Well's which were constructed by the assessee and for which capital employed in respect of each such oil well has been separately accounted for in the accounts as well as the expenditure incurred in respect of oil well including salaries given to the employees was also separately accounted for in the accounts of the assessee. The assessee submitted the audit report in Form No.10CCB along with the computation of profit and loss with regard to each oil well (**forming part of the audit report**) in the course of hearing. The Assessing Officer (AO), however, disallowed such claim under Section 80IB and also under Section 80IC for the respective years on, inter alia, the following grounds:-*

A) The assessee's oil wells for which the claim is made, is not an new industrial undertaking or enterprise; though there is no dispute that these are plants.

B) As per Sub Rule (2) of Rule 18BBB of the Income Tax Rules, a separate report is to be furnished by an undertaking or enterprise claiming deduction under Section 80IC and also as per Sub-Rule (2) of Rule 18BBB separate Books of Account should be maintained in respect of all these wells as each well is a distinct entity but no such separate Books of account have been maintained by the assessee in respect of these oil well's;

C) According to the provisions of clause (ii) of sub-section (4) of Section 80IC an undertaking should not be formed by the transfer to a new business of machinery or plant previously used for any purpose. However the assessee has used common assets like Drilling Rig, Genuineness Set and other common movable assets.

D) Separate Audit report in Form 10CCB has not been submitted for each well alongwith the return of income. the Authorized Representative (AR), Dr. Debi Pal, Sr. Advocate appearing on behalf of the Appellant submitted that under sections 80IB and 80IC where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in Sub-section (2) there shall be in accordance with and subject to the provisions of this section be allowed in computing the total income of the assessee a deduction from such profits and gains as specified in Sub-section (3). In order to claim such benefit the following conditions are to be satisfied:-

a) The benefit is available to an undertaking or enterprise;

b) Such undertaking or enterprise begins to manufacture or produce any article of thing not being any article or thing specified in respect to the Thirteen Schedule;

c) The said section applies if the conditions specified in sub-section (4) of Section 80IC applies.

The conditions set out therein includes inter alia that the undertaking or enterprise is not formed by splitting up or the reconstruction of a business already in existence. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose by an assessee.
Explanation to Section 80IC(4) lays down that the provisions of Explanations 1 and 2 to sub-section (3) of Section 80IA shall apply for the purposes of clause (ii) of Section 80IC(4) as they apply for the purposes of clause (ii) of that sub-section.
Explanation 2 to Section 80IA(3) makes it clear that where in the case of an undertaking any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of the machinery or plant used in the business, then for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.
On the above premises of the law, the AR submitted the para-wise written submission during the course of hearing on each of the contention's of the AO which are summarised as under:

(A) The question, as to whether an oil well is an undertaking for the purpose of Section 80IC of the Act is to be considered first. An undertaking is not defined under the Act. In ***AIR 1960 SC 610 at page 616, para 17,*** *the Supreme Court pointed out that it has to decide what are the attributes, the presence of which, makes an activity an undertaking within the meaning of Section 2(i) of the Industrial Dispute Act. As a working principle it may be stayed that an activity systematically or habitually undertaken for the production or distribution of goods or for rendering of material service to the community at large or a part of such community with the help of the employee is an undertaking.*
In the case of Textile Corporation Ltd. Vs. CIT reported in ***107 ITR 195,*** *the question asked was what constitutes a new industrial undertaking which is eligible for deduction under Section 15C of the Income Tax Act, 1922 (****corresponding provision is 80J and 84****). The Supreme Court pointed out at page 204 that a new industrial undertaking should be separate physically from than the old one, the capital of which and the profits thereon are ascertainable. The Supreme Court further pointed out, that a new undertaking must be an integrated unit by itself wherein articles are produced and at least*

a minimum of 10 persons, with the aid of power and a minimum 20 persons without the aid of power have been employed. Such a new industrially recongnizable unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. The industrial unit and be treated as a new industrial undertaking if the undertaking is new in the sense that the new plant and machinery are erected for producing either the same commodities or some distinct commodities. The Supreme Court further pointed out that in order to claim the benefit of Section 15C of the 1922 Act the following conditions are to be established-

a. *Investment of substantial fresh capital in the industrial undertaking set up;*
b. *Employment of requisite labour therein;*
c. *Manufacture or production of articles in the said undertaking;*
d. *Earning of profits clearly attributable to the said new undertaking and*
e. *Above all, a separate and distinct identity of the industrial unit set up.*

*According to Webster Dictionary the word '**undertaking**' means anything undertaken, any business, work or project to which one engages in or attempts, an enterprise etc.*
*Applying the above tests, each oil well appears to satisfy the test of "**undertaking**" for the purpose of Section 80IB/80IC of the Act. Each oil well is a distinct, separate and integrated unit for which capital is separately employed and the expenses incurred are separately accounted for. Each oil well produces crude oil and natural gas and therefore it satisfies also one of the tests for the purpose of claiming the benefit of Section 80IB & 80IC.*

(B) Regarding maintenance of separate set of Accounts, the AR submitted that even though the assessee maintains composite accounts the capital employed for each of the oil well is separately shown in the accounts and the expenditure incurred for each oil well is also separately shown in the account. In fact, the audit report which has to be submitted in accordance with the provisions of the Act, separately shows the capital employed as well as the expenses incurred for each oil well and ascertains and computes the profits attributable to each oil well. In other words, the auditor in his report has separately ascertained the profit attributable to each oil well and has given his reported separately for each well the capital employed, expenditure incurred, quantity of the oil produced, sale value of each oil well, production cost of each oil well, total cost thereby ascertaining from the Books of account of the appellant the profits which are attributable to each oil well. The law does not require that separate accounts be maintained for each of the undertaking's for which the claim under Section 80IB/80IC is to be allowed.

*The other point, that separate accounts are to be maintained as pointed out by the AO, is not a requirement of this Section. The Gauhati High Curt has categorically held in the case of CIT Vs.Technotive Eastern Pvt. Ltd. reported in 255 ITR 253 at page 255, that for the purpose of claiming relief under Section 80HHH and Section 80I, the law does not require that separate accounts are to be maintained for claiming deduction under the aforesaid provisions. The provisions of section 80IC are similar in that the only requirement is that thee profit of the concern or the undertaking is to be separately ascertainable, and therefore the report of the Auditor giving such separate profit (**ascertainable from, each oil well**) is sufficient compliance with the section. The aforesaid decision of the Gauhati High Court is binding*

upon all authorities within the jurisdiction of the High Court. The same view has been subsequently followed by the Gauhati High Court in the case of Bongaigaon Refinery & Petrochemicals Ltd. Vs. CIT reported in 274 ITR 379. This view has been supported in catena of judicial decisions.

104 ITR 101 (Cal) at page 104
120 ITR 110 (Cal) at page 120
190 ITR 553 (All) at pages 555

(C) Regarding the assertions of the AO that the undertaking has been formed by transfer of assets, the AR submitted that the assessee has not transferred any plant or machinery which was formerly used by the assessee. In fact, in each Oil Well, only new plant or machinery has been used and constructed for the purpose of producing the Crude Oil and Natural Gas from the said oil wells. It is incorrect to maintain that the plant and machinery which was used earlier in the business has been transferred to each of the new oil wells. What has been shown, s at the time of exploration, machinery like drilling rigs, genuineness-sets etc. which are used for exploration purposes and for boring the successful well, are a new undertaking in that the well is set up by the use of new plant and machinery and with separate expenses to produce the oil and natural gas. Therefore, such drilling rigs, genuineness-sets etc. are not transferred for the production of oil and natural gas from the undertaking but such drilling rigs, genuineness-sets etc. as soon as the exploration is completed, are transferred for use in exploration of some other oil wells in some other area. Once the successful well is constructed, with new plant and machinery, the oil well commences as an undertaking for producing the oil. Therefore, there is no transfer of any plant or machinery to the undertaking for its use.

*(D) Regarding the point of non-submission of audit report alongwith the return of income, the AR argued that submission of documents in support of the claim of the assessee, has been decided by various courts and that the submission of the required documents during the course of hearing is sufficient compliance of the requirement of a particular section or particular claim, if the same is complied with before the completion of the assessment. The AR drew my attention to the noting of the Assessing Officer …"**it is true that the as has submitted the report in Form 10CCB in respect of 59 wells and are stated to be separate new undertakings**."*
The AR, accordingly, refuted the allegation of the AO that the audit report had not been submitted. The AR also submitted that in case a consolidated report, instead of individual report is submitted, it should not be treated as a non-compliance of the provision's of the Act.
The AR also submitted that Section 80IB/80IC gave certain tax relief in certain circumstances and therefore such a provision is to be liberally construed. (239 ITR 775 (SC)
*For the reasons aforesaid it was submitted by the AR that the benefit under Section 80IB for the assessment years 2003-04 and 2004-05 and benefit u/s. 80IC for the assessments years 2005-06 and 2006-07 are to be **allowed**."*

5. Learned senior standing counsel seeks us to treat the Revenue's appeal ITA No.120/Gau/2008 for assessment year 2003-04 as the "***lead***" case raising the following substantive grounds:-

> *"1. On the facts and circumstances of the case, the Ld. CIT(A) had erred on facts and law by allowing deduction u/s. 80IB through a non speaking order, without discharging and rebutting the AO's finding on facts and law and without referring to the limitations as provided u/s. 80IB(3)(i), 80IB(4) 3rd proviso of the I.T Act and 80IB(9)."*

6. Our attention is next invited to Revenue's application filed way-back on 29.03.2017 seeking to raise its twin folded additional grounds that the CIT(A) has further erred in holding the assessee is eligible for u/s 80IB deduction despite its failure in filing the auditor's report in the prescribed Form 10CCB of the IT Rules and also for not having raised the said relief claim in the return of income. Hon'ble apex court's landmark judgment in *National Thermal Power Corporation Ltd. vs. CIT* (1998) 29 ITR 383 (SC) considered in the tribunal's Special Bench in the *M/s All Cargo Global Logistics Ltd. vs. DCIT* (2012) 137 ITD 26 (Mum) holds that we can very well entertain such a legal question to determine correct tax liability of an assessee when all the relevant facts form part of records. We go by the very analogy to admit the Revenue's foregoing twin additional grounds.

7. We now advert to the Revenue's arguments. Learned Senior Standing counsel files assessee's computation of taxable income for assessment year 2003-04 containing a note at the bottom to the fact that its fifteen new wells had started crude oil production during the corresponding financial year and therefore, it is entitled sec. 80IB 100% deduction *qua* profits derived therefrom. The same also accompanies a detailed computation furnished in Schedule-5. Mr. Sarma accordingly pleads that assessee's deduction claim relates to fifteen new wells in the relevant previous year. And also that twenty-eight such wells had been completed in the last five years taking total count to forty-three. The impugned assessment year is admittedly the first year of assessee having claimed the deduction in issue.

8. The assessee's present incumbent Assessing Officer Ms. Sherpa submits that the oil wells are not in the nature of ***"new***" undertaking so as to

be eligible for sec. 80IB deduction. She cites hon'ble Calcutta high court's decision in CIT vs. Oil India Ltd. (1992) 198 ITR 370 (Cal) in the taxpayer's case itself for assessment year 1992-73. She takes us to para 12 & 13 therein. The tribunal's findings had held the assessee's oil wells to be "***plant***" for the purpose of sec. 32(2A) development rebate. It had stated therein that an oil well is an apparatus use for the purpose of deriving income from crude oil after drilling and therefore the same is in the nature of plant of carrying out oil exploration as business activity. Ms. Sharpa accordingly contends that since their lordship had treated all oil wells as a plant in composite manner, the assessee's stand that each well forms an eligible undertaking now goes contrary to the said settled proposition.

9. The Revenue's next argument quotes Rule 18BBB(2) of the Income-tax Rules that the Assessing Officer had rightly held the assessee having violated the mandatory condition of filing a separate report for the purpose of sec. 80IB deduction as a mandatory condition for furnishing a separate audit report alongwith the relevant profit and loss account as well as balance-sheet as if the undertaking is an distinct entity for the purpose of claiming u/s 80IB deduction. It also emphasises that the impugned statutory provision treats each undertaking as a separate one on standalone basis including capital employed, profits derived to be recorded in separate books of account. Hon'ble jurisdictional high court's decision *CIT vs. Technotive Eastern Pvt. Ltd.* (2002) 225 ITR 253 (Gau) is sought to be distinguished on the ground that the same involved sec. 80HH and 80I claim(s) against the one u/s 80IB raised before us.

10. The Revenue's next arguments are that the assessee's plant and machinery in its oil wells had been previously used for other purposes and therefore, the Assessing Officer had rightly denied the impugned sec. 80IB deduction. And also that the assessee had neither filed its Form 10CCB auditor's report alongwith return of income nor during scrutiny proceedings.

11. Mr. Mahanta, Principal Commissioner of Income-tax, Dibrugarh has also rendered his valuable assistance to the bench. He quoted sec. 80IB(9)(ii) of the Act that the assessee's deduction claim has to be considered for a period of seven consecutive assessment years; including the initial assessment year, if it eligible undertakings are located in north eastern region beginning or having begun the commercial production of mineral oil on or before 01.04.1997 and thereafter; respectively. He highlights the fact that the assessee's profits derived from fifteen of the said oil wells qualify for u/s 80IB deduction for seven consecutive assessment years since the remaining twenty-eight (supra) had commenced production before 01.04.1997 and therefore, the impugned lead "***assessment year 2003-04***" is very well beyond the statutory time span of seven consecutive assessment years. Mr. Mahanta accordingly urges us to restore the instant issue back to the Assessing Officer for necessary factual verification.

12. The assessee places strong reliance upon the CIT(A)'s findings deleting the impugned sec. 80IB deduction disallowance. Mr. Jain took us to page 214 in the assessee's paper book comprising of its Form 10CCB audit report (revised) making it clear that it had in fact raised sec. 80IB(4) deduction claim than sec. 80IB(a) (supra) of the Act. Page 219 (internal page 6) thereafter also contains the assessee's specific response to clause "2 b" to this effect.

13. Mr. Jain quotes sec. 80IB(4) 1st to 3rd proviso read with the eighth schedule including Assam state at # 2 in the specified states lest to the effect. Relevant period for 100% deduction of the profits derived from the eligible undertaking therein is ten assessment year(s). He states that the assessee had started its commercial production between 01.04.1993 to 31.03.2004 in respect of all forty-three oil wells as per the above stated proviso(es) to sec. 80IB(4) of the Act. Case law *ACIT vs. Niko Resources Ltd.* (2009) 123 TTJ 310 (Ahd), *Niko Resources Ltd. vs. Union of India* (2015) 374 ITR 369 (Guj); *Commissioner of Income-tax, Guwahati vs. Bongaigaon Refinery and*

Petrochemical Ltd. (2012) 349 ITR 352 (SC); Commissioner of Income-tax vs. Technotive Eastern (P) Ltd. (202) 1224 Taxman 769 (Gau); Commissioner of Income-tax, Panchkula vs. Micro Instruments Co. (2016) 388 ITR 46 (P&H); Commissioner of Income-tax vs. Dunlop Rubber Co. (II) Ltd., (1977) 107 ITR 182 (Cal); Ranbaxy Laboratories Ltd. vs. Assistant Commissioner of Income-tax, Raange-15, New Delhi (2016) 68 taxmann.com 322 (Del); Commissioner of Income-tax vs. G.M.Knitting Industries (P) Ltd. (2015) 376 ITR 456 (SC); Commissioner of Income-tax, Delhi vs. Contimeters Electricals (P) Ltd. (2009) 317 ITR 249 (Del); Commissioner of Income-tax vs. Axis Computers (India) (P) Ltd. (2009) 178 Taxman 143 (Del); Commissioner of Income-tax-I vs. AKS Alloys (P) Ltd. (2012) 18 taxmann.com 25 (Mad); Commissioner of Income-tax vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj) and Bajaj Tempo Ltd. vs. Commissioner of Income-tax (1992) 196 ITR 188 (SC); ARB Industries vs. JCIT Special Range-14 (2005) 93 TTJ 608 (Del) Notification No.S.O. 627(E) [No.11022(F.No.142/32/99-TPL)]Section 80-IB dated 04.08.1999 and Oil & Natural Gas Corporation Ltd. vs. Commissioner of Income-tax (2015) 376 ITR 306 (SC) is also quoted in support.

14. We have given our thoughtful consideration to forgoing arguments *qua* the instant "***lead***" issue of assessee's deduction claim u/s 80IB of the Act. We advert to the Assessing Officer's four folded reasoning (supra) that the assessee was supposed to furnish a separate audit report as prescribed under IT Rules in case of an eligible undertaking or enterprise claiming sec. 80IB deduction to be further accompanied by the relevant profit and loss account / balance-sheet as if the undertaking is a distinct entity. The CIT(A) quotes hon'ble jurisdictional high court's decision Bongaigaon Refinery & Petrochemicals Ltd. (supra) that the law does not require such separate accounts to be maintained as if the undertaking itself is a distinct business. The Revenue has admittedly sought to distinguish the same for the reason that their lordships dealt with a case of sec. 80HH and sec. 80I deduction as against that raised u/s. 80IB before us. We find no merit in the Revenue's

instant arguments. Section 80IB(13) imports sec. 80IA(5) and (7) to (12) to be applicable to the eligible business carried out by the eligible undertaking ini question. We notice in this backdrop that the clinching legislative's expression 80IA(7) is "**accounts of the undertaking**" than a complete set off separate books of account. And sec. 80HH(5), 80I(7), sec. 80IA(7) as well as sec. 80IB(13) also use the very statutory expression "***accounts of the undertaking***". We hold in this backdrop that the CIT(A) has rightly followed the hon'ble jurisdictional high court's decision in taxpayer's favour. Various other judicial precedents *Bongaigaon Refinery & Petrochemicals Ltd.*, Micro Instruments Co. & Ranbaxy Laboratories Ltd. (supra) also support the assessee's case. We make it clear that the Revenue's paper book to this effect does not pin-point any material that the assessee had not maintained its books of account as per its each oil well-wise treated as a separate undertaking. Same is the fate of the Revenue's next argument that assessee's each oil well ought not to be treated as a separate eligible undertaking. Hon'ble Gujarat high court's and this tribunal decision in Nicco Laboratories Ltd. (supra) decided the very issue in assessee's favour that each oil well can indeed be treated as a separate eligible undertaking. Page 291 in assessee's paper book reveals that the CIT(A) had deputed the Assessing Officer himself to verify the correct factual position. The Assessing Officer visited the assesssee's oil wells site. He reported on 03.03.2010 that the assessee's oil wells are distinguishingly identifiable as per their respective production. And also that it had maintained production-wise and drilling cost; well-wise, in separate books of account in computers. We therefore decline the Revenue's twin foregoing arguments. Its reliance on hon'ble Calcutta high court's judgment in assessee's case (supra) treating the oil wells as a composite plant for sec. 32(2A) investment allowance deduction does not apply so far as sec. 80IB deduction claim is concerned. We make it clear that the said relief was applicable for the purpose of giving stimulus to investment whereas the instant issue is that of eligible undertaking-wise deduction as already proved in foregoing discussion.

15. The Revenue's next argument is that the assessee had used its machines or plant for other purposes as per page-6 of the assessment order dated 30.11.2005 also does not carry merit. We notice first of all that the Assessing Officer had nowhere indicated as to what kind of plant and machinery had been used for other purposes. Be that as it may, hon'ble apex court's judgment in *Bajaj Tempo Ltd.* (supra) held long back that the legislative expression "***form***" alongwith a pre-fix negative covenant has to be interpreted in the following manner:-

> *"'**Form**' according to the dictionary, has different meanings. **In the context in which it has been used it was intended to connote that the body of the company or its shape did not come up in consequence of transfer of building, machinery or plant used previously for business purposes. Use of the negative before the word 'formed' further strengthens it. In other words, building, machinery or plant used previously in other business should not result in the undertaking being formed by it. The transfer to take out the new undertaking out of the purview of sub-section (1) must be such that but for the transfer the new undertaking could not have come into being**. In our opinion, on the facts found by the tribunal, the part played by taking the building on lease was not dominant in the formation of the company. The High Court was therefore not justified in answering the question in favour of the revenue."*

16. Learned Senior Standing counsel fails to dispute that sec. 80IB(2) also carries a similar expression "***any industrial undertaking... not formed by***". We conclude in these facts that the assessee's oil wells had come into existence after earth digging through rigs. There is thus no violation of the legislative condition of use of old machinery for formation of the undertaking / oil wells. The assessee is therefore held to have used its oil rigs, equipments and tools for bringing into existence the new oil well / eligible undertaking than having formed the same through the old plant and machinery.

17. The Revenue's next argument that the assessee had not filed its Form-10CCB audit report alongwith return or during assessment fails to invoke our concurrence since the Assessing Officer had himself noted that the said report

stood duly submitted as per the CIT(A)'s detailed discussion (supra). The same takes care of the department's instant grievance.

18. The Revenue's next argument seeks to treat the assessee's impugned deduction claim u/s 80IB(9) had not sec.80IB(4) of the Act. The above former provision grants deduction for seven consecutive assessment years in case of an undertaking located in north eastern region commencing its commercial production as per the due dates prescribed. We wish to reiterate here as per page 214 in the paper book that the assessee's Form 10CCB had specifically raised sec. 80IB(4) deduction claim for ten assessment years. Pages 226 is the very Form-10CCB report for assessment year 2004-05 in identical manner. We therefore reject the Revenue's instant grievance which turns out to be against the facts on record. We make it clear that Form 10CCB is a specific document prescribed for claiming the impugned deduction. The Revenue's above stated arguments that the assessee had not expressly made it clear in its computation about the impugned deduction claim raised u/s. 80IB(4) of the Act is declined.

19. Learned standing counsel submitted at this stage that our foregoing detailed discussion holding the assessee's eligible for claiming sec. 80IB deduction is applicable only in assessment years 2003-04 and 2004-05 involving appeal(s) ITA No.120 and 121/Gau/2008. We therefore reject Revenue's instant former two appeals.

20. The Revenue's case at this stage is that the Assessing Officer had rightly declined the assessee's deduction claim u/s. 80IC of the Act. Learned Principal CIT invited our attention to the fact that sec. 80IC of the Act envisaged the corresponding deduction relief in case of north eastern states under sub-section 2(b)(iii). And that the same applies to manufacture or production of any article or thing specified in 14th schedule as per the Finance Act, 2003 with effect from 01.04.2004. Item No.16 in 14th schedule admittedly

includes "**mineral based industry**" in the positive list of articles or things to be manufactured or produced. Mr. Mahanta's case accordingly is that the assessee's activity of crude oil exploration through its oil wells does not amount to a mineral based industry. He also places reliance on hon'ble apex court's decision in ONGC (supra) as under:-

> *"13. The Income Tax Act does not define the expressions "**mines**" or "**Minerals**". The said expressions are found defined and explained in the Mines Act, 1952 and the Oil Fields (Development and Regulation) Act 1948. While construing the somewhat pari material expressions appearing in the Mines and Minerals (Development and Regulation) Act 1957 regard must be had to the provisions of Entries 53 and 54 of List I and Entry 22 of List II of the 7th Schedule to the Constitution to understand the exclusion of mineral oils from the definition of minerals in Section 3(a) of the 1957 Act. Regard must also be had to the fact that mineral oils is separately defined in Section 3((b) of the 1957 Act to include natural gas and petroleum in respect of which Parliament has exclusive jurisdiction under Entry 53 of List I of the 7th Schedule and had enacted an earlier legislation i.e. Oil Fields (Regulation and Development) Act, 1948. Reading Section 2(j) and 2(jj) of the Mines Act, 1952 which define mines and minerals and the provisions of the Oil Fields (Regulation and Development) Act, 1948 specifically relating to prospecting and exploration of mineral oils, exhaustively referred to earlier, it is abundantly clear that drilling operations for the purpose of production of petroleum would clearly amount to a mining activity or a mining operation. Viewed thus, it is the proximity of the works contemplated under an agreement, executed with a non-resident assessee or a foreign company is to be assessed under Section 44BB or Section 44D of the Act. The test of pith and substance of the agreement commends to us as reasonable for acceptance. Equally important is the fact that the CBDT had accepted the said test and had in fact issued a circular as far back as 22.10.1990 to the effect that mining operations and the expressions "**Mining projects**" or "**like projects**" occurring in Explanation 2 to Section 9(1) of the Act would cover rendering of service like imparting of training and carrying out drilling operations for exploration of and extraction of oil and natural gas and hence payments made under such agreement to a non-resident/foreign company would be chargeable to tax under the provisions of Section 44BB and not Section 44D of the Act. We do not see how any other view can be taken if the works or services mentioned under a particular agreement is directly associated or inextricably connected with prospecting, extraction or production of mineral oil. Keeping in mind the above provision, we have looked into each of the contracts involved in the present group of cases and find that the brief description of the works covered under each of the said contracts as culled out by the appellants and placed before the Court is correct. The said details are set out below:*

S.No.	*Civil Appeal No.*	*Work covered under the contract*
1	*4321*	*Work covered under the contract drilling of exploration wells and carrying out seismic surveys for exploratory drilling.*
2	*740*	*Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.*
3	*731*	*Drilling, furnishing personnel for manning, maintenance and operation of drilling rig and training of personnel.*
4	*1722*	*Furnishing supervisory staff with expertise in operation and management of Drilling unit*
5	*729*	*Capping including subduing of well, fire fighting*
6	*738*	*Capping including subduing of well, fire fighting*

7	*1528*	*Analysis of data to prepare job design, procedure for execution and details reading monitoring*
8	*1532*	*Study for selection of enhanced Oil Recovery processes and conceptual design of Pilot Tests*
9	*1520*	*Engineering and technical support ot ONGC in implementation of Cyclic Steam Stimulation in Heavy Oil Wells.*
10	*2794*	*Assessment and processing of seismic data alongwith engineering and technical support in implementation of Cyclic Steam Stimulation.*
11	*1524*	*Conducting reservoir stimulation studies in association with personnel of ONGC*
12	*1535*	*Laboratory testing under simulated reservoir conditions*
13	*1514*	*Consultancy for optimal exploitation of hydrocarbon resources*
14	*2797*	*Consultancy for all aspects of Coal Bed Methane*
15	*6174*	*Analysis of data of wells to prepare a job design.*
16	*1517*	*Geological study of the area and analysis of seismic information reports to design 2 dimensional seismic surveys.*
17	*7226*	*Opinion on hydrocarbon resources and foreseeable potential*
18	*7227*	*Opinion on hydrocarbon resources and foreseeable potential.*
19	*7230*	*Opinion on hydrocarbon resources and foreseeable potential*
20	*6016*	*Opinion on hydrocarbon resources and foreseeable potential.*
21	*6008*	*Evaluation of ultimate resource potential and presentations outside India in connection with promotional activities for Joint Venture Exploration program.*
22	*1531*	*Review of sub-surface well data, provide repair plan of wells and supervise repairs*
23	*733*	*Repair of gas turbine, gas control system and inspection of gas turbine and generator*
24	*741*	*repair and inspection of turbines*
25	*737*	*Repair, inspection and overhauling of turbines*
26	*736*	*Inspection engine performance evaluation, instrument calibration and inspection of far*
27	*1522*	*Replacement of choke and kill consoles on drilling rigs*
28	*1521*	*Inspection of gas generators*
29	*1515*	*Inspection of rigs*
30	*2012*	*Inspection of generator*
31	*1240*	*inspection of existing control system and deputing engineer to attend to any problem arising in the machines*
32	*1529*	*Inspection of drilling rig and verification of reliability of control systems in the drilling rig.*
33	*2008*	*Expert advice on the device to clean insides of a pipeline*
34	*2795*	*Feasibility study of rig to assess its remaining useful life and to carry out structural alterations*
35	*925*	*Engineering analysis of rig*
36	*1519*	*Imparting training on cased hold production long evaluation and analysis*
37	*1533*	*Training on well control*
38	*1518*	*Training on implementation of six sigma concepts*
39	*1516*	*Training on implementation of six sigma concepts*
40	*6023*	*Training on drilling project management*
41	*2796*	*Training in safety rating system and assistance in development and audit of safety management system.*
42	*1239*	*To develop technical specification for 3D seismic API modules of work and to prepare bid packages*
43	*1527*	*Supply supervision and installation of software which is used for analysis of flow rate of mineral oil to determine reservoir conditions.*
44	*1523*	*Supply, installation and familiarization of software for*

		processing seismic data

The above facts would indicate that the pith and substance of each of the contract/agreements is inextricably connected with prospecting, extraction or production of mineral oil. The dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils though there may be certain ancillary works contemplated thereunder. If that be so, we will have no hesitation in holding that the payments made by ONGC and received by the non-resident assessees or foreign companies under the said contracts is more appropriately assessable under the provisions of Section 44BB and not Section 44D of the Act. On the basis of the said conclusion reached by us, we allow the appeals under consideration by setting aside the orders of the High Court passed in each of the cases before it and restoring the view taken by the learned Appellate Commissioner as affirmed by the learned Tribunal."

21 The Revenue vehemently contends in light of their lordships discussion that even Mines and Minerals (Development and Regulation) Act, 1957 does not include crude oil exploration in the definition of minerals u/s 3 of the said law. We see no merit in Revenue's instant arguments. We quote the above extracted decision itself wherein their lordship have treated oil exploration payments made to overseas non-resident entities to be covered under the specific provision u/s 44BB and not in presumptive scheme of taxation u/s 44AD of the Act. We make it clear that the Act nowhere defines "**minerals**" or "***mineral based industry***". The same has therefore to be taken as per its meaning in ordinary prudence. Hon'ble apex court's decision in Raghunath Rai Bareza vs. PNB (2007) 135 Companies cases 163 (SC) holds that it is the cardinal principle of interpretation of a statute that the words **used** by the legislature are to be understood in their natural, ordinary, and popular meaning and to construe as per their grammatical meaning unless such a construction leads to some absurdity or unless there is something in the context or in the object of the statue to suggests to the contrary. Their lordships' another judgment in *Smt. Tarulata Shyam and Others vs. Commissioner of Income-tax, West Bengal* (1977) 108 ITR 345 (SC) also made it clear long back that it is the fundamental rule of taxation that when there is no scope for imparting into the statue words which are not used, such an import would not construe but to amend the statute. And also that if there is

any causes' omicus, the defect can be remedied by legislation alone not by judicial interpretation.

22. Their lordship recent constitutional bench's decision in Commissioner of Customs vs. M/s Dilip Kumar Company & Others CA No.3327 of 2007 dated 30.07.2018 has also settled the law regarding an exemption provision that the same has to be interpreted strictly. The burden of proving its applicability is on the assessee to show that his case comes within the parameters of the exemption clause or notification; as the case may be. And in case of an ambiguity in exemption notification which is subject-matter of strict interpretation, the benefit thereof goes to the Revenue and not to the assessee. We keep in mind the foregoing legal proposition to revert back to the instant issue. The assessee has admittedly claimed sec.80IC(2)(b)(iii) deduction in its oil wells having started crude oil production between 20.12.1997 to 01.04.2007.

23. We further notice after a deeper scrutiny that the assessee's main produce "crude oil" is treated as interchangeable to mineral oil includinig Natural Gas and Petroleum as per sec. 3(c) of the Oil Fields (Regulation and Development) Act, 1948 (No.53 of 1948) or the Oil Fields (Regulation and Development) Amendment Act 1969 (No. 30 of 1969). Section 42 read with its Explanation, Section 44BB Explanation (ii) and Section 293A Explanation (a) also define "**mineral oil**" as having the very inclusive meaning. We observe in this backdrop that the assessee is engaged in a "**mineral based industry**" as per the foregoing clinching expression employed as in 14th Schedule.

24. The Revenue's case that this crude oil production does not amount to mineral based industry as per item No.16 in 14th Schedule of the Act carries no substance since the above stated expression has to be construed in ordinary connotation without having regard the further classification of minerals i.e. ferrous or nonferrous and metallic or non-metallic etc.

25. We also wish to make it clear that there is further no dispute about the impugned statutory provision requiring in assessee to maintain its books of account qua each undertaking to be treated as separate unit in sec. 80IC(7) of the Act incorporating the very legislative intent as is there in sec. 80IB(13) (supra).

26. The Revenue's last argument is that assessee's oil exploration activity cannot be taken "manufacture or production" as prescribed in sec. 80IC(2)(b) of the Act. Hon'ble apex court's landmark judgment in *CIT vs. N.C.Budharaja and Co. and Another* (1993) 204 ITR 412 (SC) held long back that the statutory expression "**produce**" has wider connotation than the word "**manufacture**". The former; when used in juxtaposition with the latter, brings into existence new goods by a process which may or may not amount to manufacture. And that the same also includes in all the by products; intermediary or residuary hon'ble Delhi high court's decision in *HLS India Ltd.* (supra) also holds that whether or not any particular business activity amounts to manufacture or production for the purpose of various incentives schemes under the Act is required to be examined in the light of facts and circumstances in each case. These can be no denial of the fact that crude oil contains hydrocarbons as paraffin, cycloparaffin, napthene and araomatic comprcands which is obtained from beneath the earth's surface. We reiterate that this assessee admittedly drills / explores crude oil for the purpose of refining the same to various by-products. This we thus conclude that assessee's crude oil exploration very much amounts to production going by the relevant facts in the light of the preceding legal position. The Revenue's instant last argument is also rejected. We hold that CIT(A) has rightly granted sec. 80IC(2)(b) deduction to the taxpayer in assessment years 2005-06 and 2006-07. The Revenue's two corresponding appeal(s) ITA No.122 and 123/Gau/2018 also fails.

27. Next comes the assessee's four appeal(s) ITA No.87/Gau/2010, 33/Gau/2018, 325/Gau/2013 & 09/Gau/2014 relevant to assessment year(s) 2007-08 to 2010-11; respectively. Learned representatives inform us very

fairly that the lower authorities' have declined the assessee's sec. 80IC(2)(b) deduction claims in these four years. The CIT(A) has identically held that it ought to have raised its claim u/s. 80IB(9) of the Act. The assessee has pleaded its identical additional ground therefore seeking to claim the impugned deduction u/s80IB(9) of the Act. We conclude in this factual backdrop that our findings holding it eligible for sec. 809IC deduction for assessment years 2005-06 and 2006-07 would apply *mutatis mutandis* in these four latter assessment year(s) as well. Its additional ground is therefore rendered infructuous. Both the lower authorities action denying Revenue's sec. 80IC(2)(iii) deduction involving varying sum (supra) stands reversed. The assessee succeeds in its instant four appeal(s) in above terms.

28. These four Revenue's appeal(s) ITA No.120-123/Gau/2008 are dismissed whereas assessee's appeal(s) ITA No.87/Gau/2010, 33/Gau/2018, 325/Gau/2013 & 09/Gau/2014 are allowed in foregoing terms. Ordered accordingly. A copy of this order be placed in the respective case file(s).

Order pronounced in accordance with Rule 34(3) of the ITAT Rules by putting on Notice Board 28/08/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

Guwahati,
*Dkp
दिनांकः- 28/08/2019 **गूवाहाठी ।**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Oil India Ltd. P.O.Duliajan, Dist. Dibrugarh, Assam
2. राजस्व/Revenue-ACIT, Range-2, Income Tax Office Kartikpara, Dist. Dibrugarh
3. संबंधित आयकर आयुक्त गृवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Shillong
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary (on tour)
आयकर अपीलीय अधिकरण,
गूवाहाठी ।