

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4454/Del/2013 (A.Y 1996-97)

Gail (India) Ltd., 16, Bhikaji Cama Place, New Delhi – 110 066 (PAN : AAACG 1209 J) (APPELLANT)	Vs	DCIT-LTU Delhi Large Tax Payer Unit, NBCC Plaza Pushp Vihar, Sector – 3, New Delhi – 110 017 (RESPONDENT)
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And

I.T.A. No. 4642/Del/2013 (A.Y 1996-97)

DCIT-LTU Delhi Large Tax Payer Unit, NBCC Plaza Pushp Vihar, Sector – 3, New Delhi – 110 017 (APPELLANT)	Vs	Gail (India) Ltd., 16, Bhikaji Cama Place, New Delhi – 110 066 (PAN : AAACG 1209 J) (RESPONDENT)
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Appellant by	Sh. Ajay Vohra, Sr. Adv. Sh. Rohit Jain, Adv. Ms. Deepashree Rao, C.A.
Respondent by	Sh. Sambit Tripathy, CIT-D.R.

Date of Hearing	21.08.2020
Date of Pronouncement	26.10.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and Revenue against the order of the Commissioner of Income Tax [Appeals]-IX, New Delhi dated 31.05.2013 for Assessment Years 1996-97.

2. The Grounds of appeal are as under:-

ITA No.4454/Del/2013 (Assessee's appeal)

1. *“That the Commissioner of Income-tax (Appeals) (“the CIT(A)”) erred on facts and in law in holding that “Lean gas” is manufactured/ produced only at the two LPG Plants at Vaghodia (Gujarat) and Vijaipur (MP) for the purpose of allowing deduction under sections 80I/80IA of the Income-tax Act, 1961 (“the Act”) and not at various customer terminals, as claimed by the appellant.*
 - 1.1 *That on facts and circumstances of the case and in law, the CIT(A) erred in holding that the activities undertaken by the appellant at its customer terminals did not constitute “manufacture or production of any article or thing”, so as to be eligible for deduction under sections 80I and 80IA of the Act.*
 - 1.2 *That on the facts and circumstances of the case and in law, the CIT (A) erred in not appreciating that the various activities/ processes undertaken by the appellant, including removal of impurities, condensate and moisture and for regulating temperature and pressure at various customer terminals, as part of mandatory contractual obligations, in order to render lean gas in usable state and tradable condition, constituted “manufacture”/ “production” of processed “Lean Gas”.*
 - 1.3 *That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that the aforesaid activities undertaken by the appellant at customer terminals were merely “a cleansing process”, which could not be regarded as “manufacture or production of any article or thing”.*
2. *That on the facts and circumstances of the case and in law, the CIT (A) erred in holding that no deduction under section 80HH of the Act was admissible in respect of the customer terminals situated in backward areas, on the ground that “no manufacturing is carried out at the customer terminals”.*
 - 2.1 *That on the facts and circumstances of the case and in law, the CIT(A) erred in directing the assessing officer to “verify whether the claim” for deduction under section 80HH of the Act was made “for the customer terminal or for the LPG extraction plant , with the direction that “the benefit of section 80HH of the Act may no, be allowed” in case the claim was “for the customer terminal”.*
3. *That on facts and circumstances of the case and in law, the CIT(A) erred in holding that, interest income of Rs.18590.68 lakhs and miscellaneous income of Rs.926.70 lakhs, was not eligible for deduction under sections*

80HH, 80I and 80IA of the Act, holding that the aforesaid receipts could not be said to be "derived from" the eligible business of the appellant.

4. *That on facts and circumstances of the case and in law, the CIT (A) erred in not directing the assessing officer to reduce the amounts capitalized and transferred to "expenditure during construction" from interest and miscellaneous income excluded from eligible profits for the purpose of computing deduction under sections 80HH, 80IA of the Act.*
5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in disallowance of amortization of leasehold rent of Rs 27,30,000, being proportionate lease rental paid by the appellant to various local authority spread over the term of the lease.*

The appellant prays for leave to add, alter or delete any or all of the aforesaid grounds at or before the time of hearing of the appeal."

ITA No.4642/Del/2013 (Revenue's appeal)

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the assessing officer to give the benefit of section 80I/80IA on manufacturing of lean gas at Vijaipur and Vaghodia.*
 2. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing the AO to allow benefit of 80HH in case of claim for unit at Vijaipur is for LPG extraction unit.*
 3. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that the interest earned on customer outstanding is eligible for benefits of section 80I/80IA and 80HH.*
 4. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in allowing the claim of horticulture expenses of Rs.85,21,221/- holding the same to be a business requirement and revenue expenditure.*
 5. *On the facts and in the circumstances of the case in law, the Ld CIT(A) has erred in allowing the claim of deferred revenue expenditure of Rs.72,000/- holding the same to be a revenue expenditure.*
 6. *The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing."*
3. The assessee is engaged in business of production/processing transmission and distribution of various gases. The assessee set up and operates gas pipeline (around 2702 Kms) running/located in north western India, known as 'HBJ' pipeline which runs from Hazira through Vijaipur (MP) to Jagdishpur. The assessee acquires rich natural gas at Hazira which is transmitted to its 2 LPG plants located at Vaghodia (Gujarat) and Vijaipur (MP)

and various customer terminals. The assessee claimed deduction under Sections 80HH, 80I and 80IA of the Income Tax Act, 1961 and other expenses which were disallowed by the Assessing Officer vide original assessment order dated 19.03.1999 passed under Section 143(3) of the Act. The assessee preferred an appeal against the said original assessment order to the CIT(A). The assessee filed an application for admission of additional evidence under Rule 46A of the Income-tax Rules, 1962 ("the Rules") before the CIT(A). The CIT(A), however, vide order dated 08.03.2000 declined the request of the assessee for admission of additional evidence and decided the issue against the assessee and in favour of the Revenue. Vide order dated 15.02.2008, the Tribunal admitted the aforementioned additional evidence and directed the Assessing Officer to decide the issue afresh of deduction under Sections 80HH, 80I and 80IA of the Act and all other disallowance of expenses. Thereafter, the Assessing officer has passed the present assessment order u/s 143(3)/254 dated 31.12.2009.

5. Being aggrieved by the assessment order the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. As regards to Ground No. 1 and 2 of the assessee's appeal and revenue's appeal, relating to deduction under Section 80IA/ 80I/ 80HH, the Ld. AR submitted that the assessee claimed deduction under Section 80IA/ 80I and 80HH on production of LPG and Lean Gas undertaken at LPG plants and various customer terminals by treating the same as separate and independent units. The said deduction was duly supported by audit certificates. Accordingly, deduction aggregating to Rs. 151,95,06,878/- in respect of the profits derived from the aforesaid undertakings was claimed in the following manner:

S. No.	Particulars	Amount (In crores)
1.	Deduction under Section 80HH	56.4326
2.	Deduction under Section 80I	7.7621

3.	Deduction under Section 80IA @ 30% - non-backward areas	71.4236
4.	Deduction under Section 80IA @ 100% - Backward areas	16.3324
	TOTAL	151.9507

The Ld. AR submitted that the assessee acquires/ purchases “**rich natural gas**” from ONGC, which is transmitted through HBJ pipeline to its 2 LPG plants located at Vijaipur (MP) and Vaghodia (Gujarat) and various Customer Terminals. After carrying out certain processes, including but not limited to removing of impurities and moisture, the aforesaid rich natural gas is transmitted to the LPG plants and the Customer Stations, where "rich natural gas" undergoes change in chemical composition, resulting in the production of two gases, viz. “LPG gas” and “lean gas”, both of which are commercially known as separate and distinct gas, different from the natural gas. As part of its business model, following two products are manufactured/ produced: Liquefied petroleum gas (LPG) is manufactured/ produced at Vaghodia and Vijaipur, which is capable of being commercially used in the form in which it is emitted out of the production plants and is therefore sold directly to the oil marketing companies. “Lean gas” is manufactured/ produced and delivered to the customers at various Customer Terminals (14 No. during the relevant year) located along the HBJ gas pipeline. The Ld. AR pointed out that “Lean Gas” is produced only when the natural gas undergoes various intricate scientific processes before it can be commercially used. Apart from the above, the Ld. AR further pointed out that processed rich natural gas, after processing from its crude form, is also transmitted through the HBJ pipeline and other pipelines to some of the customer terminals (which are not linked to the LPG plants), wherein extensive processes are undertaken at such customer terminals for removal of impurities, moisture, optimizing temperature and pressure, etc., in order to bring it to ‘fit to use’ state and thereafter distribute it to end customers as “processed natural gas”. Further, in terms of various agreements entered

into by the assessee with various customers for supply of processed lean gas and processed natural gas, the assessee is contractually obliged to undertake all necessary processes to ensure that gas to be delivered to the customers is commercially exploitable, including the nature, contents, temperature and pressure at which it is to be delivered. Lean gas and natural gas, in the form and state/composition, at/ in which it is extracted from the LPG plant/ received at Hazira cannot be utilized by the end customers, unless the processes (which the assessee undertakes) are undertaken by using various huge/ sizeable, technologically advanced and sophisticated plant and machinery installed at the customer terminals and at various points along the Hazira-Bijaipur-Jagdishpur pipeline, the cost of which runs into crores of rupees. After undertaking the processes, as aforesaid, the processed lean gas/ natural gas is sold to various end customers through customer terminals. Thus, the Ld. AR submitted that the only dispute is whether the activities undertaken by the assessee at the customer terminals, to deliver processed lean gas/ natural gas, amount to manufacture or production of article or thing, such that profits derived therefrom would be eligible for deduction under Sections 80I and 80IA of the Act.

7. The Ld. AR submitted that the CIT(A) accepted that benefit of deduction under Section 80I/ 80IA of the Act is admissible on Lean gas manufactured/ produced, but held that such deduction is admissible at the stage of two LPG plants at Vijaipur and Vaghodia. The CIT(A) held that activities undertaken by the assessee at its customer terminals did not constitute "manufacture or production of any article or thing" so as to be eligible for deduction under Section 80I/ 80IA of the Act. As a consequence of the aforesaid, the assessee has been denied deduction in respect of profits derived from supply of processed natural gas at various customer terminals, which are not routed through LPG plant. Moreover, since deduction is admissible for specified years, as a consequence of the order of the CIT(A), deduction in respect of profits derived from processed Lean Gas shall be considered from the year of setting up of the LPG Plant and not the relevant customer terminal at which such

processed Lean Gas is supplied to the customer. The Ld. AR submitted that various Activities amounts to "production or manufacture of article or thing". In this regard, the Ld. AR submitted that 'Natural Gas' is a mixture of gaseous hydrocarbons with accompanying condensate and varying quantities of non-hydrocarbons, commonly known as impurities. Natural gas is composed mainly of Methane (C1), Ethane (C2), Propane (C3), Butane (C4) and Pentane (C5). The natural gas is processed at various Compression Stations, the LPG plants at Vijaipur and Vaghodia and also at various Customer Terminals. The final product that is produced is in the form of the following two gases, have chemical composition different from rich natural gas, as under:

- a) Liquefied petroleum gas (LPG) which consists primarily of propane (C3) and butane (C4); and,
- b) Lean gas which is constituted primarily of methane (C1) and ethane (C2), with methane (C1) as major constituent. " -

In support of the aforesaid, the Ld. AR placed reliance on the following documents:

- a) Technical Report issued by Shriram Institute for Industrial Research;
- b) Classification under the excise law;
- c) Decision of the Special Bench of Customs, Excise and Gold (Control) Appellate Tribunal in the case of ONGC v. Collector of Central Excise: 42 ELT 420 (Del) (SB);
- d) Affidavit of Mr. S.P. Rao;

8. The Ld. AR submitted that the finding of the CIT(A) that no manufacturing/ production takes place at customer terminal, is erroneous. The Ld. AR further submitted that the CIT(A) failed to appreciate that Lean Gas, in the form produced at the LPG plant, is not in a state of being delivered to the customers and various processes have to be undertaken to make the gas

“fit to use” so as to be delivered at the customer terminals; and Processed Natural Gas, which is not routed through the LPG plant, is also supplied to various customers after undertaking various processes/ activities, as per the specific requirements of the customer so as to make the same fit to use; And consequently, the contention that production takes place at LPG Plant only is incorrect and legally unsustainable. The Ld. AR submitted that there is a contractual obligation on the assessee to deliver Processed Lean Gas in usable form at customer terminal. It is a matter of fact, that no part of "Lean Gas" is sold by the assessee except through customer terminals, which is the last stage of processes undertaken by the assessee before delivery to the final customers. The Ld. AR pointed out that the submission that the assessee undertakes the aforesaid activities in order to fulfill its contractual/ commercial obligations, is supported by the relevant terms of the contract(s) which had been duly placed before the assessing officer. On a sample basis, some of the Gas Supply Contracts entered into by the assessee with various end customers were submitted to the Assessing Officer during the hearing. On a perusal of the aforesaid contracts, it will be noted that in terms thereof, the customer specifies the “delivery and process of gas” the “quality of gas” as well as detailed specifications for the delivery of gas, which are normally in the form of Annexure to the said contract. The detailed chemical composition in which lean gas is required by the customer is precisely spelt out. The Ld. AR submitted that "typical analysis of natural gas", which is the composition in terms of the mole percentage of different elements therein varies from customer to customer. A comparison of Annexure 2 of the Gas Supply Contract between the assessee and National Thermal Powers Corporation Ltd. - Kawas and Annexure-2 of the Gas Supply Contract between assessee and NTPC - Auraiya supports the submission. The Ld. AR submitted that Lean Gas, as received from the LPG Plant is required to be further processed, as per the specification of the customers, in order to deliver the same in it fit to use form. Thus, the Ld. AR submitted that the assessee is required to undertake various scientific processes/ activities in order to produce and render the "Lean Gas" in a

marketable form, i.e. in a form and state in which such gas would be accepted by the end customers and therefore, the contention of the CIT(A) that production of Lean Gas takes place at the LPG plant is erroneous. Apart from the aforesaid, the Ld. AR submitted that at certain customer terminals, processed natural gas, after being received in crude form from ONGC at Hazira, is intensively processed in order to remove all impurities, odour, Sulphur, etc., to bring it to a usable state and is thereafter transmitted to the customers, without being routed through the LPG Plant. The rich natural gas, in the form it is received, is, as per the customer's requirement required to be processed to make it fit for use. Thus, the Ld. AR that the assessee is required to undertake various processes/ activities in order to produce and render the processed Natural Gas in a marketable form, i.e. in a form and state in which such gas would be accepted by the end customers and therefore, the contention of the CIT(A) that production of gas takes place at the LPG plant is erroneous. The Ld. AR submitted that the substantial activities undertaken at Terminal by the assessee. Hence, the finding of the CIT(A) that no manufacturing/ production takes place at customer terminal, is erroneous since the CIT(A) also failed to appreciate that a typical gas terminal has the following facilities:

- 1) Pig Launcher & Receiver
- 2) Separation and filtration
- 3) Heating
- 4) Pressure regulation and control
- 5) Pressure relief valve
- 6) Measurement
- 7) Flow control
- 8) Condensate removal and handling

Each of the aforesaid activities/ processes undertaken at customer terminal(s), has been explained in detail in pages 685-691 of the paper book. The Ld. AR submitted that depending on the quality of the gas received from the producer and the contractual requirements of the consumer necessary facilities, entailing investment in crores, in different combinations are installed at the dispatch and receiving terminals. In view of the aforesaid, the Ld. AR submitted that removal of impurities and dehumidification are not the only activities/ processes undertaken by the assessee. The processes/ activities undertaken by the assessee are, on the contrary, substantial, broad based and extensive, as explained above. The Ld. AR further submitted that the aforesaid activities/ processes (viz. removal of impurities, dehumidification, sweetening, de-sulphurication/ de-sulphurization, etc., and processes necessary to bring lean gas/natural gas to a marketable form and state) are necessary/ critical/ indispensable and are undertaken by the assessee not as a measure of self-preservation (intended to protect the pipeline) but to fulfill the contractual obligations undertaken by the assessee so as to deliver gas in a marketable / exploitable state and form to the customers. The Ld. AR further submitted that though in para 7 and 8 of the CIT(A)'s order, the CIT(A) accepted the aforesaid substantial activities undertaken and also agreed that the activities are necessary to commercially sale lean gas, the CIT(A), however, still concluded that input and output at customer terminal continues to be lean gas and consequently, the process does not bring into existence new commercial product. The fallacy in the conclusion of the CIT(A) that deduction is available only at the stage of LPG plant, despite accepting that the "Lean Gas" is manufactured/ produced from "Natural Gas", is, it is submitted that there are certain customer terminals, which are not routed through the LPG Plants. These are customer terminals which draw "Natural Gas" from other gas-fields, processes the same so as to make it marketable and usable and sells the "processed Gas" manufactured from "Natural Gas" to the customers. Also there is a customer terminal located prior to the LPG plant i.e., HBJ terminal (source point), which too processes the natural gas, as per customer specifications in

order to make it marketable and usable, and sells the same to the customer. In view of the aforesaid, in case, deduction is held to be admissible at the level of LPG Plant and not at the level of Customer Terminal, then, deduction will be denied to the assessee in respect of processed Natural Gas supplied at various customer terminals, which are independent of the LPG plant. The Ld. AR further pointed out that the finding of the CIT(A) is fundamentally flawed in as much as the CIT(A) has failed to judiciously apply the test of "fit to use" and "commercial" marketability of the processed product i.e., processed Lean Gas/ Natural Gas in this case, as laid down in various judicial precedents, which are as under:

- i. UOI v. J. G. Glass Industries Ltd.: (1998) 97 ELT 5 (SC)
- ii. CIT v. Oracle Software India Ltd.: 320 ITR 546 (SC)

of the word "manufacture". The Supreme Court held as under:

Kores India Limited vs. CCE: 2004 (174) ELT 7 (SC)

India Cine Agencies vs. CIT: 308 ITR 98

ITO v. Arihant Tiles and Marbles (P) Ltd.: 320 ITR 79/ 227 CTR 513

CIT vs Emptee Poly-Yarn (P) Ltd: 320 ITR 665 (SC)

CIT vs. Hindustan Petroleum Corp Ltd.: 396 ITR 696,

Puttur Petro Products (P.) Ltd. vs. ACIT: 361 ITR 290

Central U.P. Gas Limited vs. DCIT: ITA No.224 of 2014

CIT vs. Gujarat Gas Company Ltd.: ITA No. 60 of 2009

Even the procedure/activity of purification, odorization, de-sulphurication, removing moisture content, regulating temperature and pressure etc., clearly falls within the ambit of "manufacture and production" for the purposes of section 80-I/IA and section 80HH of the Act.

10. The Ld. AR also relied upon the following decisions, wherein explaining the meaning of the word “production”, it has been held that the said term is much wider in scope than the term “manufacture” and that so long as a different commercially known product results from undertaking a process, the same would amount to “production”:

- ❖ Dy. CST v. PIO Food Packers [1980] 46 STC 63 (SC)
- ❖ Union of India v. Delhi Cloth and General Mills Co. Ltd.,
- ❖ AIR 1963 SC 791 Name Tulaman Manufacturers Pvt. Ltd. v. CCE: [1990] 183 ITR 577 (SC)
- ❖ Ujagar Prints vs. Union of India: 179 ITR 317, 341 (SC)
- ❖ N.C. Budhiraja: 204 ITR 412 (SC)
- ❖ Aspinwall & Co. Ltd. V. CIT: 251 ITR 323 (SC)
- ❖ CST vs. Jagannath Cotton Company: 99 STC 83, 86 (SC)
- ❖ CIT vs. Sesa Goa Ltd.: 279 ITR 331 (SC)
- ❖ India Cine Agency v. CIT: 308 ITR 98 (SC)
- ❖ ITO v. Arihant Tiles and Marbles (P) Ltd.: 320 ITR 79 (SC)
- ❖ Ship Scrap Traders v. CIT: 251 ITR 806 (Bom)
- ❖ Orient Longman Ltd V. ITO: 130 ITR 477 (Del.)
- ❖ CIT V. Ajay Printery (P) Ltd: 58 ITR 811 (Guj.)

Applying the aforesaid principle in the assessee’s case, the Ld. AR submitted that the assessee could not have commercially sold “Lean gas” and Processed Natural Gas, without carrying out the above mentioned activities at various stages, including but not limited to at the Customer Terminals.

11. The Ld. AR further submitted that deduction allowed in earlier years cannot be denied in subsequent years. The Ld. AR further submitted that since deduction under section 80IA of the Act w.r.t. profit derived from eligible units has been allowed by Revenue till assessment year 1995-96, the same cannot be denied subsequently. The Ld. AR made reference to the decision of the CIT(A) in the assessee’s own case for the assessment year 1994-95. The Ld. AR relied upon the following decisions:

- Saurashtra Cement & Chemical Industries v. CIT: 123 ITR 669 (Guj)
- CIT v. Paul Brothers: 216 ITR 548 (Bom.)
- CIT v Gujarat State Fertilizers Co. Ltd: 247 ITR 690 (Guj.)CIT v Fateh Granite (P) Ltd.: 314 ITR 32 (Bom.)
- CIT v. Western Outdoor Interactive Pvt. Ltd: 349 ITR 309
- Direct Information Private Ltd. v. ITO: 15 taxmann.com 63 (Bom)
- CIT vs. Escorts Ltd : 338 ITR 435 (Del)
- CIT v. Delhi Press Patra Prakashan Ltd. (No.2) : 355 ITR 14 (Del)
- CIT vs. Tata Communications Internet Services Ltd.: 251 CTR 290 (Del)

12. In view of the aforementioned, the Ld. AR submitted that extensive processing activities undertaken by the assessee at the customer terminals to make lean gas and natural gas marketable and fit for use, clearly constitute “manufacture” and the assessee would be entitled to the deductions/ tax holiday under Sections 80HH, 80I, 80IA of the Act. The conclusion/ finding of the CIT(A) that deduction in respect of Lean gas is admissible at the stage of LPG plant is erroneous.

13. The Ld. DR submitted that original assessment order was passed on 19.03.1999 u/s 143(3). The CIT(A) passed the order dated 08.03.2000. The assessee filed appeal before the Tribunal. During the course of hearing before the Tribunal, the assessee filed additional evidence. The Tribunal set aside the order of the CIT(A) and restored the matter to the file of the Assessing Officer with a direction to consider the additional evidence and other material on record and other evidence with Section 254 on 31.12.2009. Against the said order the CIT(A) passed order dated 31.05.2013. The Ld. DR pointed out that in the original/first round before the Tribunal, the assessee furnished following documents as additional evidence:

- i. Note on functioning of compressor stations
- ii. Affidavit of Mr. S. P. Rao
- iii. Certificate issued by Shriram Institute for Industrial Research

The Ld. DR further pointed out that apart from the above mentioned additional evidence, essentially no fresh submission was made before the Assessing Officer or the CIT(A) in the second round of assessment and appeal. Thus, the Ld. DR submitted that the CIT(A) has not based the findings on the said additional evidence. However the CIT(A) disregarded the findings of the Assessing Officer and the findings of the CIT(A) in original appeal order and proceeded to arrive at different conclusion on the same set of facts without giving any reason in the order for the difference from earlier order of the earlier CIT(A). Therefore, the order of the CIT(A) is perverse on facts as well as on law.

14. As regards to deduction claimed under Sections 80IA/80I/80HH on transportation of natural gas, the Ld. DR submitted that prior to the year 1990-91, natural gas was produced, marketed and transported by ONGC. Subsequently, gas marketing functions were transferred from ONGC to GAIL as per MOU dated 27.12.1991 entered into between ONGC and GAIL. In 1992, GAIL took over the on-shore pipeline system from ONGC for supply of gas in Gujarat region. This consisted of the pipelines and the terminal stations. The gas to this system was being supplied from the on-shore gas fields of ONGC. Along with the pipelines, the existing customers of ONGC were also transferred to GAIL. The Ld. DR relied upon the MOU between ONGC and GAIL.

15. The Ld. DR submitted that the assessee took over only the gas marketing function from ONGC. It was never intended to enter into gas production business. The mandate as per MOU was limited to marketing functions of gas only which included transportation of gas to existing customers of ONGC through existing pipelines of ONGC. Before this MOU, gas was being supplied by ONGC to different customers through its pipelines. As mentioned in MOU, the existing customers of ONGC were transferred to GAIL. The metering units installed at the premises of the existing customers were also transferred to GAIL. The same gas was sold by ONGC through GAIL to the same customers. The existing agreement between ONGC and customers were assigned in the favour of GAIL. Therefore, GAIL was not an industrial undertaking in respect of

transportation of gas to its customers as the said activity was not manufacture or production in terms of Section 80IA/80I/80HH. The Ld. DR pointed out that the price of the gas to be charged by the assessee was decided by Govt. of India and the assessee was required to pay ONGC the price of gas actually received by it from the consumers, as mentioned in para – 5 of MOU. In fact, total consumer price charged by the assessee from its customers had three components:-

- a) Production price – It was required to be paid to the ONGC
- b) Gas Pool Price – It was determined by Govt. of India and was required to be kept by GAIL in a separate account on behalf of the Ministry of Petroleum and Natural Gas, GOI which was required to be remitted to the Govt. of India as per directions.
- c) Transportation Charges – Only the transportation charges could be retained by GAIL as its revenue. The fact regarding transportation charges payable to GAIL is further mentioned in clause (vi) of the letter of Ministry of P & NG dated 18.09.1997. Further, in clause (viii) of the said letter, provisions of gas pool account are specified. In clause (x) of the said letter, it is mentioned that –

“GAIL shall pass on to ONGC and OIL in proportion to the gas supplied by them on a net back basis the entire proceeds of sales of gas of ONGC and OIL, after making deductions under paras (viii) and (ix) above.”

In the bills raised by GAIL, the price of gas and transportation charges are mentioned separately. The consumer price of gas had two components – a) Production price and b) Gas pool price. The said price is not the revenue of the GAIL. In addition to the price of natural gas, transportation charges are charged separately in the bill. Essentially, what remained with the assessee was only ‘transportation charges’ in respect of supply of gas to customers. It is mentioned by the Assessing Officer in the last para on page 8 of the assessment order that –

“Even in the sale contract entered into by GAIL with its buyers, the calculation of transportation charges are separately given. For example, in the contract between GAIL and IOC dated 12.04.1996, following are mentioned in para 4.3 –

“The buyer, in addition to the price of gas mentioned in Article 10, shall pay the seller (GAIL) monthly transportation/service charges and taxes thereon for spur line and facilities provided from tap off.”

The Assessing Officer relied on the order of the Hon'ble Supreme Court in the case of Cambay Electric Supply Industrial Company Ltd. (113 ITR 84 (SC)) in respect of meaning of 'derived'. In fact, the assessee was subjected to TDS @ 2% u/s 194C also over the transportation charges by its customers. In this regards, reference is invited to page no. 1 to 5 of Revenue's paper book submitted on 03.05.2019 which are copy of TDS certificates issued by GVK Industries Ltd. and Indian Oil Cooperation Ltd. in respect of TDS made @ 2% u/s 194C on transportation charges. Further, reference is drawn to pages 261-268 of Revenue's paper book and another paper book pages 6 to 19 which are copy of TDS certificates issued by customers in respect of TDS made @ 2% u/s 194C on transportation charges. The above documents substantiate the fact that the assessee was providing transportation charges on which TDS has been deducted by the customers u/s 194C. Hence, as far as 'sale of gas' to customers is concerned, there is only 'transportation charges' and nothing else which is revenue of the assessee. Its profile is only the surplus out of the transportation charges. The Assessing Officer has discussed this issue in the Assessment Order. In the original appellate order, the CIT(A) had also examined and discussed this issue and concurred with the findings of the Assessing Officer. There cannot be any dispute about the fact that deduction u/s 80IA/80HH/80I are not admissible on the said 'transportation charges'. However, the CIT(A) has not examined this issue in the appellate order passed in the second round of appeal. This is the root of the matter and on this ground only the assessee is not eligible for deduction u/s 80HH/80I/80IA.

16. The Ld. DR submitted that the business of the assessee consists of transportation of gas purchased from ONGC to customers and production of LPG at LPG Plants at Vaghodia and Vijaypur. The core business of the assessee has been transportation of gas received from ONGC to different customers through its pipelines against which it receives transportation charges. The natural gas supplied by ONGC to GAIL is already sweetened by ONGC at its Hazira Plant. This fact has been explained by ONGC. The Ld. DR has given the schematic diagram of natural gas processing at ONGC Hazira before supply to M/s GAIL in his paper book which substantiate the fact that sweetening of natural gas was done by ONGC before supply to GAIL. The reply submitted by ONGC before the Asstt. Collector, Central Excise and Customs, Surat vide letter dated 11.04.1994 was placed on record by the Ld. DR which was obtained during the course of remand proceeding and were provided to the assessee as well. In the said submission, it was submitted by the ONGC that the following processes are carried out at ONGC Hazira Complex before supplying the gas to GAIL –

- a) Gas Sweetening
- b) Gas Dehydration
- c) Gas Chilling

The schematic diagram of natural gas, after processing by ONGC at its Hazira Complex is supplied to GAIL. The said sweetened and purified gas is fit for use by the customers of GAIL and that was the requirement as per the agreements entered into between GAIL and its customers. Further, Sh. S. P. Rao, Director(Projects), GAIL has also accepted this fact in his sworn statement recorded under section 131 on 21.12.1999. Sh. S. P. Rao in response to question no. 7 answered that sulphur content would not only corrode the gas pipeline and associated equipment but would also corrode the plant & machinery of the downstream buyers of the gas. In this context, the Ld. DR submitted that sulphur is removed from natural gas by ONGC before supplying

it to GAIL. This sweetening is done by ONGC and not by GAIL. This sweetening gas is fit for use by the customers of the assessee. In fact, the same 'sweetening gas' was being supplied by ONGC to the existing customers, which subsequently became customers of the assessee subsequently. In the case of the assessee, what its customers require is 'natural gas' as produced in its natural state or stripping of heavier components for other uses as mentioned in the copy of agreements with different customers. None of the customers requires 'Lean gas'. In agreement between GAIL and NTPC, it is mentioned in para 3 as under:

“Whereas the buyer desires to purchase and receive ‘Natural gas’ for seller for their aforesaid plant and the seller agrees to sell and to the buyer ‘Natural Gas’ as produced in its natural state or stripping of heavier components for other uses hereinafter referred ‘GAS’ obtained from the Western Offshore Gas Fields as fuel for the plant of the buyer located at Kawas in the district of Surat in the state of Gujarat on the terms and conditions stated hereunder which have manually agreed to between the seller and the buyer.”

In clause 1.10 of Article 1 Gas or Natural Gas has been defined in the agreement as under –

“ ‘GAS’ or ‘NATURAL GAS’ means gas produced from gas wells condensate wells or oil wells and the residue gas remaining after proceed such gas for the removal of liquid able hydrocarbons and impugned therefore to gas specifications given in Annexure- 1”

The Ld. DR further pointed out that NTPC desires to purchase and receive Natural Gas as produced in its natural state or stripping of heavier components for other uses hereinafter referred 'GAS' obtained from the Western Offshore Gas fields as fuel for the plant of the buyer. The agreement does not talk of lean gas. The customer is desirous of buying natural gas in its natural state or sweetened gas after the removal of impurities like Hydrogen Sulphide, CO₂ and other impurities. Identical agreements have been entered

with other customers by the assessee as per the evidence produced by the assessee. Further the specification of gas required by NTPC is mentioned as under:

Specification of Gas:

The gas shall have the following limits of composition at the delivery point:

- | | | |
|------|---|-------------------------------|
| i) | Methane | Not less than 75% by volume |
| ii) | Other Gaseous Hydrocarbons | Not more than 20% by volume |
| iii) | Non-Cumbustible gases other than hydrocarbons including Nitrogen Carbon-dioxide | Not more than 8% by volume |
| iv) | Total Sulphur content as H ₂ S | 10 ppm Vol. (Max.) |
| v) | Moisture content | No free water will be present |
| vi) | Temperature | |
| | Minimum | 15 degree Cent. |
| | Normal | 30 degree Cent. |

The Ld. DR pointed out that the customer requires composition of main gas methane not less than 75%. As per the analysis of natural gas before gas sweetening given by the ONGC, in the said analysis compositions of methane is ranging from 79.76% to 80.90%. From the analysis of natural gas supplied by ONGC to GAIL, it can be seen that composition of methane (C1) is ranging from 81.30 to 81.94%. Therefore, the gas supplied by ONGC was having volume of methane much higher than the volume of methane of 75% required by the

customers of the assessee. In respect of other hydrocarbons, total sulphur content and non-cumbustible gases other than hydrocarbons including Nitrogen Carbon-dioxide also, the gas supplied by ONGC to GAIL was meeting all the specifications of the customers, as evidenced from the paper book filed by the Revenue. Similar specification of composition of natural gas is there in other agreements also. The said fact was also accepted by the assessee. The Ld. DR pointed out that LPG plants of the assessee are at Vaghodia in Gujarat and Vijaypur in M.P. Further, gas is supplied to downstream customers, and that gas is the 'sweetened gas' received from ONGC, before the gas reaches at Vaghodia Plant where C3 & C4 are extracted to make LPG, and the residue gas is flown back again to the pipeline and gas is supplied to the downstream customers till it reaches Vijaypur plant where again LPG is manufactured from the said gas. At Vijaypur Plant again, C3 & C4 are extracted and the gas flows back to HBJ pipeline. So this extraction of C3 and C4 from sweetened gas is for the use of LPG Plants of the assessee to make LPG and is not intended for supply to the customers. Since the remaining lean gas contains more than 75% methane and meets other specifications of hydrocarbons and sulphur/CO2 impurities, the customers have no objections in receiving that gas. In fact, once the sweetened gas is supplied to customers, they have their own plants for further purification/processing of the gas as per their requirement. Therefore, as per the agreements the customers require only natural gas, and not 'lean gas'. It is also evident from the gas supply contracts that all the customers require not less than 75% Methane, other gaseous hydrocarbon not more than 20%, non-combustible gases other than hydrocarbon not more than 8%, H₂S-10 PPM Vol (Max) etc. The gas which is received from ONGC by the gas contains all the above specifications of gas. In not even a single instance in any of the agreements customer has expressed requirement of lean gas, after extraction of C3 and C4 from natural gas. The Ld. DR pointed out that the analysis of natural gas supplied by ONGC to GAIL meets all the above specifications. Hence, the argument of the assessee that it was required to supply 'lean gas' to its customers after extracting C3-C4 as per contractual

obligations has no legs to stand. Considering the above facts, it becomes clear that the composition of natural gas required by the customers was being met or could be met by the gas supplied by the ONGC to GAIL and therefore, the claim of the assessee that as per 'contractual obligation' processed lean gas was to be supplied to its customers is factually incorrect and misleading. During the relevant assessment year, the assessee had LPG Plants at Vaghodia and Vijaypur along the HBJ pipeline. For its internal consumption for LPG Plants, the assessee receives natural gas from its own supply like any other customer/user of natural gas, and extracts C3 & C4 (Propane - Butane) and manufactures LPG. As LPG is a different product having different chemical properties, the Assessing Officer has rightly allowed the claim of deduction u/s 80IA to the assessee on LPG Plants. The finding of the CIT(A) that deduction u/s 80IA has to be given at the point of manufacture of 'lean gas' is incorrect. In fact, what is happening at Vaghodia and Vijaypur LPG plants is manufacturing of LPG. The assessee as a user of natural gas, receives sweetened natural gas from ONGC and extracts C3-C4 (Propane - Butane) to produce LPG. First, LPG is produced at Vahodia, Gujarat after gas reaches its terminal from Hazira. After extraction of C3-C4, the remaining gas flows back to HBJ pipeline. It is imperative to appreciate that the assessee manufactures LPG and after extraction of C3-C4 from the natural gas, the residue natural gas is termed as 'lean gas'. The LPG plant of the assessee is not meant for manufacture of lean gas. The lean gas is not required for the customers also. The residue natural gas, which still meets the requirement of specific composition of natural gas of the customers, flows back to the pipeline and is supplied to downstream customers. Again at Vijaypur, remaining C3-C4 present in natural gas is extracted to manufacture LPG and the lean gas again flows back to the pipeline for supply to the downstream customers ahead of Vijaypur. After extraction of C3-C4 at Vaghodia plant, resultant/residue gas, which is now named as 'lean gas' flows back to the pipeline. The resultant 'lean gas' can't be reconverted to impure 'natural gas' to produce 'lean gas' again at Vijaypur. At Vijaypur, the remaining quantity of C3-C4 extracted again from

the lean gas. In this connection, the Ld. DR submitted that GAIL is producing LPG at different locations from the natural gas and as such lean gas is not produced for any commercial purpose, because none of the customers require 'lean gas'. The Ld. DR further submitted that the plant of the assessee is for manufacturing of 'LPG' and not for producing 'lean gas'. Extraction of C3 & C4 at the LPG plants does not lead to any value addition to the natural gas. On the contrary, this leads to the gas being depleted. Contrary to the statement of Shri S. P. Rao, only 42% of the natural gas is subjected to LPG extraction. This fact is very clearly admitted that the gas is depleted when C3 & C4 are removed, thereby, leading to lowering of its calorific value. Hence, whatever processing is involved is not by way of value addition but by way of depletion and hence, the same cannot be treated as manufacturing for the purpose of Sec. 80HH, 80I and 80IA. The Ld. DR pointed out that even if LPG plants of the assessee would not have been there, the assessee could have supplied 'sweetened natural gas' received from ONGC to its customers whose main requirement was minimum 75% of methane in the gas by volume which was always there in the said sweetened gas. The Ld. DR submitted that the assessee wants to present the facts in such a manner so as to show whole of its business is covered u/s 80IA/80I/80HH. However, the correct position is that its main business is transportation of gas on which 80IA/80HH/80I is not admissible. It can claim 80IA only on profits from LPG manufacturing which is a separate and distinct activity in addition to business of transportation of gas. The Ld. DR pointed out that ONGC was not making any claim of deduction u/s 80IA in respect of gas transportation business. In P & L account of the ONGC for A.Y. 1987-88 has been given separate revenue from the business of pipeline transportation of gas is given. This fact was also confronted to the assessee during the remand/appellate proceeding and the assessee has not been able to explain this fact satisfactorily and continued to distort the fact. The assessee is using the 'natural gas' at its LPG Plants, and composite revenue/profit has been shown in P & L account, the Assessing Officer has estimated 40% of its profits towards manufacture of LPG in which deduction u/s 80IA has been allowed by

the Assessing Officer. The Assessing Officer has estimated 60% of its profits towards transportation business on which 80IA is not admissible.

17. The Ld. DR further submitted that as regards the claim of deduction in respect of customer terminals, the natural gas, after sweetening, removal of sulphur and chilling at Hazira by ONGC, is received by GAIL and the said gas is supplied by the assessee to its customers. Most of the customers were existing Customers of ONGC. The natural gas to be supplied by GAIL to its customers was required to be containing 75% of methane by volume including hydrocarbons, impurities which is there in the natural gas received by GAIL from ONGC. Further, the price of the gas received by GAIL is to be transmitted to ONGC. Hence, there was no requirement of any further processing at the end of GAIL as far as gas transportation business of GAIL was concerned. As transportation is about 2700KM through gas pipeline, certain activities were required to be done by GAIL to transport and supply of gas to its customers. Therefore, GAIL installed compressor stations, certain cleaning instruments as well as instruments to regulate pressure and temperature of gas at the time of supply of gas to the customers. In this regard, the Ld. DR made reference to the Letter dated 29.12.1999 of the Assessing Officer addressed to concerned CIT(A) in the first round of appeal. The Ld. DR submitted that all the plant and machinery installed by GAIL on the HBJ pipeline, barring LPG process facilities, involve no element of processing. The terminals and the pipelines for the purpose of making the gas transportable and not for the purposes of making any addition to the product being marketed. This may be compared to the packaging of the goods for the purposes of transporting them by road/rail/air transport, the only difference that in this case the means of transportation is by pipeline which has its own peculiar packaging. The meaning of the expression ‘manufacture’ was considered by the Supreme Court in Dy. CST vs. Pio Food Packers (1980) 46 STC 63, among other decisions. In the decision, the test evolved for determining whether manufacture can be said to have taken, is, whether the commodity which is subjected to the process of manufacture can not longer be regarded as the

original commodity but is recognized in the trade as a new and distinct commodity. The so called processing that the assessee has performed with regard to filtering, de-moisturisation, etc., cannot be said to be manufacturing. Lean or rich natural gas is only with regard to change in its calorific value, which we have seen is itself not standardised at the CTP. The product purchased by GAIL from ONGC remains recognizable as natural gas right through the HBJ pipeline, till it is sold. The Ld. DR relied upon the prospectus of GAIL for Global Depository Receipts Offer for 1999. The Ld. DR further submitted that natural gas must be highly pressurized to move it at high speed along the pipeline. Compressor station is the heart of any cross-country pipeline system. Its function is to pressurize pipeline gas from low pressure to high discharge pressure so that gas can be transmitted through the pipeline for supplying to down-stream consumers. Once the natural gas is pressurized, its temperature rises. So, the compressor stations are the requirement of the gas transportation business of the assessee and is not related to any production or manufacturing. During the transportation of gas through the pipeline, the gas may be cooled due to low sub-soil temperature which may result in the formation of hydrocarbon condensate and water. Moreover, the pipeline systems at some sections after compressing may still contain dirt, dust etc. Therefore, pigging, pig launcher & receiver, scrubber, filtration instruments are installed to remove the condensate, dirt etc. which is caused due to transportation for a long distance. Reduction in pressure of natural gas is associated with a drop in the temperature and this drop-in temperature would take gas temperature below its dew point which would lead to formation of condensate. In order to avoid the same, the gas is heated before pressure reduction takes place so that no condensate is formed. Therefore, gas heaters are required in the gas transportation system. In order to regulate gas pressure, a pressure control valve is used at the terminal. The valve senses the downstream pressure and adjust its variable aperture to maintain the downstream pressure. Apart from that, turbine meter and flow computer is used to meter the gas at terminals. Flow control valves are installed to ensure

that the customers does not draw more gas than what is allocated for the day and that too at a controlled rate. To sum up, compressor stations and terminal stations are general requirements related to long distance transportation of gas through pipelines and has nothing to do with production of lean gas/purification of lean gas etc. The impurities in the form of condensates caused by low temperature, dirt etc. are required to be removed to protect the gas pipeline. Further, the customers install their own processing systems to remove impurities etc. in order to use gas. Change of pressure and heat are transportation requirements. In transportation of gas through pipelines, gas has to be compressed for fast movement and once gas is pressurized, its temperature rises. As mentioned above, due to low sub-soil temperature the gas is cooled and therefore, it is required to heat it again. Further, cleaning of gas is required at regular intervals to remove condensate and dirt etc. which is the general requirement of gas transportation by pipes world over. In view of the above facts, the plea of the assessee that there is production of new product at terminals/compressor stations for supply of gas at tailor-made temperature and pressure etc. is nothing but a ploy to misplace and distort the facts in order to claim deduction. At terminal stations the nature and composition of natural/use gas remains the same even after removing condensate and dirt particles and it cannot be treated as 'manufacture'/production of a new product by any stretch of imagination. The issue with regard to the break up of profits in terms of units also needs to be highlighted. In the computation of income, the assessee has claimed deductions u/s 80I II I, 80IA and 80I unit-wise. It is an accepted fact that these deductions are to be computed on the basis of industrial units. However, in the case of the assessee, the question that needs to be answered is what constitutes a separate unit. The continuous pipeline system starting from Hazira, where the de-sulphurication plant is located. As on travels along with the pipeline, at various points compressor stations have been located and LPG and Propane Pantene extracting plants have also been located. At the point at which natural gas is supplied to the assessee's clients, terminal stations have

been located. The assessee has broken up the pipeline system into various unit such as IPCI, GSFC, IOC, GGCI etc. The break up has been made on the basis of tap off from the main HBJ pipeline to the various clients. There are some clients which are situated on the main HBJ pipeline. For clients who are situated off the main HBJ pipeline, tap-off have been made. These tap-offs are simply off shoots from the main HBJ pipeline. It is these tap-offs which the assessee is claiming as separate units. In the computation of income, the assessee has computed the profits unitwise. This computation has been made by taking the gross sales, client/tap-off vice, and then reducing the expenses relevant to each tap-off, and the depreciation, of the plant & machinery capitalized, for each tap-off. However, bulk of the expenses and depreciation are debited to the HBJ unit. The question which now arises is, would any of the units be in a position to function without the main HBJ pipeline. The gas is purchased from ONGC at the landfall point, at Hazira, where it is subjected to the sweetening process. At no other point in the whole HBJ pipeline system including its tap-offs, is gas purchased from any fresh sources and sweetened. Therefore, the tap-offs/units, by themselves do not constitute a separate entity. They are simply extensions of the main HBJ pipeline, even though they may not be known by the same name in the books of the assessee. Therefore, the very basis of breaking up the profit unit-wise is faulty. For example, the assessee has claimed deduction u/s 80IA(2)(iv) clause (b) on the profits of unit termed as Oswal Agro. This deduction is available where an industrial unit is situated in a specified backward area. The pipeline from HBJ to Shahjahanpur is very minuscule part of the total HBJ pipeline system. The assessee was asked to give details of capitalization unit-wise. This the assessee has given vide its letter dated 17.03.1999. The depreciation chart has been made site-wise and not unit-wise by the assessee. There is no way in which one can relate the machinery, given vide the said letter. In fact, the whole computation of deduction u/s 80HH, 80IA and 80I is purely a hypothetical computation. The ground reality is that the entire HBJ pipeline system and its taps-offs constitute one unit. Subsequently, in the following years, the assessee has set

up new pipeline systems in South and East India, which can be said to represent separate units. But in the financial year 1995-96, for all practical purpose, there is only one single unit i.e. the HBJ pipeline system. It is only this unit which is partially eligible for deduction u/s 80I II I, keeping in view the other factors which was referred earlier. The assessee is, therefore, not eligible for deduction u/s 80IA and 80I, except on its LPG units at Vijaypur and Vadodhia. The claim of the assessee in respect of deduction at customer terminals may be compared to claim of deduction on transportation of ice-cream. A person who is providing transportation services to ice-cream manufacturer, has to provide optimum temperature so that ice cream is not melted. It is the work of the transporter to arrange proper cold chain facilities. Only because a certain temperature is required to be maintained in refrigeration equipment the transportation lorries, the transporter will not be eligible for deduction u/s 80IA/80HH. Same way a transporter has to unload goods from a big lorry to small lorry depending on the area of approach road. The loading and unloading are part of the work of transporter. The assessee is transporter of gas and in the process of transportation it has installed terminal stations and compressor stations for smooth transportation of gas at the delivery points. Considering the above facts, the claim of deduction u/s 80HH/80I/80IA in respect of compressor units and terminal stations is not admissible.

18. The Ld. DR relied upon the following case laws:

- i) ARB Inc. vs. JCIT (2005) 93 ITD 520 (Del Tri)
- ii) Idandas vs. Anant Ramcharanara Phadke AIR 1982 SC 127
- iii) CIT vs. Sri Meenakshi Asphalt (2004) 266 ITR 630 (Mad.)
- iv) CIT vs. Gem India Manufacturing Co. (2001) 249 ITR 308 (SC)
- v) CIT vs. Gitwako Farms (I) P. Ltd. 332 ITR 471 (Del)

- vi) Dy. CST (Law) vs. Pio Foods Pacure (1980) 46 STC 63 (SC)
- vii) CIT vs. S.K. Transformers (P) Ltd. (2014) 45 taxmann.com 171(Allh.)
- viii) CIT vs. Sterling Foods (1999) 104 taxman 204 (SC)
- ix) Indian Hotels Co. Ltd. vs. ITO 112 Taxman 46 (SC)
- x) CIT vs. Dewan Chand Satyapal (2013) 29 taxmann.com 235 (Del)
- xi) CIT vs. Relish Foods (1999) 103 taxmann.com 235 (Del)
- xii) Sacs Eagles Chicory vs. CIT (2002) 123 Taxman 221 (SC)
- xiii) CIT vs. George Maijo (2000) 107 Taxman 265 (Mad)
- xiv) Regal Ind. Ltd. vs. CIT 328 ITR 175 (P&H)
- xv) Comm. of Customs (Import), Mum vs. M/s Dilip Kumar & Co. & Ors. (Civil Appeal No. 3327 of 2007) order dated 30.07.2018 (SC- 5 Judges Bench)
- xvi) Sandoz India Ltd. vs. UOI 1980 ELT 696
- xvii) S.D. Pune Chem P Ltd. vs. Collector of Central Excise (1991) 56 ELT 393
- xviii) Coromandel Prodonite P Ltd. vs. Govt. of India (1985) 2 ELT 257
- xix) McNicol vs. Pinch (1906) 2 KB 352
- xx) Mahabirprasad Birhiwala vs. State of West Bengal, (1973) 31 STC 628 (Cal)
- xxi) Mohanlal Vishram vs. CST (1969) 24 STC 101 (MP)
- xxii) CIT vs. Hindustan Metal Refining Works P. Ltd. (1981) 128 ITR 472 (Cal)
- xxiii) Universal Chemicals & Industries P. Ltd. vs. CST (1986) 62 STC 197(MP)
- xxiv) Sterling Foods vs. State of Karnataka 1986 (63) STC 239 (SC)

- xxv) Enner Refineries vs. AssL CCT (1994) 92 STC 78 (Guj)
- xxvi) Singh Engineering Works P. Ltd. vs. CIT (1979) 119 ITR 891 (Allh)
- xxvii) Koshy's Pr. Ltd. vs. CIT (1985) 154 ITR 53 (Kar.)
- xxviii) Kamal Biscuit Factory vs. CST (1985) 60 STC 344 (Allh.)
- xxix) Dy. CST vs. Pio Food Packers (1980) 46 STC 63
- xxx) South Bihar Sugar Mills vs. UOI (1978) ELT (J) 3
- xxxi) Empire Industries Ltd. vs. UOI (1986) 162 ITR 846 (SC)
- xxxii) CIT vs. Lucky Mineral Pvt. Ltd. 226 ITR 245

19. The Ld. DR further submitted that as regards the claim of the assessee that deduction allowed in earlier years cannot be denied in subsequent year, the assessee claimed deduction u/s 80IA of the Act with respect to profit derived from eligible units has been allowed by Revenue till A.Y. 1995-96, the same cannot be denied subsequently. In A.Y. 1990-91, the Assessing Officer mentioned in the Assessment Order that what the assessee was doing was simply buying natural gas and removing impurities from it and then selling as lean gas and LPG. This therefore, is not a manufacturing activity, nothing new is being produced and therefore, this claim of the assessee was not tenable and was rejected. In fact, till A.Y. 1992-93, no claim of deduction was made due to inadequacy of eligible profits. The CIT(A) noted that the Assessing Officer reopened the assessments of A.Ys. 1992-93 and 1993-94 under Section 147 of the Act disallowing the claim of deduction holding that the assessee was not engaged in manufacturing. The said reopening was set aside by the Tribunal with specific directions. Further, in A.Y. 1994-95 and 1995-96, deduction u/s 80HH, 80I & 80IA was disallowed on the ground that after adjustment of brought forward losses, the assessee was not having any taxable income. In the said two Assessment Years dispute was with respect to set off of losses from eligible units u/s 80IA vis-à-vis profits from eligible units. In view of the

provisions of Sec. 80AB, the said deductions were disallowed. The department filed the appeal before the Tribunal, fate of which was not yet known. In view of the above, the claim of the assessee regarding allowing deduction in earlier years by the Revenue is not based on correct facts. The issue has been raised by the Revenue in earlier years and deduction u/s 80HH/80I/80IA was disallowed. In the instant case, allowability of deduction u/s 80HH, 80I & 80IA came up for the first time in the relevant A.Y. 1996-97. The Assessing Officer disallowed the claim of deduction u/s 80IA/80I/80HH in respect of manufacturing of lean gas at LPG plants and also claim of deduction in respect of production / manufacture of new product on account of change of temperature, pressure and cleaning at the customer terminals.

20. Without prejudice to the above, the Ld. DR submitted that since the assessee has made the above claim, onus is on the assessee to substantiate the claim with supporting documents. No substantiating documents have been filed by the assessee. The said claim of the assessee has been found to be wrong by the CIT(A) in respect of A.Y. 1997-98. The Ld. DR pointed out that in the instant case, new facts came to the notice of the Assessing Officer during assessment proceedings and remand proceedings which were not before the Assessing Officer in the assessment proceedings of the earlier years. For example, it came to the knowledge of the Assessing Officer that sweetening of gas was done by the ONGC before the supply of gas to GAIL. It was also noticed by the Assessing Officer that GAIL was essentially receiving transportation charges from the customers which was its revenue while remaining amount collected from the customers was remitted to ONGC or Ministry of Petroleum & Natural Gas. Therefore, in the earlier years, the Assessing Officer has not taken a view on these facts which is being reversed in the year under consideration. The Ld. DR further pointed out that the assessee has mainly relied on the decision of Gujarat High Court in case of Saurashtra Cement & Chemical India vs. CIT 123 ITR 669 (Guj.) and other decisions of various High Courts which are different from the present case. In Saurashtra Cements (supra), the claim u/s 80J was allowed in the initial assessment year by treating the extension in

capacity of the plant as formation of a new industrial undertakings. However, in the subsequent year, the Assessing Officer sought to deny the said claim on the consideration of the same facts, which was set aside by the Hon'ble Gujarat High Court. In case of Paul Bros. (supra), the issue was related to jurisdiction assumed by the CIT u/s 263 of the Act. Hence, the facts of the said case are different from those of the present appeal and the ratio of the said decisions is distinguishable and not applicable in the instant case. The decision of CIT vs. Escort Ltd. 338 ITR was distinguished by the Hon'ble Delhi High Court in the case of Thomoson Press (India) Ltd. (2015) 379 ITR 222 (Del). The decision in the case of CIT vs. Tata Communication Ltd. 251 CTR 290 (Del) was in respect of splitting up or reconstruction of business and the facts are not relevant in this case. In the case of CIT vs. Gitwako Farma (I) Ltd. 332 ITR 471 (Del), the Hon'ble Delhi High Court considered the case of Radha Soami Satsang vs. CIT (1992) 193 ITR 321 (SC). The Hon'ble Court held that since each year assessment is independent of the previous year, there was no bar against the revenue to examine the case of the assessee from the legal perspective. In the instant case also, the matter is not confined to the factual matrix but on the legal issues concerning the claim made u/s 80IA/80I/80HH. The Ld. DR also tried to distinguish the following decisions:

- i) Samrudhi India Ltd. vs. JCIT (2011) 12 taxamnn.com 231 (Pune)
- ii) Krishak Bharati Corporation Ltd. vs. DCIT (2012) 23 taxmann.com 265
- iii) Rohitasava Chand vs. CIT (2008) 306 ITR 242 (Del)
- iv) Anup Sharma vs. Addl. CIT (ITA No. 161/CHD/2012 order dated 26.08.2014, ITAT Chandigarh)
- v) Meeraj Estate & Developers vs. DCIT (2014) 148 ITD 166 (Agra Tri.)
- vi) K K Khullar vs. DCIT (2009) 116 ITD 301 (Del)
- vii) Dwarkadas Kesardeo Morarka vs. CIT (1962) 44 ITR 529 (SC)

viii) C. K. Gangadharan vs. CIT (2008) 72 Taxman 87 (SC)

ix) CIT vs. Swapna Roy (2011) 331 ITR 367 (Allah)

21. We have heard both the parties and perused all the relevant material available on record. The CIT(A) accepted that benefit of deduction under Section 80I/ 80IA of the Act is admissible on Lean gas manufactured/ produced, but held that such deduction is admissible at the stage of two LPG plants at Vijaipur and Vaghodia. The CIT(A) held that activities undertaken by the assessee at its customer terminals did not constitute "manufacture or production of any article or thing" so as to be eligible for deduction under Section 80I/ 80IA of the Act. As a consequence of the aforesaid, the assessee has been denied deduction in respect of profits derived from supply of processed natural gas at various customer terminals, which are not routed through LPG plant. Moreover, since deduction is admissible for specified years, as a consequence of the order of the CIT(A), deduction in respect of profits derived from processed Lean Gas shall be considered from the year of setting up of the LPG Plant and not the relevant customer terminal at which such processed Lean Gas is supplied to the customer. Extensive processing activities undertaken by the assessee at the customer terminals to make lean gas and natural gas marketable and fit for use, clearly constitute "manufacture". The contention of the assessee is that the claim of deduction made by the assessee under section 80I/80IA/ 80HH are genuine as the similar claims have been allowed in the earlier years by the revenue. Deduction allowed in earlier years cannot be denied in subsequent years. Since deduction under section 80IA of the Act in respect to profit derived from eligible units has been allowed by Revenue till assessment year 1995-96, the same cannot be denied subsequently. The Ld. AR made reference to the decision of the CIT(A) in assessee's own case for the assessment year 1994-95. Therefore, the CIT(A) has not taken into account the revenue's stand in the earlier years and deviated from the same without any substantial reasons or evidence on record. Thus, the claim of deduction made by the assessee under section 80I/80IA/ 80HH

are genuine in this year as well. Ground No. 1 and 2 of the assessee's appeal are allowed and Ground No. 1 and 2 of revenue's appeal are dismissed.

22. As regards to Ground No. 3 of assessee's appeal and revenue's appeal relating to interest income eligible for deduction under Section 80IA, 80I and 80HH, the Ld. AR submitted that interest income of Rs. 18711.37 lacs comprised of following components:

- i. Interest on fixed deposits, bonds and inter-corporate deposits
- ii. Interest on employees loans and advances
- iii. Interest on customer outstanding

Miscellaneous Income of Rs. 926.70 lacs is derived from eligible undertaking as it comprises of income from sale of scrap, recovery from employees for electricity and water charges, other miscellaneous recoveries from contractors, etc. The CIT(A) held that deduction is admissible in respect of interest on customer outstanding. In respect of interest on fixed deposits, the Ld. AR submitted that the Assessing Officer should be directed to allow deduction in respect of interest on fixed deposits under Section 80IA of the Act, being distinct from Section 80HH and specifically in view of the following judicial precedents:

- i. CIT vs. Jagdishprasad M. Joshi 318 ITR 420 (Bom. HC)
- ii. M/s Tema Exchangers Manufactures Pvt. Ltd. vs. ACIT ITA No. 415 of 2004 (Bom. HC) wherein in context of deduction available under Section 80IA, the Hon'ble High Court held that interest income earned by assessee on fixed deposits with bank and other interest income were eligible for deduction under that Section.
- iii. CIT vs. Shah Alloys Ltd. 396 ITR 711 (Guj. HC)
- iv. Arul Mariammal Textiles Ltd. vs. ACIT 97 taxmann.com 298 (Mad. HC)

- v. CIT vs. Hewlett Packard Global Soft Ltd. 299 CTR 118 (Kar. HC Full Bench) wherein in context of similar provisions of Section 10A of the Act, the Hon'ble High Court held that interest income earned by the assessee on short term deposits made out of the surplus funds would be eligible for exemption under Section 10A of the Act inasmuch as such deposits were made by the assessee in the ordinary course of the export business. Accordingly, the contention of the department regarding taxability of the said interest income as 'income from other sources' was rejected by the Hon'ble High Court.

The Ld. AR also relied upon the following decisions:

- i. ACIT vs. Maxcare Laboratories Limited 92 ITD 11 (Cuttack Tri.)
- ii. DLF Power Limited in ITA No. 1195/Del/2002 (Del. Tri.)
- iii. Bharat Rasayan Ltd. vs. JCIT ITA No. 4639/Del/2000 (Del. Tri.)

As regards to employees loans and advances, the Ld. AR submitted that the interest on loan provided to employees is inextricably linked to the business of the assessee and constitutes business income eligible for deduction. The Ld. AR relied upon the following decisions:

- i. CIT vs. Eltek SGS (P) Ltd. 300 ITR 6 (Del)
- ii. Joyco India (P) Limited vs. ITO 122 TTJ 940 (Del.)
- iii. Maruti Udyog Ltd. vs. DCIT 92 ITD 119 (Del.)
- iv. Kirloskar Ebara Pumps Ltd. vs. DCIT 138 TTJ 211 (Pune)
- v. Shipping Corporation of India Ltd. vs. Addl. CIT Lex doc ID 415851

As regards to interest on customer outstanding is profit derived from eligible undertakings and entitled for deduction under Section 80IA/80I, in department's appeal, the Ld. AR submitted that the issue is covered in favour of the assessee by following decisions of High Court:

- i. CIT vs. Jacksons Engineering 341 ITR 518 (Del HC)

- ii. CIT vs. Advance Detergents Ltd. & Bharat Rasayan Ltd. 339 ITR 81 (Del)
- iii. CIT vs. Vidyut Corpn. 324 ITR 221 (Bom.)

As regards to miscellaneous income, the Ld. AR submitted that miscellaneous income were inextricably linked to and have first degree nexus with the profits and gains of the eligible undertaking and the same were eligible for deduction.

The Ld. AR relied upon the following decisions:

- i. CIT vs. Sadhu Forging Ltd. 336 ITR 444 (Del HC)
- ii. CIT vs. Arvind Constructions 172 Taxman 5 (Del)
- iii. Fenner (India) Ltd. vs. CIT 241 ITR 803 (Mad)
- iv. CIT vs. Meghalaya Steels Ltd. 383 ITR 217 (SC)
- v. CIT vs. Indo Swiss Jewels Ltd. 284 ITR 389 (Bom)
- vi. DLF Power Limited in ITA No. 1195/Del/2002 (Del)
- vii. Asia Investments Ltd. vs. DCIT 90 ITD 630 (Mum) – Sale of scrap
- viii. ACIT vs. Maxcare Laboratories Ltd. 92 ITD 11 (Cuttack) Sale of scrap
- ix. ACIT vs. Biotech Medicals (P) Ltd. 310 ITR (AT) 47 (Hyd) Sale of scrap
- x. ITO vs. Kiran Enterprises 92 TTJ 104 (Chd.)
- xi. DCIT vs. Chaman Lal & Sons 93 TTJ 132 (Asr)

16. The Ld. DR submitted that the assessee earned interest of Rs. 185.05 crores on fixed deposits, bonds and ICD on which deduction u/s 80IA has been claimed. The Ld. DR pointed out that the assessee firstly submitted that this issue is covered against the assessee. However, the assessee justified its claim by relying on the decisions, the Ld. DR distinguishes these decisions. The Ld. DR submitted that in case of Jagdishprasad (supra), the Hon'ble High Court relied on the decision of Delhi High Court in case of CIT vs. Eltek SGS P Ltd. 300 ITR 6. Further, in case of Tema Exchangers (supra), reliance was made on Jagdishprasad (supra). The Ld. DR pointed out that in case of Eltek SGs (supra), the Hon'ble Apex Court in case of Liberty India vs. CIT (2009) 317 ITR 218/183 Taxman 349 was not considered. Further, in case of Shah Alloys, landmark decisions of the Hon'ble Supreme Court in case of Sterling Foods 237

ITR 579 and Liberty India (Supra) have not been considered. The facts in the case of Arul Mariamal Textiles (Madras), relied upon by the Ld. AR are different from the facts of the instant case and hence, distinguishable. In the case of CIT vs. Sterling Foods (1999) 237 ITR 579, it was held by the Hon'ble Supreme Court that "there must be for the application of the words 'derived from', a direct nexus between the profits and gains and the industrial undertaking." That decision was in reference of deduction claimed under Section 80HH of the Act. The issue was raised whether the said ratio is applicable in the case of education claimed under Section 80IA/80IB. This controversy was put to rest by the Hon'ble Supreme Court in case of Liberty India (supra) by holding that it is evident that Section 80IB provides for allowing of deduction in respect of profits and gains derived from the eligible business. The words "derived from" is narrower in connotation as compared to the words "attributable to". In other words, by using the expression "derived from", Parliament intended to cover sources not beyond the first degree. In this case, the assessee has earned interest income on FS, ICD and Bonds. The source of first degree is FD, ICD and bonds and therefore, the interest income is not derived from the industrial undertaking. The Ld. DR relied upon the following decisions:

- i. Liberty India vs. CIT (2009) 317 ITR 218 (SC)
- ii. CIT vs. Ritesh Industries Ltd. (2005) 142 Taxman 551 (Del.)
- iii. CIT vs. Sterling Foods (1999) 104 Taxman 204 (SC)
- iv. Cambay Electrical Supply In. Co. Ltd. vs. CIT 113 ITR 673 (SC)
- v. India Commet International vs. ITO (2013) 354 ITR 673 (SC)
- vi. CIT vs. Menon Impex (P.) Ltd. 259 ITR 403 (Madras)
- vii. CIT vs. Nagesh Knitware Ltd. (2012) 345 ITR 135 (Del.)
- viii. Essar Power Ltd. vs. Addl. CIT (2013) 32 taxmann.com 346 (Mum. Tri.)

17. As regards to Interest on employee loans and advances, the Ld. DR submitted that the first degree of source of interest income is from loans given to employees and is not derived from industrial undertaking. Hence, the ratio of Liberty India (supra) read with Sterling Foods (supra) is squarely applicable. Further, reliance is placed on the decision of Essar Power Ltd. vs. Addl. CIT (2013) 32 taxmann.com 346 (Mum. Tri.) wherein it has been held by the Tribunal that the assessee is not entitled to the deduction u/s 80IA of the Act on the interest on employees loan and advances, interest on margin money and interest income dues towards income tax refund adjustment from Essar Power Ltd.

18. As regards to Misc. Income, the Ld. DR submitted that the assessee has not been able to prove that scrap sale was derived from industrial undertaking.

19. We have heard both the parties and perused all the relevant material available on record. As regards to Misc. Income, the assessee has produced all the relevant evidence as regards to how the scrap sale is derived from the industrial undertaking. As regards to interest on fixed deposits, various decisions of the Hon'ble High Court categorically held that the deduction in respect of interest on fixed deposits under Section 80IA is allowable. The revenue has not pointed out as to why the same should be denied to the assessee. The case laws given by the Revenue in fact reiterate the stand of the assessee. Hence, it is pertinent to remand back the matter to the file of the Assessing Officer and we direct the Assessing Officer to allow deduction in respect of interest on fixed deposits under Section 80IA of the Act. So far as interest on employees' loans and advances is concerned, the interest on loan provided to employees in our opinion is inextricably linked to the business of the assessee and constitutes business income eligible for deduction. As regards to interest on customer outstanding is profit derived from eligible undertakings and entitled for deduction under Section 80IA/80I, in department's appeal, the issue is covered in favour of the assessee by various decisions of High Court. As regards to miscellaneous income, the said income is inextricably linked to and have first degree nexus with the profits

and gains of the eligible undertaking and the same were eligible for deduction. Therefore, Ground No. 3 in assessee's appeal is allowed and Ground No. 3 in revenue's appeal is dismissed.

20. As regards to Ground No. 4 of the assessee's appeal relating to interest transferred to "expenditure during construction" liable to be excluded from eligible profits, the Ld. AR submitted that while excluding interest and miscellaneous income for deduction under Section 80I/80IA of the Act, the Assessing Officer has excluded gross interest and miscellaneous income. Out of interest income of Rs. 18711.37 lacs and miscellaneous income of Rs. 926.70 lacs, interest of 21.06 lacs and miscellaneous income of Rs. 170.01 lacs are reduced from income and transferred to IEDC a/c and capitalized and balance interest income of Rs. 18690.31 lacs and balance miscellaneous income of Rs. 756.69 lacs was credited to the P&L account. The aforesaid issue of capitalization has been decided in favour of the assessee by the Tribunal in assessee's own case vide order dated 22.01.2010 for the A.Y. 1997-98. The Tribunal followed the decision of the Hon'ble Supreme Court in case of CIT vs. Bokaro Steel 236 ITR 315 and Karnal Cooperative Sugar Mills 243 ITR 2. The Ld. AR further submitted that the CIT(A) should have directed the Assessing Officer to reduce the aforesaid interest and miscellaneous income capitalized while excluding the same from the eligible profits.

19. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

20. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that out of interest income of Rs. 18711.37 lacs and miscellaneous income of Rs. 926.70 lacs, interest of 21.06 lacs and miscellaneous income of Rs. 170.01 lacs are reduced from income and transferred to IEDC a/c and capitalized and balance interest income of Rs. 18690.31 lacs and balance miscellaneous income of Rs. 756.69 lacs was credited to the P&L account by the assessee which was placed before the Revenue authorities. The aforesaid issue of capitalization has been decided in

favour of the assessee by the Tribunal in assessee's own case vide order dated 22.01.2010 for the A.Y. 1997-98. The Tribunal followed the decision of the Hon'ble Supreme Court in case of CIT vs. Bokaro Steel 236 ITR 315 and Karnal Cooperative Sugar Mills 243 ITR 2. Therefore, the CIT(A) should have directed the Assessing Officer to reduce the aforesaid interest and miscellaneous income capitalized while excluding the same from the eligible profits which the CIT(A) failed to do so. Therefore, we are remanding back this issue to the file of the Assessing Officer with the direction to reduce the aforesaid interest and miscellaneous income capitalized while excluding the same from the eligible profits. Thus, Ground No. 4 of the assessee's appeal is partly allowed for statistical purpose.

21. As regards to Ground No. 5 of the assessee's appeal relating to amortization of leasehold rent, the Ld. AR submitted that this issue is decided against the assessee by the Hon'ble Delhi High Court in assessee's own case for A.Y. 1996-97.

22. The Ld. DR relied upon the decision of the Hon'ble Delhi High Court, assessment order and the order of the CIT(A).

23. We have heard both the parties and perused all the relevant material available on record. The issue is decided by the Hon'ble Delhi High Court in assessee's own case for A.Y. 1996-97 against the assessee. The facts are identical in the present assessment year relating to this issue. Therefore, Ground No. 5 of the assessee's appeal is dismissed.

24. As regards to Ground No. 4 of revenue's appeal relating to horticulture expenses, the Ld. DR submitted that the said expenses are rightly disallowed by the Assessing Officer. The Ld. DR relied upon the Assessment Order.

25. The Ld. AR submitted that during the relevant previous year, the assessee incurred horticulture expenses amounting to Rs. 85,21,221/- comprising of expenditure incurred, inter alia, on planting of trees, maintenance of lawns and areas in the close vicinity of the offices/ plants of

the assessee in accordance with the mandate of the Government. The Ld. AR submitted that the assessee is primarily engaged in the business of exploration, production and distribution of gas. In order to conduct such business activities, the assessee requires various regulatory approvals including environmental clearances. Further, being a Government company, the assessee is bound to follow policies which are floated by the Government from time to time. In terms of the applicable pollution control laws, it is mandatory for the assessee company to expend certain amount each year on horticulture, i.e., plantation of trees and other activities in order to minimize environmental hazards, before the relevant authorities accord various environmental clearances to the assessee. The Ld. AR further pointed out that unless the assessee has, in fact, incurred expenditure on horticulture, the assessee would not be able to obtain the expenditure is a pre-condition for carrying on of business and is thus expenditure incurred wholly and exclusively for the purposes of the business. The Ld. AR made reference of the approvals granted by various regulatory authorities as follows:

- a) Officer Memorandum dated 30.03.1992 issued by Ministry of Environment and Forests for setting up of UP Petroleum Complex
- b) Letter dated 29.04.1992 written by the Assistant Inspector General of Forests to the Secretary, Department of Forests, Government of U.P., intimating the diversion of 35.52 hectares of forest land for construction of gas-based petrochemical project by the assessee in Etawa District, specifically required the assessee to undertake "compensatory plantation to be raised for equipment non-forest land, which will be notified as protected forests under the Indian Forests Act." The approval of diversion of the aforesaid land for construction of the petro-chemical complex of the assessee was made specifically subject to the aforesaid condition of undertaking compensatory plantation.
- c) The Ministry of Environment & Forests, Govt. of India, while granting environmental clearance vide letter no J-11011/143/2004-IA II(I) dt.

12.01.2004 had specifically imposed a condition that “Green Belt” shall be provided to mitigate the effects of fugitive emissions all around the plant in a minimum of 25% of the plant area.

d) Gujarat Pollution Control Board accorded consent and authorization under the Water Pollution Act, the Air Pollution Act and the Hazardous Waste (Management and Handling) Rules to the assessee company vide letter dated 12.04.2004. The said authorization was made specifically subject to fulfillment of conditions stipulated thereunder which inter alia, required the assessee company to install and operate air pollution control system in order to achieve norms prescribed in the said letter.

The Ld. AR submitted that the aforesaid expenditure is required to be incurred as a measure of restoring the environmental impact resulting from the activities of the assessee, and for that reason; too, the same is an allowable business donation. The expenditure on horticulture expenses amounting to Rs. 85,21,221 was revenue expenditure and not capital in nature, inasmuch as, as a result of the aforesaid expenditure, there is neither the acquisition of any capital asset nor any enduring benefit to the assessee in the capital field. The aforesaid expenditure has been incurred purely as a matter of statutory obligation and as a condition precedent to conduct its business. Further, the assessee has to incur such expenses on a continuing basis in order to comply with the conditions put by various approvals and to minimize the impact of its business activities on the environment. Being so, the Ld. AR submitted that the aforesaid expenditure is liable to deduction under Section 37(1) of the Act. The Ld. AR relied upon the following decisions:

- i. Sri Venkata Satyanarayana Rice Mill vs. CIT 223 ITR 101 (SC)
- ii. CIT vs. D.T.T.D.C. Ltd. 350 ITR 1 (Del.)
- iii. CIT vs. Madras Refineries Ltd. 266 ITR 170 (Mad.)
- iv. CIT vs. India Radiator Ltd. 236 ITR 719 (Mad.)
- v. Gujarat Guardian Ltd. vs. DCIT ITA No. 3214/Del/2013 (Del. ITAT)
- vi. Airport Authority of India vs. CIT 340 ITR 407 (Del HC)

26. We have heard both the parties and perused all the relevant material available on record. The horticulture expenses on planting of trees, maintenance of lawns and areas in the close vicinity of the offices/ plants of the assessee in accordance with the mandate of the Government and the assessee has to comply with the government regulations for environmental cause. Thus, the CIT(A) has given a categorical finding while allowing these expenses. Ground No. 4 of Revenue's appeal is dismissed.

27. As regards to Ground No. 5 of the revenue's appeal relating to deferred revenue expenditure, the Ld. DR submitted that the CIT(A) erred in allowing the said expenditure.

28. The Ld. AR submitted that the assessee paid a sum of Rs. 72,000/- to Tata Economic Consultancy for conducting market survey to assess the degree and extent of utilization of additional ethylene proposed to be produced by the assessee at UP Petrochemicals project. The said project was intended at expanding the existing business of the assessee of production, processing, transmission and distribution of various gases which are capable of being used as industrial or household fuel. It is settled law that revenue expenditure incurred by an existing business for expansion or setting up of new unit in the same business is allowable business deduction. The Ld. AR relied upon the following decisions:

- i. CIT vs. Priya Village Roadshows Ltd. 332 ITR 594 (Del)
- ii. Indo Rama Synthetics (I) Ltd. 333 ITR 18 (Del)
- iii. Jay Engineering Works Ltd. vs. CIT 311 ITR 405 (Del)
- iv. CIT vs. Monnet Industries Ltd. 221 CTR 266 (Del)
- v. Prem Spinning and Weaving Mills Co. Ltd. vs. CIT 98 ITR 20 (All)
- vi. CIT vs. Alembic Glass Industries Ltd. 103 ITR 715 (Guj)

- vii. CIT vs. Shah Theatre Pvt. Ltd. 169 ITR 499 (Raj)
- viii. CIT vs. Hindustan Machine Tools Ltd. 175 ITR 212 (Kar)
- ix. CIT vs. Ghanashyam Machine Tools Ltd. Lex ID 390033 (Guj)
- x. DCIT vs. Samtel Color Ltd. (ITA No. 4623 & 4624/Del/2001 (Del ITAT)
- xi. Raymond Limited vs. JCIT ITA No. 6243/Bom/1995 (Mum ITAT)
- xii. Havells India Ltd. vs. Addl CIT ITA No. 1300/Del/2010 (Del ITAT)

29. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that expenditure incurred on market survey to assess the degree and extent of utilization of additional ethylene proposed to be produced by the assessee is related to the business related. Thus, revenue expenditure incurred by an existing business for expansion or setting up of new unit in the same business is allowable business deduction. Therefore, the CIT(A) rightly allowed the said expenditure. Ground No. 5 of the Revenue's appeal is dismissed.

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

Order pronounced in the Open Court on this 26th day of October, 2020.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 26/10/2020
*Priti Yadav, Sr. PS /R.N**

Copy forwarded to:

- 1. Appellant
- 2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	