IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.7950/Del/2018
[Assessment Year : 2014-15]

Addl.CIT, Special Range-04, New Delhi	vs	M/s. Idemitsu Lube Pvt.Ltd., 603, 6th Floor, EROS Corporate Tower, Nehru Place, New Delhi-110019. ***PAN-AABCI5684A***
APPELLANT		**RESPONDENT**

C.O.No.-82/Del/2019
[In ITA No.7950/Del/2018]
[Assessment Year : 2014-15]

M/s. Idemitsu Lube Pvt.Ltd., 603, 6th Floor, EROS Corporate Tower, Nehru Place, New Delhi-110019. ***PAN-AABCI5684A***	vs	Addl.CIT, Special Range-04, New Delhi
APPELLANT		**RESPONDENT**

Appellant by	Shri Pradeep Dinodia, CA, Shri R K Kapoor, Adv. & Shri Harish Dhamija, CA
Respondent by	Shri Kanv Bali, Sr. DR
Date of Hearing	22.03.2024
Date of Pronouncement	05.04.2024

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue and cross objection filed by the assessee pertaining to the assessment year 2014-15 are directed against the order of the of Ld. CIT(A)-35, New Delhi dated 24.09.2018. Both appeals of Revenue and cross-objection of assessee are being disposed off by this consolidated order for the sake of brevity and convenience.

2. First we take Revenue's appeal in ITA No.7950/Del/2018 for the Assessment Year 2014-15. The Revenue has raised following grounds of appeal:-

1. *a) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 15,86,72,179/ on account of Investment allowance u/s 32AC of the IT Act, 1961 by holding that business activity of the assessee is manufacturing as per the Central Excise Act and that the assessee had acquired & installed the new assets during the period 01.04.2013 to 31.03.2014.*

   b) Whether on the facts & in the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the findings of the Assessing officer that

   i) The business activity of the assessee involves only blending of oil and therefore, does not qualify as "manufacture" as defined u/s 2(29BA) of the Act.

   ii) The assessee had not acquired and installed the whole of plant & machinery during the year under assessment, with a substantial part of the plant & machinery having been acquired & installed before 01.04.2013, and therefore, the threshold limit of investment of Rs. 100 crore during the year under consideration was not satisfied in this case.

   iii) A substantial part of the assets did not qualify as plant & machinery, being in the nature of lighting fixtures, switches, electric work, and therefore, such items were liable to be excluded from the amount of investment in the plant & machinery for reckoning the qualifying amount of Rs. 100 Crore for the purpose of eligibility of the claim u/s 32AC.

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 20,82,61,994/- made on account of disallowance of additional depreciation claimed u/s 32(1)(iia), not appreciating the fact that the business activity of the assessee does not amount to manufacture or production of an article or thing.*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in holding that the assessee is a manufacturer as per the Central Excise Act and therefore, entitled to additional depreciation u/s 32(1)(iia), not appreciating the fact that the definition of manufacture under the excise laws is different from the definition for the purpose of Income tax act, 1961.*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting an addition of Rs. 97,05,846/- made by the AO on account of excess depreciation due to incorrect classification of certain assets(lighting fixtures, sprinklers, fire hydrants etc.) in the absence of the bills and the location of such assets, and in holding that the impugned assets had been correctly classified by the assessee under the block "Plant & Machinery"."*

3. Facts giving rise to the present appeal are that the assessee company filed its return of income on 29.11.2014, declaring a loss of INR 96,49,05,777/-. The case of the assessee was selected for scrutiny assessment and the assessment was framed vide order 27.12.2016 u/s 143(3) of the Income Tax Act, 1961 ("the Act"). The Assessing Officer ("AO") noted that the assessee is a wholly owned subsidiary of M/s. Idemitsu Kosan Co.Ltd., Japan. The assessee company is engaged in the business of trading of petro chemical products including lubricant oil and other chemical products. The assessee company is also providing technical assistance in the related areas. During the

year, the assessee company commissioned a lubricants blending plant at Patalganga Industrial Area, District Raigarh, Maharashtra. The AO noted that the assessee claimed investment allowance u/s 32AC of the Act, amounting to INR 15,86,72,179/-. However, after considering the submissions and explanation of the assessee, the AO disallowed the claim of the assessee on the ground that the assessee does not fulfill the conditions as prescribed u/s 32AC of the Act. Thus, he made addition of INR 15,86,72,179/- in respect of disallowance of investment allowance u/s 32AC of the Act. Further, the AO also disallowed the additional depreciation claimed u/s 32(1)(iia) of the Act amounting to INR 20,82,61,994/-. He also disallowed excess depreciation in respect of incorrect capitalization of assets amounting to INR 97,05,846/-. Further, he made addition on account of difference of INR 98,97,292/- which was set off by the assessee against the interest paid on ECB loans. Further, he made addition on account of disallowance of Club Membership Fee subscription treating it as capital expenditure of INR 2,33,850/-. Thus, the AO assessed the income of the assessee at loss of INR 57,81,34,616/- against the income declared by the assessee at a loss of INR 96,49,05,777/-.

4. Aggrieved against this, the assessee carried the matter before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) deleted the addition in respect of disallowance of investment allowance u/s 32AC of the Act, disallowance of additional depreciation u/s 32(1)(iia) of the Act, disallowance of deprecation on account of wrong capitalization of certain assets and the addition made on account of disallowance of club membership fee. However, Ld.CIT(A) dismissed the

additional ground taken by the assessee in respect of sum of INR 29,86,871/- erroneously offered as income.

5. Aggrieved against the order of Ld.CIT(A), both the Revenue and the assessee have filed appeal and cross-objection respectively before this Tribunal.

6. **Ground No.1** raised by the Revenue is against the deleting the addition of INR 15,86,72,179/- on account of investment allowance u/s 32AC of the Act.

7. Apropos to Ground No.1, Ld. DR for the Revenue vehemently argued that Ld.CIT(A) was not justified in deleting the disallowance as the assessee do not fulfill the requisite condition. He contended that the AO has demonstrated that the blending process undertaken by the assessee company does not amount to manufacture or production of an article or thing which is mandatory requirement for claiming investment allowance under the provision of section 32AC of the Act. Further, the another objection of AO that the assessee should require and install new plant & machinery during the period 01.04.2013 to 31.03.2014. It was also pointed out by the AO that the assessee has incorrectly capitalized the asset thereby, the threshold limit of investment of INR 100 crores as prescribed u/s 32AC of the Act is not met. Hence, he was justified in making disallowance. The condition precedent as prescribed under law is not satisfied.

8. On the other hand, Ld. Counsel for the assessee opposed the submissions of Ld. DR and placed reliance on the findings of Ld.CIT(A). he contended that the Assessing Authority mis-directed itself by returning the

finding that the assessee is not engaged in the business of manufacture and production of an article or thing. He grossly erred in interpreting the provision of the relevant law and the case laws as relied by the assessee. He submitted that the blending of lube oil as per the AO himself, undergoes different process. The Hon'ble Supreme Court under the identical facts in the case of ***CIT-1, Mumbai vs Hindustan Petroleum Corporation Ltd. [2017] 84 taxmann.com 215*** has decided the issue in favour of the assessee. He further submitted that the Assessing Authority erred in holding that the threshold limit of INR 100 crores, investment was not met. He contended that the AO erroneously excluded the items which were necessary part and parcel of plant & machinery and intrinsically connected with the plant & machinery. He contended that the plant & machinery would certainly include the accessories which are necessary for running of the plant & machinery that would also include the electrical fittings and sockets. He submitted that the assessee had given composite contract for plant & machinery. Therefore, he submitted that under the facts of the present case, the AO was not justified in deleing the claim made by the assessee regarding investment allowance. He submitted that the issue is no more *res-integra* and has been decided in favour of the assessee in catena of judgements. Hence, the Ld.CIT(A) has rightly allowed the claim of the assessee.

9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. The question is whether the Ld.CIT(A) was justified in allowing the claim of the assessee qua investment allowance made

u/s 32AC of the Act by the assessee. For the sake of clarity, section 32AC of the Act is reproduced as under:-

Investment in new plant or machinery.

32AC. *(1) "Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees, then, there shall be allowed a deduction,—*

(a) for the assessment year commencing on the 1st day of April, 2014, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees; and

(b) for the assessment year commencing on the 1st day of April, 2015, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

(1A) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired during any previous year exceeds twenty-five crore rupees and such assets are installed on or before the 31st day of March, 2017, then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new assets for the assessment year relevant to that previous year:

Provided *that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed:*

Provided further *that no deduction under this sub-section shall be allowed for the assessment year commencing on the 1st day of April, 2015*

to the assessee, which is eligible to claim deduction under sub-section (1) for the said assessment year.

(1B) No deduction under sub-section (1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of five years from the date of its installation, the amount of deduction allowed under sub-section (1) or sub-section (1A) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

(4) For the purposes of this section, "new asset" means any new plant or machinery (other than ship or aircraft) but does not include—

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year."

10. A bare reading of the above, it is clear that the investment allowance would be available where an assessee being a company engaged in the business of manufacture or production of any article or thing acquires and installs after 31st day of March, 2013 but before the 01st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds INR 100 crores. Thus, the "key" word for consideration is that the assessee should be a company who should be engaged in the business of manufacture or production of any article or thing and installs new assets after 31st day of March, 2013 but before the 01st day of April, 2015 and aggregate amount of actual cost of such new assets exceeds INR 100 crores. The term "new asset" has been defined in sub-clause (4) of section 32AC of the Act which defines new asset means any new plant & machinery (other than ship or aircraft) but does not include:-

[i] "any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

[ii] any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

[iii] any office appliances including computers or computer software;

[iv] any vehicle; or

[v] any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year."

11. In the present case, the assessee is a company and claims to be engaged in the business of manufacture or production of lube oil. The assessee claims

that blending of lube oil tantamount to manufacture or production as contemplated u/s 32AC of the Act.

12. In support of the contention that the assessee is carrying out manufacturing of production activity. Reliance was placed on the judgement of Hon'ble Supreme Court in the case of *CIT-1, Mumbai vs Hindustan Petroleum Corporation Ltd. (supra)* wherein after examining various judgements, Hon'ble Supreme Court held as under:-

> *14) "We have given adequate consideration to the respective submissions of both the parties, which they deserve. As is clear from the facts and arguments noted above, the question of law which is involved (already mentioned) is:*
>
> *Whether bottling of LPG, as undertaken by the assessee, is a process which amounts to 'production' or 'manufacture' for the purposes of Sections 80HH, 80-I and 80-IA of the Act?; and if so, whether the respondents/assessees are entitled to claim the benefit of deduction under the aforesaid provisions while computing their taxable income?*
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> *15) At the outset, it needs to be emphasised that the aforesaid provisions of the Act use both the expressions, namely, 'manufacture' as well as 'production'. It also becomes clear after reading these provisions that an assessee whose process amounts to either 'manufacture' or 'production' (i.e. one of these two and not both) would become entitled to the benefits enshrined therein. It is held by this Court in Arihant Tiles and Marbles P. Ltd. case that the word 'production' is wider than the word 'manufacture'. The two expressions, thus, have different connotation. Significantly, Arihant Tiles judgment decides that cutting of marble blocks into marble slabs does not amount to manufacture. At the same time, it clarifies that it would be relevant for the purpose of the Central Excise Act. When it comes to interpreting Section 80-IA of the Act (which was involved*

in the said case), the Court was categorical in pointing out that the aforesaid interpretation of 'manufacture' in the context of Central Excise Act would not apply while interpreting Section 80-IA of the Act as this provision not only covers those assessees which are involved in the process of manufacture but also those who are undertaking 'production' of the goods. Taking note of the judgment in Commissioner of Income Tax, Goa v. Sesa Goa Ltd.7 which was rendered in the context of Section 32A of the Act and which provision also applies in respect of 'production', the Court reiterated the ratio in Sesa Goa Ltd. to hold that the word 'production' was wider than the word 'manufacture'. On that basis, finding arrived at by the Court was that though cutting of marble blocks into marble slabs did not amount to 'manufacture', if there are various stages through which marble blocks are subjected to before they become polished slabs and tiles, such activity would certainly be treated as 'production' for the purpose of Section 80-IA of the Act. In this context, relevant discussion contained in Arihant Tiles case needs to be reproduced, which is as under:

> *"16. In the present case, we have extracted in detail the process undertaken by each of the respondents before us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated hereinabove is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80-IA of the Income Tax Act.*
>
> *17. As stated hereinabove, the judgment of this Court in Aman Marble Industries (P) Ltd. [(2005) 1 SCC 279 : (2003) 157 ELT 393] was not required to construe the word "production" in addition to the*

word "manufacture". One has to examine the scheme of the Act also while deciding the question as to whether the activity constitutes manufacture or production. Therefore, looking to the nature of the activity stepwise, we are of the view that the subject activity certainly constitutes "manufacture or production" in terms of Section 80-IA.

18. In this connection, our view is also fortified by the following judgments of this Court which have been fairly pointed out to us by learned counsel appearing for the Department.

19. In CIT v. Sesa Goa Ltd. [(2004) 13 SCC 548 : (2004) 271 ITR 331], the meaning of the word "production" came up for consideration. The question which came before this Court was whether ITAT was justified in holding that the assessee was entitled to deduction under Section 32-A of the Income Tax Act, 1961, in respect of machinery used in mining activity ignoring the fact that the assessee was engaged in extraction and processing of iron ore, not amounting to manufacture or production of any article or thing.

20. The High Court in Sesa Goa case [(2004) 13 SCC 548 : (2004) 271 ITR 331], while dismissing the appeal preferred by the Revenue, held that extraction and processing of iron ore did not amount to "manufacture". However, it came to the conclusion that extraction of iron ore and the various processes would involve "production" within the meaning of Section 32-A(2)(b)(iii) of the Income Tax Act, 1961 and consequently, the assessee was entitled to the benefit of investment allowance under Section 32-A of the Income Tax Act. In that matter, it was argued on behalf of the Revenue that extraction and processing of iron ore did not produce any new product whereas it was argued on behalf of the assessee that it did produce a distinct new product.

21. The view expressed by the High Court that the activity in question constituted "production" has been affirmed by this Court in

Sesa Goa case [(2004) 13 SCC 548 : (2004) 271 ITR 331] saying that the High Court's opinion was unimpeachable. It was held by this Court that the word "production" is wider in ambit and it has a wider connotation than the word "manufacture". It was held that while every manufacture can constitute production, every production did not amount to manufacture.

22. In our view, applying the tests laid down by this Court in Sesa Goa case [(2004) 13 SCC 548 : (2004) 271 ITR 331] and applying it to the activities undertaken by the respondents herein, reproduced hereinabove, it is clear that the said activities would come within the meaning of the word "production"."

16) Keeping the aforesaid distinction in mind, let us take note of the process of LPG bottling that is undertaken by the assessees herein and about which there is no dispute. It has come on record that specific activities at assessees' plant include receiving bulk LPG vapour from the oil refinery, unloading the LPG vapour, compression of the LPG vapour, loading of the LPG in liquefied form into bullets, followed by cylinder filling operations. The stages of these activities are as under:

(a) Bulk LPG is received in the bottling plant through road tankers/rail wagons;

(b) The LPG is unloaded into spheres/bullets through LPG compressors which use variable levels of pressure for suction, unloading and vapour recovery;

(c) Refilling/bottling of LPG in cylinders by compressing the same into liquid form; and

(d) Capping, fixing of seals and safety valves prior to storage and loading of filled cylinders.

17) Thus, after the bottling activities at the assessees' plants, LPG is stored in cylinders in liquefied form under pressure. When the cylinder valve is opened and the gas is withdrawn from the cylinder, the pressure

falls and the liquid boils to return to gaseous state. This is how LPG is made suitable for domestic use by customers who will not be able to use LPG in its vapour form as produced in the oil refinery. It, therefore, becomes apparent that the LPG obtained from the refinery undergoes a complex technical process in the assessees' plants and is clearly distinguishable from the LPG bottled in cylinders and cleared from these plants for domestic use by customers. It may be relevant to point out that keeping in view the aforesaid process, the ITAT arrived at the specific findings in support of its decision, which are as under:

> *(a) There is no dispute that the LPG produced in the refinery cannot be directly supplied to the consumer for domestic use because of various reasons of handling, storage and safety.*
>
> *(b) LPG bottling is a highly technical and complex activity which requires precise functions of machines operated by technically expert personnel.*
>
> *(c) Bottling of LPG is an essential process for rendering the product marketable and usable for the end customer.*
>
> *(d) The word 'production' has a wider connotation in comparison to 'manufacture', and any activity which brings a commercially new product into existence constitutes production. The process of bottling of LPG renders it capable of being marketed as a domestic kitchen fuel and, thereby, makes it a viable commercial product.*

18) In the considered opinion of this Court, the aforesaid activity would definitely fall within the expression 'production'. We agree with the submission of the learned counsels for the assessees that the definition of 'manufacture of gas' in Rule 2 (xxxii) of the Gas Cylinders Rules, 2004 also supports the case of the assessees inasmuch as gas distribution and bottling is treated as manufacturing or producing gas. We are also inclined to accept the submission of the learned counsel for the assesses that various High Courts have, from time to time, decided that bottling of gas into cylinder amounts to production and, therefore, claim of deduction

under Sections 80HH, 80-I and 80-IA would be admissible. Another important aspect which was highlighted by learned counsels for the assessees was that identical issue whether bottling of gas into cylinder amounts to production for claim of deduction under the Act has been considered by various High Courts and decided in the affirmative but those decisions were not challenged by the Department. The cases specifically referred were Puttur Petro Products Pvt. Ltd. v. Asstt.CIT [2014] 361 ITR 290/221 Taxman 43/[2013] 40 taxmann.com 430 (Kar.) and Central U.P.Gas Ltd. v. Dy.CIT [IT Appeal No.224, of 2014].

19) From the submissions made by learned counsel for the Revenue, who banked on the reasoning given by the AO, it can be gathered that the entire thrust of the AO was that the process involved in filling up the gas into cylinders does not amount to 'manufacture' inasmuch as the said process does not bring into existence a new identifiable and distinctive goods. In the first instance, no distinction was drawn between manufacture and production and the matter was not looked into from the angle as to whether the aforesaid process would amount to production or not. Other reason which prevailed with the AO and which was also the argument of the learned counsel for the Revenue was that, on identical facts, the Gujarat High Court had held that refilling the LPG after purchasing from M/s. HPCL into small cylinders would not amount to manufacture. That was a case which was decided in the context of the Gujarat Sales Tax Act, 1969. The Court held that transfer of LPG from bulk containers into cylinders did not amount to process of manufacture. It is pertinent to point out that Section 2(16) of the Gujarat Sales Tax Act, 1969 defines 'manufacture' and, therefore, the entire case was examined keeping in view the said definition of 'manufacture' and the issue was as to whether the process amounted to manufacture or not. As pointed out above, the question as to whether it amounts to 'production' as well did not arise for consideration. The AO committed manifest error in relying upon the said decision inasmuch as the provisions with which we are

concerned in the instant case use the words 'manufacture or production' and are not limited to 'manufacture' alone.

20) Judgment in the cases of Servo-Med Industries Private Limited and Tara Agencies, which were cited by the learned counsel for the Revenue, may not apply to the present case. They dealt with the provision of the Central Excise Act and, therefore, test of 'manufacture' propounded on that case would not be applicable when dealing with the cases under the provisions of Sections 80HH, 80-I and 80-IA of the Act which use both the expressions 'manufacture' and 'production'. It has already been clarified in Vadilal Chemicals Ltd. judgment. Insofar as judgment in Tara Agencies is concerned, the factual scenario therein was totally different where three different stages in relation to tea were examined by this Court. The Court held that the procedure of blending of different qualities of tea would amount to 'processing of tea' and it did not amount to 'manufacture or production of tea'. Here, the case set up by the assessees is not that bottling of LPG is 'processing' as distinguished from 'manufacture' or 'production'. We may, at this juncture, refer to the judgment of this Court in Commissioner of Income Tax, Madras v. Vinbros and Company10 where bottling and blending of alcohol is held to be 'manufacture or production' for the purpose of Section 80-IB of the Act.

21) We, thus, find that the view of the ITAT as affirmed by the High Court is correct and, therefore, there is no merit in these appeals which are accordingly dismissed."

12.1. Therefore, the opinion of the AO that the assessee is not engaged in the manufacturing or production activity, is contrary to the judgement of the Hon'ble Supreme Court. As the provision is not restricted to manufacturing activity and it also has production in its ambit. We therefore, do not find any merit in the findings of AO. Reliance placed by Ld. DR for the Revenue during the course of hearing in the case of *Commissioner of Trade Tax vs M/s. Kumar*

Paints & Mill Stores through its Proprietor in Civil No.5938 & 5939/2011 would not help the Revenue as referred judgement decided the dispute under U.P. Trade Tax Act, 1948. Another objection of the AO was regarding investment made by the assessee, did not meet threshold limit. In this regard, during the course of hearing, the assessee has placed on record a note capitalization. For the sake of clarity, the same is reproduced as under:-

> *"The Assessee Company during the financial year 2013-14 relevant to the assessment year 2014-15 under consideration had capitalized the total assets of Rs. 225.46 Crores as would be noted from the Fixed Assets Schedule of the Audited Financial Statement at Page No. 46 of Paper Book. The same amount had also been certified by the Tax Auditors in their Tax Audit Report in Annexure-III to such Tax Audit Report available at Page No. 76 of Paper Book (Rs. 214.78 Crores for more than 180 days and Rs. 12.22 Crores for less than 180 days minus Cenvat Credit on this capitalization of Rs. 1.54 Crores i.e. Rs. 214.78 plus Rs. 12.22 minus Rs. 1.54 Rs. 225.46 Crores).*
>
> *Out of this total capitalization of Rs. 225.46 Crores, Rs. 197.88 Crores was obtained through a turnkey contract which was granted to M/s. Shimizu Corporation India Private Limited for which the necessary details are available at Page No. 202 to 208 of Paper Book where assets wise details of assets supplied by the M/s. Shimizu Corporation India Private Limited has been given. Out of this Rs. 197.88 Crores, Rs. 88.27 Crores was on account of Plant & Machinery and balance amount Rs. 109.61 Crores represented other assets namely office building, factory building, furniture & fixture, land development etc. The balance capitalization of Rs. 27.58 Crores was done by the assessee directly from the various other suppliers / vendors. Out of Rs. 27.58 Crores, Rs. 17.51 Crores was towards Plant & Machinery and balance of Rs. 10.07 Crores was towards other assets under various heads.*

Thus, the total capitalization under the head "Plant & Machinery" was as under:-

1. By M/s. Shimizu Corporation India	*Rs. 88.27 Crores*
2. By assessee at its own from other vendors	*Rs. 17.51 Crores*
	Rs. 105.78 Crores

The complete detail of all the assets on which depreciation has been claimed is available at Page No. 77 to 105 of Paper Book which forms part of Tax Audit Report.

The items capitalized under the head Plant & Machinery starts from the Page No. 95 and goes upto Page No. 105 of Paper Book where the Total Capitalization is of Rs. 107.32 Crores is given. However, on the Cenvat portion which is Item No. 529 at Page No. 105 amounting to Rs. 1.54 Crores, depreciation is not claimable so therefore the Net Capitalization under the head of "Plant & Machinery" is Rs. 105.78 Crores (Rs. 100.94 Crores for more than 180 days and Rs. 6.38 Crores for less than 180 days minus Cenvat Credit on this capitalization of Rs. 1.54 Crores i.e. Rs. 100.94 plus Rs. 6.38 minus Rs. 1.54 Rs. 105.78 Crores). It is this figure on which the Assessee Company has claimed the depreciation and investment allowance. The Learned Assessing Officer has denied the additional depreciation & investment allowance and the normal depreciation on this amount under the various reasons given in the Assessment Order."

13. The Revenue has not rebutted the contents of the note. The figures submitted by the assessee are self-explanatory. Further, Ld. Counsel for the assessee had taken us through the Paper Book to support his contention. The Revenue has not brought any contrary material to controvert the claim of the assessee that it had made investment exceeding the threshold limit. In the absence of such material, we do not see any infirmity in the finding of Ld.CIT(A). We further find that Ld.CIT(A) has given a finding on fact regarding

installation of plant & machinery. Ld.CIT(A) has categorically recorded that it has been clarified beyond doubt that deduction is allowable in the year of installation and not in the year of acquisition. The fact that installation of the plant & machinery has been completed during the year under consideration is not in the dispute at all. Further, Ld.CIT(A) has pointed out that it is only in the Assessment Year 2014-15, the assets has actually been capitalized in the books of the assessee. It is only in the year under consideration that such assets were put to use for production of lubricant oil on which normal claim of depreciation has been allowed by the assessee. This finding is not controverted by the Revenue. Therefore, we are of the considered view that the assessee is entitled for claim as made by it and Ld.CIT(A) rightly allowed the same. Therefore, we do not see any merit in the Ground No.1, the same is hereby rejected. Ground No.1 raised by the Revenue is accordingly, dismissed.

14. **Ground No.2** raised by the Revenue is against the deleting of addition of INR 20,82,61,994/- in respect of additional depreciation claimed u/s 32(1)(iia) of the Act and **Ground No.3** raised by the Revenue is against treating the assessee as manufacturer. Undisputedly, Ground Nos. 1, 2 and 3 are inter-connected and finding rendered in Ground No.1 has bearing on these grounds.

15. Ld. DR for the Revenue supported the assessment order.

16. On the other hand, Ld. Counsel for the assessee reiterated the submissions as made in the written synopsis and also relied on the finding of Ld.CIT(A).

17. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) has decided the issue by observing as under:-

> *4.4.3.1. "The appellant during the year has claimed additional depreciation u/s 32(1)(iia) of the Income Ta Act, amounting to Rs. 20,82,61,994/-. The Assessing Officer has discussed this issue in Para 31 & 32 of his order. The only reason given by the Assessing Officer to disallow the claim of the additional depreciation is that appellant is not engaged in the business of manufacture or production an article or a thing. The Assessing Officer has merely relied upon his earlier observations on this issue as have been made while denying the claim of the deduction u/s 32AC of the Income Tax Act.*
>
> *The appellant has also in turn relied upon its submissions made earlier on the issue that appellant is engaged in the business of manufacturing of lubricant oil while arguing the Ground No. 3 for disallowance of claim u/s 32CA of the Income Tax Act.*
>
> *4.4.3.1. The submission of the appellant, case laws cited and the relevant orders have been considered. Since I have already held that appellant is manufacturer of lubricant oil while deciding the ground on the eligibility of claim u/s 32AC. Therefore, the reasoning of the Assessing Officer for denying the additional depreciation do not survive in view of my findings on Ground No. 3 and appellant deserves to succeed on this ground. It is, therefore held that appellant is entitled to additional depreciation which is held to be eligible to the appellant and the addition made by the Assessing Officer, therefore, deleted. Appeal on Ground nos.4, 4.1 & 4.2 are allowed."*

18. The above finding on fact is not rebutted by the Revenue since the issue is inter-connected with the investment allowances. The issue whether the assessee is engaged in the manufacturing or production activity, has been

elaborately discussed while deciding the Ground No.1, we have affirmed the view of Ld.CIT(A). The assessee in our considered view, would be entitled for additional depreciation under the facts of the present case. Therefore, we do not see any infirmity in the finding of Ld.CIT(A), the same is hereby affirmed. Ground No.2 & Ground No.3 raised by the Revenue are accordingly, rejected.

19. In the result, the appeal filed by the Revenue is dismissed.

C.O.No.-82/Del/2019
[In ITA No.7950/Del/2018] [A.Y.: 2014-15]

20. Now, we take up **Cross-objection No.82/Del/2019 [Assessment Year 2014-15]** filed by the assessee. The assessee has raised following grounds of appeal:-

1. *"Additional ground raised for capitalization of intrest income on fixed deposits as the same have direct nexus to the ECB loan raised and used for acquiring fixed capital assets has been rejected by CIT(A).*
2. *Additional round raised for rule of consistency not follow by Ld.AO in respect of treatment of loss on reinstatement of foreign currency external commercial borrowing taken for acquiring capital assets."*

21. At the outset, Ld. Counsel for the assessee contended that under the instruction of the assessee, the grounds raised in Cross-objection are not pressed.

22. In the result, the Cross-objection filed by the assessee is dismissed.

23. In the final result, the appeal filed by the Revenue in **ITA No.7950/Del/2018 [A.Y. 2014-15]** and cross-objection filed by the assessee in **C.O.No.82/Del/2019 [A.Y.2014-15],** both are dismissed.

Order pronounced in the open Court on 05th April, 2024.

Sd/-	***Sd/-***
(N.K.BILLAIYA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI