

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 5775/Del/2014
Asstt. Year 1998-99

Gail (India) Ltd. Mr. A.K. Tiwari, 16, Bhikaji Cama Place New Delhi – 110 066 PAN AAACG1209J	Vs.	DCIT LTU, NBCC Plaza Pushp Vihar, Sector-3, New Delhi 110 017
(Appellant)		(Respondent)

ITA No. 5912/Del/2014
Asstt. Year 1998-99

DCIT. LTU New Delhi.	Vs.	Gail (India) Ltd. 16, Bhikaji Cama Place R.K. Puram New Delhi – 110 066 PAN AAACG1209J
(Appellant)		(Respondent)

Assessee by:	Shri Rohit Jain, Advocate Ms. Deepashree Rao, CA Shri Vibhu Gupta, CA
Department by :	Ms. Sunita Singh, CIT(DR)
Date of Hearing	24.11.2020
Date of pronouncement	26.11.2020

ORDER

PER N.K. BILLAIYA, AM

ITA No. 5775/Del/2014 and ITA No. 5912/Del/2014 are cross appeals by the assessee and revenue preferred against the order of the CIT(A)-LTU, New Delhi dated 28.8.2014 pertaining to assessment year 1998-99. Both these appeals were heard together and are disposed of by this common order for the sake of convenience.

2. We will first address assessee's appeal in ITA No. 5775/Del/2014. The grievance of the assessee reads as under:

1. *"That the Commissioner of Income-tax (Appeals) (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 801/ 80IA of the Income-tax Act, 1961 ("the Act") and not at various customer terminals, as claimed by the appellant following the order of CIT (A) for the preceding assessment year.*

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 801, 80IA and 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 for the enabling supply of lean gas at customer terminals , which could not be regarded as “manufacture or production of any article or thing”.

1.4 That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that the AO had not allowed the deductions under section 801, 80IA in the initial assessment year 1992-93.

3. The issues raised vide ground No. 1 to 1.4 are identical to the issues considered by the Tribunal in assessee's own case in the previous assessment year 1997-98 vide ground No. 1 and 2 of the appeal wherein the Tribunal has followed the earlier year's decision of the coordinate bench. For our detailed discussion therein ground No. 1 with all its sub grounds are allowed.

4. We will now address to the revenue's appeal. The grievance of the revenue reads as under :-

"1. on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of manufacturing of lean gas at the 02 LPG plants.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of lean gas in principle & thereafter, further directing to compute the deduction after allowing the applicable expenses.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in allowing the claim of horticulture expenses amounting to Rs. 1,23,80,000/- as revenue expenditure.

4. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in directing the Assessing Officer to allow the investment allowance u/s 32A, since the disallowance was made after examining the issue and contention of the assessee was not found appropriate.

5. The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing. “

5. Grievances raised vide ground No. 1 and 2 are identical to the findings given in ground No. 1 and 2 in assessment year 1997-98 in ITA No. 4657/Del/2014 and ITA No. 5091/Del/2014. For our detailed discussion therein ground No. 1 and 2 are dismissed. Grievance raised vide ground No. 3 is identical to the grievance raised vide ground No. 5 in ITA No. 5091/Del/ 2014 for assessment year 1997-98. For our detailed discussion therein ground No. 3 is dismissed.

6. Grievance raised vide ground No. 4 is identical to the grievances raised vide ground No. 6 in asstt. Year 1997-98 in ITA No. 5091/Del/ 2014. For our detailed discussion therein ground No. 4 is dismissed.

7. In the result the appeal filed by the revenue is dismissed and appeal filed by the assessee is allowed.

Order pronounced in the open court on 26th November,
2020.

sd/-
(MS. MADHUMITA ROY)
JUDICIAL MEMBER

sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: /11/2020

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi