

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

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6714/Del/2018 : Asstt. Year : 2011-12

ITA No. 6715/Del/2018 : Asstt. Year : 2012-13

Addl. CIT, Special Range-4, New Delhi	Vs	Indraprastha Gas Ltd., Plot No. 4, IGL Bhawan, Sector-9, R.K. Puram, New Delhi-110022
(APPELLANT)		(RESPONDENT)
PAN No. AAACI5076R		

Assessee by : Sh. Rajat Jain, CA

Revenue by : Ms. Sunita Singh, CIT DR

Date of Hearing: 01.03.2021

Date of Pronouncement: 19.03.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue against the orders of the Id. CIT(A)-35, New Delhi dated 28.08.2018.

2. The cases pertaining to assessment years 2011-12 & 2012-13 deals with the issue of reopening u/s 147 and allowing of additional depreciation u/s 32(1)(ia) of the Act. The issue of additional depreciation stands adjudicated by the order of the Tribunal in the case of the assessee for the assessment year 2013-14 in ITA No. 6489/Del/2017 dated 05.01.2021. Since, the issue of additional depreciation has been squarely covered by

the order of the Tribunal, we hereby dismiss the appeal of the revenue on this ground.

3. With regard to the reopening u/s 147, since the main grounds having been dwelled on merits of the case, the adjudication on the issue of Section 147 would be only academic in nature and hence refrained to do so.

4. For the sake of ready reference, the order of the Tribunal in ITA No. 6489/Del/2017 dated 05.01.2021 is reproduced here under:

“Indraprastha Gas Limited (IGL) is a joint venture of GAIL India Ltd., the largest Natural Gas transmission company in India and Bharat Petroleum Corporation Limited (BPCL), one of the leading oil refining and marketing company in India and government of NCT of Delhi. The company is currently engaged in the business in the Delhi-NCR region including Noida, Greater Noida, Ghaziabad and Rewari.

4. IGL is a City Gas Distribution Company (CGD) which is engaged in the business of selling and distribution of Natural Gas to be used as industrial and household fuel in Commercial and Domestic sector respectively. Further IGL is also engaged in the manufacturing and selling of Compressed Natural Gas (CNG) which is used as a fuel to be used for running Automobiles.

5. The AO has held that the process of delivery of CNG to automobiles at the CNG filling centres does not amount to manufacture or production or an article or thing which is mandatory requirement for claiming additional depreciation u/s 32 (1)(iia) of the Income Tax Act. Therefore, the AO held that

the assessee company is not entitled for additional depreciation as claimed in the return of income and accordingly an amount of Rs. 8,23,15,761/- was added back to the total income of the assessee.

6. The Id. CIT (A) confirmed the addition holding that the company is not into manufacturing or production of CNG.

7. Aggrieved the assessee filed appeal before us.

8. The Id. AR argued that IGL obtained certificate from Central Excise Department and also paying Central Excise duty which can be verified from P&L account. By the virtue of payment of Central Excise duty, he argued that it can be conveniently proved that the assessee is into manufacturing activity. He further relied on the tax audit report and argued that the additional depreciation has been rightly charged on compressors, dispensers, gas gen-sets, cascades, PRV Mass flow meters which are installed at CNG stations and are used in the manufacturing process. He explained the process which is as under:

1. Metering skid - Filters are used to clean heavy dust particles coming along with the gas so that we can provide clean fuel to our customers. Pressure regulating valves are also used this skid to reduce incoming pressure within safe limits.

2. Compressor - It's a three stage reciprocating compressor which is used to process this gas from ~18 bar to ~250 bar. This is a three stage process in which gas is compressed different stages-

a. First stage - ~ 18 bar to ~ 55 bar

- b. Second stage - ~ 55 bar to ~ 120 bar
- c. Third stage - ~120 bar to ~250 bar.

First stage is double acting while second and third stage is single acting. Each stage consists of spring loaded suction and discharge valves. Safety valves, pressure and temperatures sensors, gas & flame detectors are installed to ensure safe compression of gas.

Further temperature increases whenever we compress the gas thus after every compression gas enters air cooler which cools the gas, using forced / induced draught fans, so that it can be compressed without much loss of energy in subsequent stages.

Inlet gas consists of oil particles; along with this separate lubrication system is there to lubricate various parts of system. Oil separators installed at each stage to remove oil particles added during compression process.

After cooling of gas moisture get condensed and to remove this condensate filtering system are there.

All above-mentioned process are monitored & controlled through automated digitally controlled systems.

Priority panels are installed in every compressing unit to automatically route the gas to dispensing units based on gas requirement.

This is a complete integrated infrastructure comprising of pipe line network, compressor, dispensers and cascades to converts Natural gas into fuel. Natural gas as such cannot be used as

commercial viable option for use as a fuel in automobile this CNG is a completely differently product from natural gas.”

9. The Id. AR relied on the order of the Hon'ble High Court of Allahabad in the case Central UP Gas Ltd. Vs DCIT in ITA 224 of 2014.

10. The Id. DR Gaurav Dudeja, elaborately argued the case to prove that the assessee is not into manufacturing and hence not eligible for claim of additional depreciation. He has referred the audit report and the financials of the assessee company to buttress his arguments. He argued that the Memorandum and Articles of Association of the assessee company outlines the objects to be pursued by the company and the main object as per Memorandum and Articles of Association is “to carry on all or any of the businesses of storage, suppliers, distributors, sellers and dealers in natural gas and its derivatives includes LPG, CNG, PROPANE and any conventional and non-conventional type of energy. Memorandum and Articles of Associations clearly indicates that the assessee company is not in the supplying and distribution business and not in the business of manufacturing or producing CNG.

11. Regarding the argument of the assessee, that it has obtained certificate from Central Excise Department and excise duty is leviable only when a person is engaged in manufacturing activities, the Id. DR rebutted that this argument of the assessee is not acceptable because the Income Tax Act and Central Excise Act operate in different domains and the meaning of the term 'manufacture' is different for both of these Acts.

12. As per section 2(f) of Central Excise Act, 1944 (CEA), 'manufacture' includes any process,

- (i) Incidental or ancillary to the completion of a manufactured product AND
- (ii) Which is specified in relation to any goods in the section or chapter notes of the 1st Schedule to the Central Excise Tariff Act, 1985 (CETA), as amounting to manufacture (deemed manufacture) OR
- (iii) Which in relation to goods specified in 3rd Schedule of CETA involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer (deemed manufacture).

13. However, the definition of the term 'manufacture' as per Income Tax Act, 1961 as provided in Section 2(29BA) is as under:

"manufacture , with its grammatical variations, means a change in a non-living physical object or article or thing,—

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;

These two definitions clearly suggest that the meaning of term 'manufacture' is different for Income Tax Act and for Central Excise Act and a person considered as manufacturer for the purposes of Central excise Act may not be necessarily considered manufacturer for Income Tax Act. Therefore, merely because the assessee company is registered with the Central Excise Department and paying excise duty does not mean that it is manufacturing an article or thing for the purposes of Income Tax Act. Therefore, this argument of the assessee is not acceptable."

14. Regarding the argument of the audit report, the Id. DR submitted that the audit report cannot be basis for claim of additional depreciation but the additional depreciation has to be accorded only in the case, the assessee is eligible to claim the benefit u/s 32(1)(iia).

15. The Id. DR argued that the meaning of term 'manufacture or production of an article or thing' has been a subject matter of discussion of various Courts and Tribunal and there is no universal definition. Id. DR further argued that the definition of term, 'manufacture' was introduced in the Income Tax Act w.e.f. 1.4.2009 therefore law has changed since AY 2007-08 and the claim of the assessee needs to be examined in view of amended law. The Id. DR has also relied on the following case laws to drive home the point that every activity cannot be treated as manufacturing process:

- i. Cutting and polishing of uncut raw diamonds - Does not amount to manufacturing as polished diamond is not a new

article or thing [CIT Vs Gem India Mfg. Co (SC) 249 ITR 307]

- ii. Conversion of large mass of quartz into smaller dimensions
No manufacturing activity involved as nothing is consumed in the process. [ACIT Vs G.T.C. Enterprises (ITAT, Chennai) 87 ITD 188]
- iii. Roasting and grinding of chicory roots into chicory powder
No manufacturing activity involved. [Sacs Eagles Chicory Vs CIT (SC) 255 ITR 178].
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iv. Chilly & Chilly products are essentially same commodity -
No manufacturing activity involved [Nampudhiris Pickle Industries (Ker) 1993 KLJ (Tax cases) 198]
- v. Breaking of big boulders into small stones or bajri - No manufacturing activity involved since no new and distinct commodity came into existence. [ITO Vs Jitendra Stone Crushing Co. (ITAT, Chd.) 105 ITD 52]
- vi. Conversion of spirit into IMFL - Assessee processing raw alcohol (potable spirit) and selling the same as whisky, brandy and rum with different brand names - It purchases potable spirit from distilleries which is already manufactured and does not require any further manufacturing - Only some processing is required to produce brandy, whisky, rum etc. by adding some water, colour, essence etc. - There is only degree of reduction of alcohol content and there is no essential difference between the potable spirit and the bottled IMFL - Activity

does not amount to manufacturing. [Shaw Scott Distilleries (P) Ltd. Vs ACIT (ITAT, SB-Cal) 76 ITD 89]

- vii. Electroplating - Not manufacture / production of article or thing since the original commodity still remains the same with the word "coated" added to it - It is only done to prevent it from rusting and no new goods were produced.
- viii. CIT Vs Hindustan Metal Refining Works (P) Ltd. (Cal) 128 ITR 472 Titanor Components Ltd Vs DCIT (ITAT, Del) 72 ITD 514
- ix. Filling of mushroom powder in gelatine capsules to make it fit for marketing - No manufacturing or production of any commercially distinct commodity [DXN Herbal Mfg. (India) (P.) Ltd. Vs ITO (ITAT, Chennai) 110 ITD 99]
- x. Purchased seeds from agriculturists and sold them after processing - No manufacturing activity involved. [ITO Vs Daftri Agro (ITAT, Hyd.) 135 TTJ 729; 130 ITD 496].
- xi. Peeling & Freezing of Shrimps / processing of fish - No manufacturing - activity involved since there is no essential difference between raw shrimps and prawns and processed or frozen shrimps and prawns.
- xii. CIT Vs Relish Foods (SC) 237ITR 59
- xiii. Golden Hind Shipping (India) P. Ltd. Vs CIT (Del) 240 ITR 324 CIT Vs Poyilakada Fisheries P. Ltd. (Ker) 240 ITR 445
- xiv. CIT Vs Sterling Foods (Bom) 213 ITR 851
- xv. CIT Vs George Maijo (Mad) 250 ITR 440

16. Further, the Id. DR argued that the activity of the assessee is only of compressing the natural gas. In fact, as stated by the assessee, the natural gas which reached to CNG stations is already compressed to a pressure 18 to 26 bar and it is compressed up to 250 bar in three stages. Besides this, the gas is being filtered before its compression. And, in the whole process, the input and output remains same i.e. natural gas as the compression-process not change characteristics of natural gas. Further, he argued that the natural gas before compression and after compression remains a fuel in the form of natural gas.

17. On going through the audit report he argued that there has been no manufacturing expenses and even by going through the closing stock, there is no new product which can be said to have been manufactured by the assessee company. He also distinguish that the case of HPCL, the company was into bottling of cylinders whereas the assessee is not into such activity except dispensing of the natural gas to the automobile vehicles.

18. The Id. DR has succinctly argued pertaining to what consists of manufacturing with reference to the Income Tax Act. He has taken through the definition of manufacturing and the exemption allowed for manufacturing under difference provisions of the Act to prove the point that the manufacturing is not a ubiquitous definition as far as Income Tax Act is concerned. He argued that similar activity of production is "considered" as "manufacturing" in certain areas and allowed deductions whereas the similar product produced is "not treated" as "manufacturing" for the purpose of deduction in other areas. He referred to various schedules relevant to deductions under Chapter VI-A to prove that manufacturing

under Income Tax prevails is different from the provisions of Central Excise.

19. Heard the arguments of both the parties and perused the material available on record.

20. While appreciating the arguments of both the counsels, namely Sh. Gaurav Dudeja and Sh. Rajat Jain, we hold that we are guided by the order of the Hon'ble High Court of Judicature at Allahabad in the case Central UP Gas Ltd. Vs DCIT in ITA No. 224 of 2014 dated 08.12.2016. For the sake of ready reference, the order of the Hon'ble High Court detailing the issue is reproduced as under:

*"Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J*

Heard Shri Udit Chandra, learned counsel for the appellant and Shri Manish Goyal, learned counsel for the department.

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 13.06.2014 for the assessment year 2008-09. The question of law sought to be answered is as under:

"Whether the compressed natural gas produced by the appellant, having different name, character and use from natural gas can be said to be covered by the phrase manufacture or production?"

The facts of the case are that the appellant procures gas from GAIL Indian Limited and compresses it through the compressor for the manufacture of compressed natural gas (CNG), which is subsequently sold to the customers, as fuel for vehicles.

The natural gas purchased by the appellant from GAIL India Limited is either sold through appellant-company's own pipelines to factories and household etc. which sale is made as piped natural gas (PNG) sale. The appellant also manufactures compressed natural gas (CNG) from the

natural gas received by it from GAIL India Limited, which is sold from the vending station(s) as a fuel for running of vehicles.

The natural gas is supplied by GAIL India Limited through pipelines which are connected with the compressor with suction pressure of 14 Bar to 22 Bar and the discharge pressure of 255 Bar, which are installed at CNG stations and is dispensed in the vehicle at a maximum pressure of 200 Bar through the dispense connected to the compressor.

The safe compression and dispensing system during process of manufacturing of compressed natural gas (CNG), all the compressors are fitted with a close circuit type cooling system and also safety valve at each stage. The compressed natural gas (CNG) manufacturing premises are designed and based on the basis of specification provided under the Oil Industry and Safety Directorate and the Gas Cylinder Rules, 2004.

The manufacturing, storage and dispensing of compressed natural gas (CNG) can only be started after the grant of license by the Petroleum Explosive Safety Organization.

The Rule 2(viii) of the Gas Cylinder Rules, 2004 defines, compressed natural gas' as mixture of hydro carbon gases and fibers consisting mainly of Methane in gaseous form which has been compressed for use as automotive fuel. Further, Rule 2(xxxii) defines 'manufacture of gas' as filling of cylinder with any compressed gas and also includes transfer of compressed gas from one cylinder to any other cylinder.

The appellant-company is registered under the Central Excise Act as a 'manufacture of CNG.' In the certificate obtained from the Central Excise Authorities, it is clearly mentioned that the appellant is a manufacturer of excisable goods. Further, the appellant company is regularly paying Excise Duty on the manufacturing of compressed natural gas (CNG). The appellant does not manufacture anything besides CNG from PNG.

The circular dated 16.10.2008 had also been issued under the Central Excise Act wherein it is clearly mentioned that compressed natural gas (CNG) is a fuel manufactured product, therefore, excise duty is leviable on the production of CNG.

The trade tax authorities have also passed an order in the case of the appellant company, in which it has been held that conversion of natural gas into CNG amounts to manufacture. The schedule IV, Entry 8 of the U.P. Value Added Tax Act imposes the tax on natural gas other than compressed natural gas (CNG) @ 5% and 21% when sold to registered and unregistered dealers; while compressed natural gas (CNG) is covered by Schedule V of the U.P. Value Added Tax Act. Thus, the natural gas and compressed natural gas (CNG) are two different products, being taxable at different rates of tax under the U.P. Value Added Tax Act.

It is further stated that in the manufacturing process of CNG, there is a loss of 2-3% of natural gas and even the selling prices of both the products are different. Piped natural Gas (PNG) is sold at the rate of Rs 26/- per kg while the selling price of compressed natural gas (CNG) is Rs.35/- per kg.

The Tribunal has come to the conclusion that the compression of natural gas into compressed natural gas does not result in bringing into existence in a new product and the activity of compressing the natural into compressed natural gas would not amount to manufacture or production. The Tribunal records in paragraph 5 as hereunder:

"We have considered the rival submissions, perused the material available on record and gone through the orders of the authorities below and the judgment cited by learned A.R. of the assessee. We find that it is noted by CIT (A) on page No.6 of his order that the assessee's activity of conversion of natural gas to compressed natural gas does not amount to bringing out a new and distinct object or article or thing having different character,

use or chemical composition. In the light of these findings of CIT (A), now we examine the judgment of Hon'ble High Court rendered in the case of Commissioner of Income-tax Vs. Hindustan Petroleum Corporation Ltd. (Supra) cited by learned A.R. of the assessee. In this case, the issue before the Hon'ble High Court was that as to whether the activity of the assessee of bottling LPG gas amounts to production or manufacturing activity for the purpose of deduction under Section 80HHC and 80-IA of the Income Tax Act, 1961. Hon'ble Bombay High Court has given a finding that the process of bottling liquified petroleum gas into cylinders makes the gas marketable on execution of the

process and therefore, follows that a new product comes into existence. We also find on page 2 of the order, it is noted by CIT(A) that it was submitted by learned counsel for the assessee before him that the assessee company buys natural gas from GAIL and such natural gas is then sold through company's own pipelines to factories and household etc which sale is name as Pipes Natural Gas (PNG) sale or the natural gas received from GAIL is converted into compressed natural gas (CNG) which is sold as CNG from the vending stations as a fuel for running of vehicles etc. From these facts, it comes out that natural gas is saleable otherwise also through pipelines and it is not a fact that the natural gas is made saleable only by converting the same into CNG whereas in the case of LPG, the same is not saleable unless it is bottled and therefore, bottling of LPG into cylinders makes LPC saleable is not otherwise saleable. There is difference in the facts, In our considered opinion, the judgment of Hon'ble Bombay High Court is not applicable in the facts of the present case. Since compression of natural gas into CNG does not result into bringing into existence any new product, in our considered opinion, this activity is neither manufacture nor production and hence, no interference is called for in the order of CIT (A) on this issue. Accordingly, ground No.1 of the assessee is rejected." From a reading of the facts above and the Tribunal's order and other material on record, it comes to the fore that natural gas which comes through pipelines in its natural form cannot be used for the same purposes as compressed natural gas that is to be used as automobile fuel. The appellant on the other hand contends that it is manufactured compressed natural gas which is used for the automobile fuel, which is prepared by a process of manufacture, by which the natural gas is put through a plant/machinery for compression and when the compressed gas comes out in its new form it is used for the automobile fuel. After undergoing the process of compression, natural gas acquires a new form by the name of compressed natural gas. It has a distinct use as automobile fuel and a distinct commercial name. The provisions of Section 2 (29BA) defines 'manufacture' as hereunder: "(29BA)- manufacture with its grammatical variations, means a change in a non-living physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and used; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;" Learned counsel for the appellant has placed reliance on the judgments of the

Apex Court in the case of Income Tax Officer Vs. Arihant Tiles and Marbles P. LTD. reported in 2010 320 ITR 79 (SC) in support of his case. On the face of it, it appears that compressed natural gas is a commodity having a distinct name, character and use and therefore, the test to determine whether 'manufacture' has taken place is satisfied. Without undergoing the process of compression natural gas in its original form cannot be used as fuel for the automobile industry. It is only upon undergoing the process of compression, it is converted into compressed natural gas which is a commodity, to be used as a fuel for the automobile industry. The Tribunal has failed to discuss this aspect of the matter completely and has ignored the material placed by the appellant on record whereby it has sought to show that the entire process by which natural gas is compressed and having been compressed acquires a new and changed name of compressed natural gas acquires a new use and a distinct commercial identity. Having heard learned counsel for both sides, we are satisfied that compressed natural gas in its compressed form has a distinct identity and character and use. It is settled law of the Apex Court as well as of this Court that when a commodity acquires a distinct name, use and commercial identity, it would acquire the trait of 'manufacture'. In view of above, the question is answered in favour of the assessee and against the department. The appeal is accordingly allowed.

Order Date :- 8.12.2016

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(Vinod Kumar Misra, J.)

(Bharati Sapru, J.)

21. Respectfully following the above judgment of the Hon'ble High Court, the appeal of the assessee is hereby allowed."

5. As a result, both the appeals of the revenue are dismissed.
Order Pronounced in the Open Court on 19/03/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 19/03/2021

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR

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