

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MRS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.5/Mum/2018
(Assessment Year : 2011-12)
ITA No.642/Mum/2018
(Assessment Year : 2012-13)
&
ITA No.643/Mum/2018
(Assessment Year : 2013-14)**

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| DCIT(IT)-3(3)(1), Room No.1630, 16 th Floor Air India Building Nariman Point Mumbai-400 021 | Vs. | M/s.Niko (Neco) Ltd., 407-411/311, Oberoi Chamber II Plot No.645/646 New Link Road Andheri (W) Mumbai – 400 053 |
| PAN/GIR No.AACCN4403B | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-------------------|
| Revenue by | Ms. Vatsalaa Jha |
| Assessee by | Shri Vijay Mehta |
| Date of Hearing | 31/03/2022 |
| Date of Pronouncement | 15/06/2022 |
| | |

आदेश / O R D E R

PER BENCH:

These appeals in ITA Nos. 5/Mum/2018, 642/Mum/2018, 643/Mum/2018 & for A.Y.2011-12 – 2013-14 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-57, Mumbai in

appeal No. CIT(A)-57/Arr-144/2017-18, CIT(A)-57/Arr-298/2017-18 & CIT(A)-57/Arr-289/2017-18 respectively dated 06/10/2017 & 08/11/2017 respectively (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 20/05/2015, 19/05/2016 & 13/02/2017 respectively by the Id. Dy. Comm. of Income Tax (I.T.)-3(3)(1), Mumbai (hereinafter referred to as Id. AO).

1.1. Identical issues are involved in both these appeals and they are taken up together and disposed of by this common order for the sake of convenience.

ITA No.5/2018 (Revenue Appeal) A.Y.2011-12

2. The Revenue has raised the following grounds:-

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred on facts and circumstances of the case and in law and not disallowing assessee's claim u/s 80IB(9) on interest income of Rs. 25,54,050/- ignoring the fact that it is not derived from activities mentioned in Section 80IB(9) of the Act.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80IB(9) on profit of Rs. 208,96,63,164/- earned by the assessee from exploration of natural gas ignoring the provisions of Section 80IB(9) which restricts the deduction to exploration of mineral oil.*

3. *The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

4. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2.1. The effective issue to be decided is whether assessee is eligible for deduction u/s.80IB(9) of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. The brief facts of this appeal are that the assessee with 10% participating interest and its joint venture partner Reliance Industries Limited ('RIL') has entered into a Production Sharing Contract ('PSC') with the Government of India for the exploration and development of oil and gas field with respect to contract area identified as KG-DWN-98/3 popularly known as the D6 block. The assessee makes the payment to the co-venturer i.e. RIL to conduct day to day business activities and the expenditure related to Joint Venture. These payments made by the assessee are deposited by RIL in a separate bank account. Pending utilisation of the said funds, the same were placed with the banks on which assessee had earned interest income which was offered to tax under the head 'income from business'.

3.1. The first ground of Departmental's appeal is challenging the action of the Id. CIT(A) allowing assessee's claim u/s.80IB(9) of the Act on interest income of Rs.25,54,050/- and treating the same as 'income from other sources' on the ground that it is not derived from the activities mentioned in Section 80IB(9) of the Act. We find that the Id. AO had taken this stand by following the order passed by his predecessor in the earlier years. We find that the assessee submitted that the interest income of Rs.25,54,050/- was earned out of business funds which were deposited with the designated bank account. Since the said interest was earned out of unutilised business funds placed with the banks, the same would partake the character of business income of the assessee. It was also

pointed out that the interest income from funds placed with banks were made out of the operational funds and hence, was an integral part of the assessee's business.

3.2. The Id. CIT(A) observed that this issue has been decided in assessee's own case in assessee's favour for A.Y.2007-08 and 2008-09 by the Tribunal and placing reliance on them, deleted the addition made by the Id. AO.

3.3. We find that this issue was also decided by this Tribunal in assessee's own case for A.Y.2009-10 by holding the interest income be treated as 'income from business' and not as 'income from other sources'. We find that this Tribunal in assessee's own case for A.Y.2009-10 in ITA No.4826/Mum/2015 dated 07/06/2017 had held that temporary business funds were deposited by the assessee into the bank account till the date of its requirement and therefore by placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Lok Holdings reported in 308 ITR 356, the said interest income would be taxable as 'business income'. Respectfully following the same, the ground No.1 raised by the Revenue is dismissed.

4. The second ground in Revenue's appeal is challenging the action of the Id. CIT(A) granting deduction u/s.80IB(9) of the Act on profit of Rs.208,96,63,164/- earned by the assessee from exploration of natural gas ignoring the provisions of Section 80IB(9) of the Act which restricts the deduction to exploration of mineral oil.

4.1. We find that the assessee company with 10% participating interest and its joint venture partner Reliance Industries Ltd., (RIL) with 90%

participating interest, entered into Production Sharing Contract (PSC) with Government of India as per amendment No.1 to the PSC with Block KG-DWN-98/3 on 26/12/2007 for the exploration and development of oil and gas field with respect to contract area identified as Block KG-DWN-98/3 popularly known as D-6 field or D-6 PSC. The Id. AO had observed that company had set up project office in India from April 2006 under intimation to RBI and had obtained necessary approval from the Registrar of Companies in this regard. The assessee claimed that commercial production of mineral oil commenced from 01/05/2009 from KG D-6 Block as informed by the operator i.e. Reliance Industries Ltd., and the trial production of crude oil and natural gas was started from September 2008 and 02/04/2009 respectively.

4.2. We find that the Id. AO in his assessment order took a view that "natural gas" does not fall into the category of "mineral oil" and hence restricted deduction u/s.80IB(9) of the Act to the proportionate profit relating to sale of only "crude oil". The Id. CIT(A) granted relief to the assessee by granting deduction u/s.80IB(9) of the Act by placing reliance on the orders passed by another CIT(A) in the case of joint venture partner i.e. Reliance Industries Ltd., for A.Yrs 2012-13 and 2013-14. Aggrieved, the Revenue is in appeal before us.

4.3. The provisions of Section 80IB(9) of the Act provide for "*deduction to an undertaking which begins commercial production or refining of mineral oil*". It is not in dispute that the Company is engaged in the business of prospecting for or exploration and production of mineral oil. Therefore it is eligible to claim deduction under section 80-IB (9) of the Act for its undertakings which had commenced commercial production for a period of seven consecutive years from the year of commencement of

commercial production. Section 80-IB (9) of the Act provides that an undertaking would be eligible for a deduction in respect of 100 percent of its profits for a period of seven consecutive years if the following conditions are fulfilled:-

- The undertaking is engaged in the commercial production of mineral oil; and
- It commences commercial production on or after April 1,1997

4.4. The Id. AR argued that the term 'mineral oil' has been defined under sections 42, 44BB and 293A of the Act to include 'natural gas'. The term 'mineral oil' has also been defined under the Oil Fields (Regulation and Development) (OFRD) Act, 1948, which governs the exploration and development activities of the Blocks awarded by the Government of India, to include 'natural gas and petroleum'. He argued that the Government of India is entering into PSCs with companies and advising them on the tax holiday available for E&P activities (both Oil and Gas). The reference to the OFRD Act in the PSC makes it abundantly clear that mineral oil in the context of the PSC include natural gas. The PSC also defines petroleum to mean crude oil and natural gas. Further, there is no exception provided in the PSC that deduction under section 80-IB (9) of the Act will not be available to undertakings commencing commercial production of 'natural gas', as the same is not a 'Mineral oil'. The term 'mineral oil' should therefore be read consistently, especially, since there is no contrary definition either in the Act or in the sister legislations governing the E&P sector. In the absence of any contrary meaning, there is no basis whatsoever, to hold that the term 'mineral oil' does not include natural gas for the purposes of Section 80-IB(9) of the Act as well. The Id. AR also placed reliance on the speech of the Hon'ble Finance Minister introducing the tax holiday for promotion of the oil and gas industry in the

country. Accordingly, he submitted that the term "mineral oil" as referred to Section 80IB(9) of the Act includes 'natural gas' and the intention of the legislature as spelt out in the budget speech of the Hon'ble Finance Minister and provisions of Section 44BB, 293A and Section 42 of the Act are to be read harmoniously.

4.5. Per contra, the Id. DR vehemently argued that the explanation to the provisions of Section 44BB defines mineral oil to include petroleum and natural gas. He argued that this explanation is relevant only for the provisions of Section 44BB of the Act. He submitted that no such explanation is given in Section 80IB(9) of the Act. Hence, the assessee would not be eligible for deduction u/s.80IB(9) of the Act in respect of natural gas.

4.6. We find that this issue was subject matter of consideration by this Tribunal in the case of Reliance Industries Ltd., for A.Yrs.2010-11, 2011-12 and 2012-13 dated 28/09/2018 wherein it was held as under:-

"109. The next issue urged by the revenue in ground no.7 is relating to the decision of the AO in restricting the deduction u/s 80IB(9) of the Act to the proportionate profit relating to sale of Crude oil. We noticed earlier that the AO did not allow deduction on the profit arising on sale of Natural gas and condensate by holding that the "natural gas" shall not fall under the category of "Mineral Oil" for allowing deduction u/s 80IB(9) of the Act. The Ld CIT(A), however, held that the mineral oil shall include "natural gas" also and accordingly directed the AO. The revenue is aggrieved by the said decision of Ld CIT(A).

110. We heard the parties on this issue and perused the record. We notice that the question as to whether "natural gas" shall fall under "mineral oil" or not was examined by the Ahmedabad bench of ITAT in the case of "NIKO Resources Ltd vs. DCIT (22 DTR 225) and it has been held that the natural gas shall fall under "mineral oil" in terms of sec. 80IB(9) of the Act. The said decision of Tribunal has since been affirmed by Hon'ble Gujarat High Court in the same case reported in 374 ITR 369.

112. Since identical issue has been decided by Hon'ble Gujarat High Court in favour of the assessee in the case of NIKO Resources Ltd (which holds 10%

share in the block) and since the Ld CIT(A) has followed the same, we do not find any infirmity in the order passed by Ld CIT(A) on this issue.

4.7. For the sake of convenience, we also would like to reproduce the operative portion of the decision of the Hon'ble Gujarat High Court in the case of Niko Resources Ltd., vs. Union of India reported in 374 ITR 369.

2. The Petitioner has been claiming benefit of deduction of 100% of the profits and gains from the production of mineral oil and natural gas under Section 80-IB(9) as it stood prior to an amendment to Section 80-IB(9) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') which was introduced by the Finance (No.2) Act 2009. In these proceedings the constitutional validity of the amendment to sub-Section (9) of Section 80-IB and Explanation added to it under the Act by the Finance (No.2) Act, 2009, has been challenged.

3. The relevant portion of the amendment in the present proceedings read as under:—

'37. In Section 80-IB of the Income-tax Act, -

(a) for sub-Section (9), the following sub-Section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000, namely :-

'(9) The amount of deduction to an undertaking shall be hundred per cent, of the profits, for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following, namely :-

- (i) is located in North-Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997;*
- (ii) is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997;*
- (iii) is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998.*

Explanation. - For the purposes of claiming deduction under this sub-Section, all blocks licensed under a single contract, which has been awarded under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking"':

(a) in sub-Section (9), as so substituted, —

- (A) in clause (iii), after the words, figures and letters "the 1st day of October, 1998", the words, figures and letters "but not later than the 31st day of March, 2012" shall be inserted;*

(B) after clause (iii), the following clause shall be inserted with effect from the 1st day of April, 2010, namely: -

'(iv) is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (hereafter referred to as "NELP-VIII") under the New Exploration Licensing Policy announced by the Government of India vide Resolution No.0-1 9018/22/95-ONG.DO.VL dated 10th February, 1999 and begins commercial production of natural gas on or after the 1st day of April, 2009;' (Emphasis supplied)

6. The second part of the amendment is the introduction of a new sub-clause (iv) to Section 80-IB(9) by which the benefits of the deduction under section 80-IB(9) have been conferred to persons engaged in commercial production of "natural gas" In blocks licensed under the VIIIth Round of bidding under the New Exploration and Licensing Policy (NELP) and who begin commercial production of natural gas on or after 1st day of April 2009. This amendment is effective from 1.4.2010 i.e. for Assessment Year 2010-11 onwards.

32. We propose to deal with the second issue first.

33. Before we go into the issue of constitutional validity and vires of the amendments by insertion of sub-clause (iv) to Section 80-IB(9) to the Act, it will be profitable to understand the meaning and import of the expression "mineral oil". The term "mineral oil" has not been defined under the Act. The Respondent seeks to rely on Explanation to Section 42 which, for the purpose of that Section, explains "mineral oil" as including both, petroleum and natural gas, The Explanation qualifies the applicability only to Section 42 of the Act. It is therefore contended that 'mineral oil" under section 80-IB should be so construed so as not to include natural gas and the Explanation under Section 42 cannot be looked at in construing the provisions of Section 80-IB.

34. This contention would merit consideration if mineral oil has either been defined under the Act or has acquired a natural, commercial or interpretative meaning so as to exclude natural gas. Section 80-IB(9)(ii) of the Act provides for the same exemption to undertakings located in any part of India which began commercial production of mineral oil on or after 1st April 1997. Apart from use of the term "undertaking", this provision also uses the term "mineral oil". It is necessary to consider the scope and amplitude of these terms in the context of the provisions of Sections 80-IB particularly in view of the fact that while amending the provisions of this Section in the manner aforesaid, Section 80IB(9)(ii) has remained unamended.

35. The question whether natural gas is encompassed in the term "mineral oil" came up for consideration before a Constitutional Bench of the Apex Court in the case of Association of Natural Gas v. Union of India [2004] 4 SCC 489. The question arose as to the legislative competence of the State to enact laws on natural gas in terms of Entry 25 of List II of the Seventh Schedule of the Constitution. Union of India contended that the exclusive domain power and competence to legislate on natural gas is available only to the Parliament by virtue of Entry 53 List I of the Seventh Schedule.

35.1 Entry 53 of List I of the Seventh Schedule reads as under:—

"Regulation and Development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

35.2 Entry 25 List II reads as follows :—

"Gas and gas works."

35.3 The State contended that the expression 'gas' in Entry 25 List II takes within its ambit "natural gas", Natural gas is widely used as energy source and State alone would be in a position to exploit the resources and distribute them to the consumer. Natural gas is classified in several broad categories such as wet gas, lean gas, dry gas, sour gas and sweet gas. State also contended that natural gases are not associated with any petroleum products, and therefore State has the legislative competence to pass legislation in respect of natural gas, as it is not a petroleum gas.

35.4 The Apex Court framed the following question in paragraph 19 of the decision :-

"The controversy in the instant case could only be resolved by examining the question whether the expression "petroleum and petroleum products", or "mineral oil resources" mentioned in Entry 53 of List I of the Seventh Schedule would take in its compass the natural gas or its derivative forms."

35.5 The relevant portions of this decision is reproduced below:—

'20. In Kirk-Othomer Encyclopedia of Chemical Technology, (Third Edition), Vol, 11 page 630, 'Natural gas' is defined as a naturally occurring mixture of hydro-carbon and non- hydrocarbon gases found in the porous geologic formations beneath the earth's surface, often in association with petroleum.

22. Natural gas is found in areas of the earth that are covered with sedimentary rocks. These sediments were first laid down during the Cambrian period, ca 500 million years ago, and this process continued until the end of the Tertiary period ca 100 million years ago. These sediments contain the organic source materials from which natural gas and petroleum were produced. Gas and petroleum, being less dense than the water present in the rocks, tended to migrate upward until contained under impervious rock barriers.

23. On page 634 of the above Encyclopedia, Natural gas is classified in several broad categories based on the chemical composition, which are; (1) wet gas contains condensable hydrocarbons such as propane, butane, and pentane; (2) lean gas denotes an absence of condensable hydrocarbons; (3) dry gas is a gas whose water content has been reduced by dehydration process; (4) sour gas contains hydrogen sulfide and other sulfur compounds; and (5) sweet gas denotes an absence of hydrogen sulfide and other sulfur compounds. Natural gas sold to the public is described as lean, dry and sweet.

27. In Volume 17 on page 119, it is stated that the term 'petroleum', literally, rock oil, is applied to the deposits of oily material found in the upper strata of the earth's crust. Petroleum was formed by a complex and incompletely

understood series of chemical reactions from organic material laid down in previous geological eras. Large deposits have been found in widely different parts of the world and their chemical composition varies greatly. Consequently, no single composition of petroleum can be defined. It is not surprising that the composition varies, since the local distribution of plant, animal and marine life is quite varied and, presumably, was similarly varied when the petroleum precursors were formed.

28. As per 'The New Book of Popular Science' Vol. 2, petroleum is an oily, inflammable, liquid made up mostly of hydrocarbons - compounds containing only hydrogen and carbon. The hydrogen content of petroleum ranges from 50 per cent to 98 per cent. The rest is made up chiefly of organic compounds containing oxygen, nitrogen, or sulphur.

29. According to a widely held theory, the remains of countless small marine animals and plants dropped to the ocean bottom and were covered over by mud. Many layers of mud and plant and animal remains accumulated in the course of time. These sediments were subjected to great pressure and heat, and were often squeezed and distorted as the earth's crust moved. Gradually they were converted into layers of sedimentary rock. The plant and animal remains contained within them were transformed into petroleum and natural gas. The details of this transformation are not quite clear.

30. Gas and oil are found in huge subterranean caverns. They both occur in minute pores of such rocks as sandstone and limestone. They are held captive under great pressure by surrounding rock formations that are impervious to seepage. Finally they are released when the shifting of the earth's surface cracks the cap rock."

"31. 'Natural gas' has been defined in the Webster's new 20th Century dictionary, unabridged second edition, as follows :

"Natural Gas: A mixture of gaseous hydrocarbons, chiefly methane, occurring naturally in the earth in certain places, from which it is piped to cities etc, to be used as a fuel." (p-756).

32. In Ballantine's Law Dictionary, 3rd Edn. 1969, 'Natural Gas' has been defined as "A mineral in the form of a vapor." "A gas characterized by hydrocarbons in mixture, occurring naturally in the crust of the earth, obtained by drilling, and piped to cities and villages, industrial and commercial centers, for use in heating, illumination and other purposes."

*"35. All the materials produced before us would only show that the natural gas is a petroleum product. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word 'petroleum' or 'petroleum products' has been defined in an inclusive way, so as to include natural gas. In Encyclopaedia Britannica, 15th Edn. Vol. 19, page 589 (1990), it is stated that "liquid and gaseous hydrocarbons are so intimately associated in nature that it has become customary to shorten the expression 'petroleum and natural gas' to 'petroleum' when referring to both. "The word petroleum literally means 'rock oil'. It originated from the Latin term *petra-oleum*. (*petra*-means rock or stone and *oleum*-means oil). Thus, Natural Gas could very well be comprehended within the expression 'petroleum' or "petroleum product."*

"37. A survey of the various legislations on the topic would show that the term 'petroleum' or 'petroleum products' has been given a wide meaning to include natural gas and other similar products.

38. In the Pipelines Act, 1962 of the United Kingdom, 'petroleum' has been defined as follows :-

"Petroleum includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, whether or not it has undergone any processing; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation."

39. Petroleum has been variously defined in different Acts, noted herein below :-

"Petroleum (Production) Act 1934 (UK) "Petroleum includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other shales or other stratified deposits from which oil can be extracted by destructive distillation.

Petroleum Act, 2000 (Sec.4), Australia "Petroleum" means a naturally occurring substance consisting of a hydrocarbon or mixture of hydrocarbons in gaseous, liquid or solid state but does not include coal or shale unless occurring in circumstances in which the use of techniques for coal seam methane production or in situ gasification would be appropriate."

Liquid Fuel Emergency Act, 1984 (Sec.3) "petroleum" means :-

- (a) any naturally occurring hydrocarbon or mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or*
- (b) any naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or other substances, whether in a gaseous, liquid or solid state."*

40. The various legislations passed by the Indian Parliament and the relevant rules also would show that 'natural gas' was treated as mineral oil resource or petroleum product.

1. The Oil Fields (Regulation & Development) Act, 1948.

3(c) *"Mineral Oils" include natural gas and petroleum.*

2. Mines Act, 1952 2 (jj) *"minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicking, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum)."*

3. The Mines and Minerals (Development and Regulation) Act, 1957,

3.(b) *"minerals oils" includes natural gas and petroleum."*

4. Petroleum and Natural Gas Rules, 1959,

3. (k) *"Petroleum" means naturally occurring hydrocarbons in a free state, whether in the form of natural gas or in a liquid viscous or solid form, but does not include helium occurring in association with petroleum, or coal, or shale, or any substance which may be extracted from coal, shale, or other rock by the application of heat or by a chemical process."*

3. (n) *"petroleum product" means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by-products derived from oil condensate, gas or petroleum hydrocarbons, whether herein enumerated or not."*

5. *The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962,*

2. (c) "petroleum" has the same meaning as in the Petroleum Act, 1934, and includes natural gas and refinery gas."

6. *The Oil Industry (Development) Act, 1974*

2. (h). "mineral oil" includes petroleum and natural gas."

2. (m). "petroleum product" means any commodity made from petroleum or natural gas and includes refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas, gasoline, naphtha, distillate gasoline, kerosene, bitumen, asphalt and tar, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by products derived from oil or gas and blends or mixtures of two or more liquid products or byproducts derived from oil condensate and gas or petroleum hydrocarbons not specified herein before."

"42.Thus, the legislative history and the definition of 'petroleum', 'petroleum products' and 'mineral oil resources' contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States - all these factors lead to the inescapable conclusion that "natural gas" in raw and liquefied form is petroleum product and part of mineral oil resource, which needs to be regulated by the Union.'

35.6 *The Constitutional Bench, after considering "natural gas is a mineral in the form of vapor"; "a gas characterized by hydrocarbon in mixtures"; "Natural gas is found in areas of earth covered by sedimentary rocks. Gas and petroleum being less dense than water present in the rocks tends to migrate upwards"; and "Liquid and gaseous hydrocarbon are so intimately associated in nature that it has become customary to shorten the expression petroleum and natural gas to petroleum when referring to both", concluded as follows:-*

(i) *All the materials produced before us would only show that the natural gas is a petroleum product. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word 'petroleum' or 'petroleum products' has been defined in an inclusive way, so as to include natural gas, In Encyclopedia Britannica, 15th Edn. Vol. 19, page 589 (1990), it is stated that "liquid and gaseous hydrocarbons are so intimately associated in nature that it has become customary to shorten the expression 'petroleum and natural gas' to 'petroleum' when referring to both. The word petroleum literally means 'rock oil', it originated from the Latin term *petra-oleum*. (*petra*-means rock or stone and *oleum*-means oil). Thus, Natural Gas could very well be comprehended within the expression 'petroleum' or 'petroleum product'.*

(ii) *In para 37, it held "a survey of various legislations on the topic would show that the term "petroleum' or "petroleum products" has been given a wide meaning to include natural gas and other similar products.*

- (iii) *In para 41, it held "production of natural gas is not independent of the production of other petroleum products; though from some wells natural gas alone would emanate, other products may emanate from sub terrain chambers of the earth, But all oil fields explored for their potential hydrocarbon."*
- (iv) *In para 42 it held that the legislative history and the definition of 'petroleum', 'petroleum products' and 'mineral oil resources' contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States - all these factors lead to the inescapable conclusion that "natural gas" in raw and liquefied form is petroleum product and part of mineral oil resource, which needs to be regulated by the Union of India.'*

35.7 The Apex Court in unequivocal terms has held that, "natural gas in raw and liquefied form is a petroleum product and part of mineral oil resources." In light of the above judgment, and in absence of any specific definition of mineral oil under Section 80-IB of the Act, any reference to mineral oil in its natural, commercial and technical sense will include petroleum products and natural gas. The decision rendered by the Apex Court in Association of Natural Gas case would squarely apply. In the absence of the definition under Section 80-IB of the Act, if reliance has to be placed on allied enactments passed by Parliament, this would also lead to a clear conclusion that mineral oil includes natural gas.

35.8 It is therefore clear, that the expression "mineral oil" would include and encompass within itself, both, petroleum products and natural gas. When one deals with the provisions of the PSC or any taxing statute, without doubt mineral oil is the genus and contains within its ambit petroleum products and natural gas as its species. The term natural gas may not be sufficient to include petroleum product or mineral oil. On the contrary the expression "mineral oil" is wide enough to encompass within itself petroleum products and natural gas. The contention of the Respondent that petroleum products and natural gas have been made part of mineral oil only through inclusive provisions contained in Sections 42, 44BB and 293A and its conspicuous absence in section 80-IB has to be inferred that the purpose of Section 80-IB, mineral oil would not include petroleum products and natural gas. This contention of the learned counsel for the Respondent needs to be rejected for the following reasons:—

- (i) *The judgment of the Apex Court makes it very clear that the expression "mineral oil" encompasses within itself petroleum products and natural gas.*
- (ii) *The Constitutional Bench judgment was delivered on 25.3.2004. The Explanation in Sections 42 and 293A was introduced vide Finance Act 1981 effective from 1.4.1981. Explanation of Section 44BB was again introduced vide Finance Act 1987 with retrospective effect from 1.4.1983.*
- (iii) *The judgment of the Apex Court which is later in time after*

considering the technical, commercial and legislative meaning have concluded that mineral oil would encompass within itself petroleum products and natural gas.

- (iv) *In the light of the judgment of the Constitutional Bench of the Apex Court, the Explanation in these Sections have to be read and referred to only as abundant caution.*

35.9 *If Explanation has to be given preference then it would amount to reading or rewriting the decision of the Apex court that mineral oil in its natural sense would not include natural gas. On the contrary, para 48 of the judgment uses the expression "all these factors lead to the inescapable conclusion" that natural gas in raw and liquefied form is petroleum product and part of mineral oil resources.*

35.10 *In fact, there is no dispute or contest on facts between the Union and the States as to what would constitute "natural gas" and its broad categories and chemical compositions. The Apex Court referred to technical literature and the advancement in science in the use of liquefied natural gas. The contention of the State that natural gas do not fall within the genre of petroleum products and mineral oil stood rejected by holding that natural gas in raw and liquefied form is petroleum product and part of mineral oil resources.*

35.11 *Section 80-IB of the Act has not defined mineral oil nor has it excluded petroleum products and natural gas. It is not alien to tax laws to have scripted definition to suit a particular enactment or introduce deeming provisions. The amendments to Section 80-IB do not define or restrict the meaning of mineral oil or even introduce such deeming provisions. The ratio and findings of Constitution Bench judgment apply squarely to the controversy in this case. The judgment conclusively covers the issue and we have no hesitation in concluding that the term "mineral oil" in the Section 80-IB of the Act, takes within its purview both petroleum products and natural gas.*

35.12 *Before parting with this issue, we need to examine one more aspect. The Constitutional Bench resolved the conflict as to the domain competence to legislate on natural gas by holding that natural gas is nothing but part of mineral oil and the exclusive competence to regulate is vested only with the Union or Parliament and the power of the State are completely denuded. It is by virtue of its power under Entry 53, Central Government has entered into the Production Sharing Contract (PSC) with parties like the Petitioner granting them rights to explore, develop and produce mineral oil which also encompasses natural gas. The proposition that even though the findings of the Apex Court are unequivocal, for the purpose of Section 80-IB the term "mineral oil" would not encompass within its purview, natural gas only has to be stated to be rejected.*

35.13 *The judgment of the Apex Court holds the field. The ratio of this judgment remains unaffected by the subsequent amendments to Section 80-IB(9)(ii). The insertion of sub-clause (iv) to Section 80-IB(9) does not militate against meaning attributed to the expression "mineral oil" by the Apex Court, Entry 53 of List I does not refer to Natural Gas separately. The Apex Court has also read it only as part of mineral oil, but for which Parliament would not have had the power and competence to legislate. Various enactments such as the Oil Fields (Regulation and Development) 1948, Mines Act 1952, The Mines and Minerals (Development and*

Regulation) Act 1957, Petroleum and Natural Gases Rules 1959, The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 and The Oil Industry Development Act 1974 have been passed by the Parliament. Since there was no explicit entry "Natural Gas" in Entry 53, all the aforesaid legislations while referring to Mineral Oil had indicated explicitly, what is otherwise implicit that Mineral Oil includes Natural Gas. If Natural Gas is not part of the term Mineral Oil, Parliament could not have legislated in any manner on any issues relating to Natural Gas which position has been made explicit.

35.14 Sub-clause (iv) to Section 80-IB(9) was introduced by the Finance (No.2) Act 2009 with effect from 1.4.2010. Notes on Clauses to the Finance Bill 2008 and 2009, the actual amendments to Section 80-IB(9) made through Finance Bill 2008 and Finance Bill 2009 along with the statements laid on the floor of the Parliament by the Hon'ble Finance Minister while moving the motion for consideration of Finance Bill 2008 on this subject matter are reproduced below :—

'Notes on clauses to Finance Bill 2008 :-

"Clause 15 seeks to amend section 80-IB of the Income-tax Act, which relates to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. Sub-section (9) of the said section provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil. The term "mineral oil" does not include petroleum and natural gas, unlike other sections of the Act. The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years including the initial assessment year - (i) in which the commercial production under a production sharing contract has first started; or (ii) in which the refining of mineral oil has begun. It is proposed to insert a new proviso in sub-section (9) of section 80-IB so as to provide that no deduction under this sub-section shall be allowed to an undertaking engaged in refining of mineral oil if it begins refining on or after 1st April, 2009. This amendment will take effect from 1st April, 2008."

Amendment of Section 80-IB in Finance Act 2008.

"18. In Section 80-IB of the Income-tax Act, -

(a) In sub-section (9), after the second proviso, the following proviso shall be inserted, namely :-

***Provided** also that where such undertaking begins refining of mineral oil on or after the 1st day of April, 2009, no deduction under this section shall be allowed in respect of such undertaking unless such undertaking fulfils oil the following conditions, namely :-*

- (i) It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine per cent of the voting rights;*
- (ii) It is notified by the Central Government in this behalf on or before the 31st day of May, 2008; and*
- (iii) It begins refining not later than the 31st day of March, 2012.'*

35.15 Statement of the Finance Minister on the floor of the Parliament while moving the motion for the consideration of Finance Bill 2008 :—

"...Members are aware, this sub-section allows 100 per cent tax exemption in respect of an undertaking which begins commercial production or refining of mineral oil for a period of seven consecutive assessment years.

Now, what is the scope of this Section? It is disputed. The Department has taken a view; the assessee has taken another view. The disputes go back to assessment year 2001-02. The disputes are under adjudication before different tax authorities. In my view, it is not correct to resolve these disputes by debate in Parliament. We should allow the disputes to be resolved in the normal course by the tax tribunals and the courts. Nevertheless, some doubts have arisen because of the notes on clauses attached to the Finance Bill. I wish to clarify these doubts. The statement in the notes on clauses is a mere restatement of the Income Tax Department's known position before the tribunals and the courts which are adjudicating the matter. Nothing new has been stated, it is simply a restatement of Department's position which has already placed before the tribunals and the courts. Besides, it is a well settled proposition of law that notes on clauses have no legal effect and are not binding on the courts. I may assure potential bidders for oil exploration blocks that the benefit of Section 80IB(9), as finally interpreted by the courts, will be applicable to all exploration and production contracts, whether obtained through nomination or bidding..."

35.16 *Budget speech of the Finance Minister while introducing Finance (No.2) Bill, 2009 :—*

"102. Madam Speaker, in the context of the geo-political environment, it is necessary for us to create our own faculties for energy security. Accordingly, I propose to extend the tax holiday under Section 80IB(9) of the Income Tax Act, which was hitherto available in respect of profits arising from the commercial production or refining of mineral oil, also to natural gas. This tax benefit will be available to undertakings in respect of profits derived from the commercial production of mineral oil and natural gas from oil and gas blocks which are awarded under the New Exploration Licensing Policy-VIII round of bidding. Further, I also propose to retrospectively amend the provisions of the said Section to provide that "undertaking" for the purposes of Section 80-IB(9) will mean all blocks awarded in any single contract."

35.17 *Notes on clauses to Finance (No.2) Bill 2009:*

'Clause 37 of the Bill seeks to amend Section 80-IB of the Income Tax Act, which relates to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. Sub-section (9) of the said Section provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil subject to the conditions stipulated in the said sub-section.

It is proposed to substitute the said sub-section to provide that the amount of deduction to an undertaking shall be hundred per cent, of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following :-

- (i) is located in North-Eastern Region and has begun or begins*

- commercial production of mineral oil before the 1st day of April, 1997;*
- (ii) *is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997;*
- (iii) *is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998.*

It is further proposed to provide by way of an Explanation that for the purposes of claiming deduction under this sub-section, all blocks licensed under a single contract which is, awarded under the New Exploration Licensing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL dated 10th February 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by the Central or State Government in any other manner, shall be treated as a single "undertaking". This amendment will take effect retrospectively from 1st April, 2000 and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent years. It is further proposed to amend clause (iii) of the said sub-section (9) as so substituted to provide that the benefit of deduction under the said sub-section shall be available if the undertaking is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 but not later than the 31st day of March, 2012.

This amendment will take effect retrospectively from the 1st April, 2009. It is also proposed to further amend the said sub-section (9) as so substituted and further amended by inserting a new clause (iv) to provide that the benefit of deduction under the said sub-section shall be available if the undertaking is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts under the New Exploration Licensing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL dated 10th February, 1999 (hereinafter referred to as "NELP-VIII") and begins commercial production of natural gas on or after the 1st day of April, 2009.

This amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010 - 2011 and subsequent years.'

35.18 Amendment to Section 80-IB(9) by Finance (No.2) Act, 2009 :—

'37. In Section 80-IB of the Income-tax Act, -

(a) for sub-section (9), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000, namely :-

'(9) The amount of deduction to an undertaking shall be hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following, namely :-

- (i) *is located in North-Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997;*
- (ii) *is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day*

of April, 1997;

- (iii) is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998.

Explanation.- For the purposes of claiming deduction under this sub-section, all blocks licensed under a single contract, which has been awarded under the New Exploration Licensing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking";

(b) In sub-section (9), as so substituted, -

(A) in clause (iii), after the words, figures and letters "the 1st day of October, 1998", the words, figures and letters "but not later than the 31st day of March, 2012" shall be inserted;

(B) after clause (iii), the following clauses shall be inserted with effect from the 1st day of April, 2010, namely :-

(iv) is engaged in commercial production of natural gas in blocks licensed under the VIIIth Round of bidding for award of exploration contracts (hereafter referred to as "NELP-VIII") under the New Exploration Licensing Policy announced by the Government of India vide Resolution No.O-19018/22/95-NG.DO.VL dated 10th February, 1999 and begins commercial production of natural gas on or after the 1st day of April, 2009.

(v) is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April, 2009.'

35.19 *These amendments are not in the nature of a Validating Act and they have not been given retrospective effect. In fact, the Notes on Clauses merely set out the stand of the revenue authorities. This exercise is insufficient to construe that the term mineral oil does not include natural gas or that the benefits of Section 80-IB have been extended to natural gas for the first time with effect from 1.4.2009 by virtue of insertion of sub-clause (iv) to Section 80-IB(9). At the best, sub-clause (iv) has to be construed to mean that the benefit would also be available for NELP VIII bidders who satisfy the conditions set out in the said sub-clause.*

35.20 *In the absence of specific wordings in the Statute, to draw a conclusion that only undertakings engaged in the commercial production of 'mineral oil' other than "natural gas" will be entitled to deductions of profits and gains under the above mentioned sub-section, is wholly incorrect.*

35.21 *For the aforesaid reasons, we hold that the insertion of sub-clause (iv) to Section 80-IB(9) of the Act by the Finance (No.2) Act, 2009 cannot be interpreted to mean that the term "mineral oil" as used in Section 80-IB does not include natural gas and cannot result in denial of the benefit of deduction under Section 80-IB(9) to undertakings engaged in commercial production of natural gas under contracts entered into prior to VIIIth round of bidding. In view of the decision of the Constitutional Bench of the Apex Court, the term "mineral oil" includes and has always included "natural gas".*

(Underlining provided by us)

4.8. In view of the aforesaid decisions of this Tribunal in the case of Reliance Industries Ltd., which is a 90% joint venture partner of assessee and the decision of the Hon'ble Gujarat High Court in the case of Niko Resources Ltd., referred to supra which is a sister concern of the assessee, we hold that the Id. CIT(A) had rightly granted relief to the assessee by allowing deduction u/s.80IB(9) of the Act on profit earned by the assessee for exploration of natural gas. Accordingly, the ground No.2 raised by the Revenue is dismissed.

5. The ground No. 3& 4 raised by the Revenue are general in nature and does not require any specific adjudication.

6. In the result, appeal of the Revenue for A.Y.2011-12 in ITA No.5/Mum/2018 is dismissed.

ITA No.642/Mum/2018 (A.Y.2012-13) Revenue Appeal

7. Both the parties mutually agreed that the grounds raised by the Revenue for this assessment year are exactly identical with those raised in A.Y.2011-12 and hence, the decision rendered in A.Y.2011-12 would apply mutatis mutandis to this assessment year also except with variance in figures.

8. In the result, appeal of the Revenue for A.Y.2012-13 in ITA No.642/Mum/2018 is dismissed.

ITA No.643/Mum/2018 (A.Y.2013-14) Revenue Appeal

9. Both the parties mutually agreed that ground nos. 3 & 4 raised for this assessment year are exactly identical with the grounds raised for A.Y.2011-12 by the Revenue and the decision rendered for A.Y.2011-12 shall apply mutatis mutandis to these grounds also except with variance in figures.

10. The ground Nos. 1 & 2 raised by the Revenue are challenging the action of the Id. CIT(A) in deleting the transfer pricing adjustment of Rs.15,72,431/- made on account of interest chargeable on outstanding receivables.

10.1. We have heard rival submissions and perused the materials available on record. We find that assessee in its form 3CEB had reported an amount of Rs.1,08,81,872/- as receivable from Niko Resources Ltd., Cyprus India- Project Office, Associated Enterprises of the assessee (AE). Assessee had not charged any interest on the said outstanding receivables from its AE. The assessee is a non-resident company incorporated in Cayman Island and is a tax resident of Cyprus India. It is not in dispute that the receivables from AE were outstanding for more than two years. Accordingly, the Id. TPO observed that the same constitutes indirect funding by the assessee to its AE and therefore, the imputation of interest need to be made on the same. Whether the transaction of imputation of interest on outstanding receivables from AE would constitute an international transaction or not, is not in dispute before us. For the purpose of imputation of interest, the Id. TPO proposed the interest rate at 14.45% being the SBI prime lending rate. We hold that adoption of SBI prime lending rate @14.45% is definitely excessive

and is not in order. In our considered opinion, applying LIBOR rates plus two basis points would be a reasonable rate of interest which should be adopted for benchmarking the international transaction of interest on outstanding receivables. We direct the Id. TPO / Id. AO to make transfer pricing adjustment in this regard accordingly. Accordingly, the ground Nos. 1 & 2 raised by the Revenue for A.Y.2013-14 are allowed for statistical purposes.

11. In the result, appeal of the Revenue is allowed for statistical purposes.

12. TO SUM-UP:-

| <u>ITA NO.</u> | <u>AY</u> | <u>APPEAL BY</u> | <u>RESULT</u> |
|-----------------------|------------------|-------------------------|---|
| 5/Mum/2018 | 2011-12 | Revenue | Dismissed |
| 642/Mum/2018 | 2012-13 | Revenue | Dismissed |
| 643/Mum/2018 | 2013-14 | Revenue | Allowed for statistical purposes |

Order pronounced on 15/ 06 /2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/ 06/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai