

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 7551/Del/2018  
(for Assessment Year : 2015-16)

ACIT Special Range – 4, New Delhi  PAN No. AAACI 5076 R <b>(APPELLANT)</b>	Vs.	Indraprastha Gas Ltd., Plot No.4, IGL Bhawan, Sector – 9, Community Centre, R. K. Puram, New Delhi – 110 022 <b>(RESPONDENT)</b>
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Assessee by	Shri Rajat Jain, C.A. Shri Ashish, C.A.
Revenue by	Shri Brij Mohan Singh, Sr. D.R.

Date of hearing:	03.03.2022
Date of Pronouncement:	11.03.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the Revenue is directed against the order dated 20.09.2018 passed by the Commissioner of Income Tax (Appeals) – 35, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in retail gas distribution business of supplying Compressed Natural Gas (CNG) to transport sector and Piped Natural Gas (PNG) to domestic, industrial and commercial sectors in Delhi and NCR. Assessee filed its return of income for A.Y. 2015-16 on 30.09.2015 declaring income of Rs.529,68,66,240/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 27.12.2017 and the total income was determined at Rs.533,33,93,749/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 20.09.2018 in Appeal No.29/17-18 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,65,27,509/- made by the Assessing Officer on account of disallowance of additional depreciation claimed by the assessee u/s 32(1)(iia) of the Act by holding that the activities undertaken by the assessee amount to Manufacture.*
  - a) *Whether the Ld CIT(A), in holding that the activity of the assessee qualifies as Manufacture, has erred in not appreciating that the assessee is engaged in the business of storage, supplies & distribution of Natural Gas and the activity of compression of gas in the course of such business does not result into a new or distinct object having a different character, chemical composition or integral structure.*
  - b) *Whether the Ld. CIT(A) has erred in relying upon the decision of Hon’ble ITAT in assessee’s own case for AY 2007-08, not appreciating the fact that the term ‘manufacture was introduced in the Act w.e.f. 01.04.2009 by way of insertion of section 2(29BA) and therefore, the claim of the assessee regarding its*

*activity qualifying as 'manufacture' was required to be examined in the light of the aforesaid amended provisions of law."*

4. Before us, at the outset, both the parties submitted that though Revenue has raised various grounds but the sole controversy is with respect to the claim of additional depreciation.

5. During the course of assessment proceedings, AO noticed that assessee had claimed additional depreciation amounting to Rs.3,65,27,509/- u/s 32(1)(iia) of the Act. Assessee was asked to substantiate the claim of additional depreciation and furnish the necessary documents. Assessee *inter alia* submitted that assessee is engaged in the business of Natural Gas in commercial and domestic sector and is also engaged in the manufacturing/production process. It was further submitted that assessee had obtained Certificate from Central Excise Department and it was paying excise duty also. It was further submitted that the Excise duty was leviable only when a person is engaged in manufacturing activities. It was thus *inter alia* submitted that since the assessee was engaged in manufacturing activity, it was eligible to claim additional depreciation @ 20%. The submissions of the assessee was not found acceptable to AO. AO noted that the annual report of the assessee states it to be engaged in the business of supplying CNG to transport sector and PNG to domestic natural and commercial sector but it nowhere

indicates that the assessee was in the business of manufacturing or producing the CNG. With respect to the assessee's submissions that it is engaged in the manufacturing of gas as excise duty is also been paid, AO was the view that the meaning of the term 'manufacture' was different for Income Tax Act and for Central Excise Act and a person considered as manufacturer for the purposes of Central Excise Act may not be considered to be a manufacturer for the income tax purposes. He also noted that the activity of the assessee was only of compressing the natural gas and in the whole process, the input and output remains same i.e. natural gas and during the compressing process, the characteristics of natural gas does not change by the process stated to have been done by the assessee and it was not resulting into any new and distinct object having different name character and use. He therefore held that the process undertaken by the company at CNG stations does not amount to manufacture or production of article or thing so as to be eligible for claim u/s 32(1)(iia) of the Act. He accordingly held that the assessee to be not eligible for additional depreciation and accordingly disallowed the claim of depreciation of Rs.3,65,27,509/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deciding the issue in assessee's favour noted that for A.Y. 2007-08, AO in the assessment order passed u/s 147 of the Act had disallowed the claim of additional depreciation but CIT(A) held assessee to be eligible for the claim of

additional depreciation. He also noted that the order of CIT(A) was challenged by Revenue before ITAT. Hon'ble ITAT vide order dated 25.04.2018 confirmed the order passed by the CIT(A) and held the assessee to be a manufacturer as per the Income Tax Act and therefore eligible to claim additional depreciation u/s 32(1)(iia) of the Act. He therefore noted that the facts in the year under consideration were identical to that of earlier years and therefore held the assessee to be eligible for additional depreciation. Aggrieved by the order of CIT(A), Revenue is now before us.

7. Before us, Learned DR supported the order of AO.

8. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A). He further submitted that identical issue has already been decided by the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2007-08, 2011-12, 2012-13, 2013-14 & 2014-15. He further submitted that against the order passed by the Tribunal for A.Y. 2007-08, Revenue had filed an appeal before the Hon'ble Delhi High Court. Hon'ble Delhi High Court dismissed the appeal filed by the Revenue on technical grounds. He thus supported the order of CIT(A).

9. We have heard the rival submissions and perused the material on record. The issue in the present ground of Revenue is

with respect to allowing the claim of additional depreciation. We find that CIT(A) while deciding the issue has noted that the facts of the case under consideration were similar to A.Y. 2007-08. We further find that while deciding the identical issue in assessee's own case for A.Y. 2011-12 & 2012-13, the Co-ordinate Bench of Tribunal vide order dated 19.03.2021 and following the decision of Tribunal in assessee's own case in ITA No.6489/Del/2017 order dated 05.01.2021 for A.Y. 2013-14 held the issue to be covered in assessee's favour. Before us, Revenue has not placed any material on record to demonstrate that the facts in the case in the year under consideration and that of earlier years are different and distinguishable and further no material has been placed by the Revenue to demonstrate that the decision rendered by the Tribunal in assessee's own case in earlier years has been stayed/ set aside/ overruled by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A).

**Thus grounds of the Revenue are dismissed.**

**10. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 11.03.2022**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 11.03.2022

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI