* THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 04.05.2009

ITA 1070/2007, 1071/2007,
1072/2007 & 1073/2007

GEO ENPRO PETROLEUM LTD. ..... Appellant

versus

DY. COMMISSIONER OF INCOME TAX ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S. Ganesh, Sr. Advocate with Mr H. Raghavendra Rao, Advocate.
For the Respondent : Ms Prem Lata Bansal, Sr. Standing Counsel with Mr Sanjeev Rajpal, Mr Mohan Prasad Gupta & Ms Anshul Sharma, Advocates

CORAM :-

HON'BLE MR JUSTICE VIKRAMAJIT SEN
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. The above captioned appeals have been preferred by the assessee under Section 260A of the Income Tax Act, 1961(hereinafter referred to as the 'Act') against a common judgment dated 04.05.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No. 3240/Del/05 and ITA No. 3551/Del/05 in respect of the assessment years 2000-01 and 2001-02 respectively filed by the assessee and ITA No. 3634/Del/06 and ITA No. 3635/Del/06 in respect of assessment years 2003-04 and 2004-05 respectively filed by the Revenue.

2. The only issue which arises for our consideration is whether the Tribunal erred in coming to the conclusion that the commercial production, in the case of the assessee, had commenced in the assessment year 1996-1997 for the purposes of deduction under Section 80-IB(9) of the Act . The assessee's case before us was that the commercial production had commenced in the assessment year 1999-2000. In order to dispose of these appeals the following facts require to be noticed.

2.1 The Government of India had issued a Notice Inviting Tender (in short 'NIT') for developing certain oil fields which included the Kharsang oil field in the state of Arunachal Pradesh. The assessee at the relevant time was a member of a consortium which responded to the NIT. The consortium's bid was successful and consequently it entered into a Production Sharing Contract (in short 'PSC') with the Government of India dated 16.06.1995. Under the PSC, the Government of India handed over 36 oil wells which had already been drilled alongwith 10 new oil wells. It is important to notice at this stage that the assessee was incorporated only on 13.04.1994.

2.2 The Government of Arunachal Pradesh executed a lease in favour of the consortium for carrying out the mining operations in respect of the Kharsang oil fields. It is important to note that the lease was granted with retrospective effect, that is, 16.06.1995 (being the date on which PSC was executed) for a period of 20 years. During the financial year 1995-96, relevant to assessment year 1996-97, the consortium produced crude oil to the extent of 9430 metric tons. Since the assessee's share was 10% of the total

production of the consortium; the assessee's production share was pegged at 943.20 metric tons. In the subsequent two years the total production of the consortium was 11,990 metric tons and 11,170 metric tons. Accordingly, as in the preceding period the assessee's share was 10% of the said total production of the consortium.

2.3 The assessee's stand before us is that it commenced work-over operations (the learned counsel for the appellant prefers to refer to it as make-over operations) on the oil wells from January, 1998. The delay in commencing work-over operations, as explained by the assessee to the authorities, was on account of the delay in execution of the mining lease. It is the claim of the assessee that the work-over operations took almost one year three months and thus, according to the assessee the work-over operations were completed in April, 1999. It was also stated by the assessee before the authorities below that commercially feasible quantities were produced by the assessee in the financial year relevant to assessment year 2000-01. The assessee's claim was that prior to the work-over operations the production of the crude oil was approximately between 31 to 37 metric tons per day and after the work-over operations were completed the commercial production in the previous year 1998-99 relevant to assessment year 1999-2000 was in the range of 134 metric tons per day to 167 metric tons per day.

3. The Assessing Officer for the assessment year 2000-01 disagreed with the stand adopted by the assessee. The Assessing Officer was of the view that the "initial assessment year" for the

purposes of Section 80-IB(9) of the Act would be assessment year 1996-97.

4. The assessee being aggrieved carried the matter in appeal to the Commissioner of Income Tax (Appeals) – X, New Delhi [hereinafter referred to as the "CIT(A)-1"). The CIT(A)-1 reversed the order of the Assessing Officer and came to the conclusion that the initial assessment year for the purposes of Section 80-IB(9) of the Act would be assessment year 1999-2000 which according to her was the year in which the assessee had commenced commercial production. The same situation obtained for assessment year 2001-02. Following her earlier order CIT(A)-1 reiterated that the initial assessment year for the purposes of Section 80-IB(9) of the Act would be assessment year 1999-2000.

5. The Revenue being aggrieved by the said orders of CIT(A)-1 preferred an appeal to the Tribunal in respect of assessment year 2000-01 and 2001-02 being ITA nos. 3240/Del/05 and 3551/Del/2005 respectively.

5.1 The issue as to what was the initial assessment year for the purposes of Section 80-IB(9) of the Act also came up for consideration before the Assessing Officer in assessment years 2003-04 and 2004-05. The Assessing Officer in respect of the said assessment years similarly concluded that since initial assessment year for the purposes of Section 80-IB(9) of the Act was assessment year 1996-97 the deduction under Section 80-IB of the Act being available only for a period of seven years from the date of initial assessment year the relevant period expired in the previous year

relevant to assessment year 2002-03 and hence the deduction was not available in the assessment years 2003-04 and 2004-05.

5.2 It seems that the Assessing Officer also took note of the proviso to Section 80-IB(9) of the Act based on which he took the view that since the undertaking of the assessee was located in the North-Eastern region the production had to commence before the 1st day of April, 1997 and since that was not the case, even according to the assessee, the assessee was not entitled to a deduction any way in assessment years 2003-04 and 2004-05.

6. The assessee being aggrieved by the order of the Assessing Officer in respect of assessment years 2003-04 and 2004-05 preferred appeals once again to the Commissioner of Income Tax (Appeals)- XV, New Delhi [hereinafter referred to as the “CIT(A)-2”]. The CIT(A)-2 after considering the matter at length, including in particular, the Director’s Report of the assessee for the year ending 31.03.1996 returned a finding that commercial production had commenced in respect of the assessee in assessment year 1996-97 and hence the said assessment year had to be taken as initial assessment year for the purposes of Section 80-IB(9). What is important is that the CIT(A)-2 returned a finding of fact that in the previous year relevant to the assessment year 1996-97 the consortium had extracted crude oil equivalent to 9430 metric tons.

7. Aggrieved by the order of the CIT(A)-2 in respect of assessment years 2003-04 and 2004-05 the assessee preferred an appeal to the Tribunal.

8. As indicated hereinabove, the Tribunal by the impugned

years 2000-01 and 2001-02 and that of the assessee for assessment year 2003-04 and 2004-05. The Tribunal in the impugned judgment, as indicated above, has returned following findings of fact:

(i) In the financial year 1995-96 relevant to assessment year 1996-97 the consortium produced crude oil equivalent to 9430 metric tons. The assessee’s share being 10% of the total production came to 943.20 metric tons.

(ii) In the subsequent two years, that is, financial year 1996-97 and 1997-98 the consortium produced crude oil was 11,990 metric tons and 11,170 metric tons respectively. Once again the assessee’s share was 10% of the total production.

(iii) The total production before the work-over operations commenced was 10,000 metric tons and the production after the commencement of the work-over operations was 44,630 metric tons.

(iv) It was observed that the exploration carried out by the Oil India Limited led to discovery of petroleum in commercial quantities in the contract area.

(v) The Government desired that petroleum resources in the contract area be exploited expeditiously which is why the Government had invited bids from interested persons for development of resources in the contract area. It was pursuant to this that the consortium was granted rights to exploit petroleum resources in the contract area. Importantly the finding is that oil in commercial quantity was available and some oil was already

flowing. ***The consortium started production of crude oil soon after the agreement was made***. In order to ensure that production was carried out in an efficient manner work-over operations were carried out to improve the quality of the wells.

9. In the context of the aforesaid findings we have heard the arguments advanced by both the counsels, Mr S. Ganesh, learned Senior Advocate instructed by Mr H. Raghavender as well as Ms Prem Lata Bansal, learned counsel for the Revenue. It was submitted by the learned counsel for the assessee that the Tribunal had committed serious error in taking the initial assessment year in terms of Section 80-IB(9) to be assessment year 1996-97 for the following reasons:

9.1 The PSC, that is, the contract between the assessee and the consortium was executed only on 16.06.1995 and that there is no dispute that under the contract the consortium of which the assessee was a part took over 36 oil wells out of which 27 oil wells were abandoned and 9 produced negligible output. It was contended that apart from the 36 oil wells the assessee had also been given 10 new oil wells. The fact that the majority of the oil wells were those which had either been abandoned or produced negligible output and hence required a make-over was lost sight of by the Tribunal. The learned counsel also submitted that the commencement of make-over operations was delayed on account of the fact that the mining lease for the area was executed in favour of the consortium by the State Government of Arunachal Pradesh only on 21.10.1997. Consequently, the make-over operations could begin only in January, 1998. It was contended that before the

make-over operations commenced the oil wells at an average were producing equivalent to 30 metric tons per day. The make-over operations, according to the learned counsel ended in March, 1999 when the per day production of crude oil reached 170 metric tons per day. The learned counsel submits that in view of these facts and circumstances, which cannot be disputed, the only conclusion that the authorities below could have arrived at was that the initial year of assessment at the earliest would be pegged as assessment year 1999-2000.

9.2 It is important to point out at this stage that the learned counsel for the assessee did not pursue the argument taken in his appeal before the Tribunal that the initial assessment year was assessment year 2000-01 when, according to the assessee, a substantial commercial production took place.

9.3 Continuing his submission the learned counsel for the assessee submitted that it is not the case of the department that the assessee is not entitled to a deduction under the provisions of Section 80-IB. If that be the case, some meaning would have to be given to the provisions of Section 80-IB(9) read with section 80-IB(14)(c)(iii). He submits that a plain reading of the provisions would show that the assessee is entitled to a deduction for seven consecutive assessment years commencing from the year in which the commercial production took place. There is no denying that the assessee was required to carry on make-over operations to enhance the production of the oil wells. The learned counsel thus submits that the Revenue could not have taken into account the make-over period. It is only after the make-over operations were completed

that the commercial production in terms of Section 80-IB(9) read with Section 80-IB(14)(c)(iii) of the Act could said to have commenced.

10. As against this the learned counsel for the Revenue Ms Prem Lata Bansal submitted that the issue raised by the assessee in the appeal is a pure question of fact. The authorities below have returned a finding of fact against the assessee and hence this court need not look any further. The learned counsel for the Revenue in order to drive home the point relied upon extracts from the balance sheet of the assessee to demonstrate that the assessee itself had taken the stand that it was entitled to a claim of deduction under Section 80-1A (the provision as its stood prior to it being substituted by 80-IB), however, chose not to claim the deduction only on the ground that profits were not available. In this regard, the learned counsel for the Revenue placed heavy reliance on the Director's Report for the year ending 31.03.1996, 31.03.1997, 31.03.1998 & 31.03.1999. The learned counsel significantly referred to the following extract from the document which is not disputed:-

GEO ENPRO PETROLEUM LIMITED

ASSESSMENT YEAR 1999-2000

"NOTES ATTACHED TO THE STATEMENT OF

TOTAL INCOME

The assessee has entered into a Production Sharing Contract (PSC) with the Government of India on 16th June, 1995. In respect of the Kharsang Oil Field, the PSC has been placed before the parliament in accordance with the provisions of Section 42 of the Income Tax Act, 1961. The assessee has also been appointed as the Joint Operator under the PSC. After discovery of the petroleum in commercial quantities, the Government of India invited bids for the exploration and development of the said fields. The

> *by the Joint Operator.* ***Due to the workover, commercial production of crude oil was started by the Joint Venture during the Financial year 1997-98.*** *According to the provisions of Section 80IB, the assessee is entitled for a tax holiday for a period of 7 consecutive years* beginning with the year in which commercial production begins."

10.1 Based on the aforesaid the learned counsel for the Revenue submitted that the assessee has been making inconsistent statements. She submitted that the inconsistency in the financial statement for assessment year 1999-2000 (extracted above) becomes starkly obvious. When compared to assertions made in financial year ending 31.03.1996 relevant to assessment year 1996-97 where it is stated that it was entitled to a deduction under Section 80-IA now Section 80-IB of the Act and that it had not been so claimed only on account of absence of profit. She submits that what makes it worse is that despite the statement made in assessment year 1999-2000 that commercial production had commenced in the financial year 1997-98 the appellant continues to argue that commercial production commenced as on 1st April, 1999 and thus the initial assessment year would be 1999-2000. She submitted that as a matter of fact before the Assessing Officer contrary to its own financial statements the assessee had contended that the initial year of assessment for the purposes of Section 80-IB ought to have been assessment year 2000-01. It was, therefore, the submission of the learned counsel for the Revenue that the shifting stands of the assessee are a clear pointer to the fact that what the assessee had indicated in its financial statement for the year ending 31.03.1996 was correct and that only to get out of the said situation the assessee as the years progressed chose to shift the initial

assessment year with a view to claim a deductions for a longer period, which is not available to it.

11. Having heard the learned counsel for the parties, it is relevant to note that the following facts which have emerged and which cannot be disputed are as follows:

11.1 The financial statement of the assessee for the assessment years 1996-97, 1998-99 and 1999-2000 bear the following noting:

"GEO ENPRO PETROLEUM LIMITED

Assessment Year	*1996-97*	
Accounting Year	*1995-96*	
Computation of Business Income		
Loss as per Profit & Loss Account		*xxxx*
xxxx		*xxxx*
xxxx		*xxxx*
xxxx		*xxxx*

NOTES:

(i) *The Company alongwith other Consortium Members had entered into Production Sharing Contract dated 16th June 1995 with Government of India for Exploration, Development and Production of Crude Oil.*

(ii) *The Production Sharing Contract has been placed the Parliament pursuant to Section 42 of the Income Tax Act, 1961 (copy of notification enclosed).*

(iii) ***In (the) absence of Profit, claim u/s 801A has not been made****"*

"GEO ENPRO PETROLEUM LIMITED

Assessment Year *1998-99*

Computation of Business Income

Loss as per Profit & Loss Account	*xxxx*
xxxx	*xxxx*
xxxx	*xxxx*
xxxx	*xxxx*

NOTES:

(i) *The company alongwith other Consortium Members had entered into Production Sharing Contract dated 16th June 1995 with Government of India for Exploration, Development and Production of Crude Oil.*

(ii) *The Production Sharing Contract has been placed the Parliament pursuant to Section 42 of the Income Tax Act, 1961.*

(iii) ***In (the) absence of Profit, claim u/s 801A has not been made***"

"GEO ENPRO PETROLEUM LIMITED

Assessment Year	*1999-00*
Accounting Year	*1998-99*

Computation of Business Income

Loss as per Profit & Loss Account	*xxxx*
xxxx	*xxxx*
xxxx	*xxxx*
xxxx	*xxxx*

NOTES:

(i) *The Company alongwith other Consortium Members had entered into Production Sharing Contract dated 16th June 1995 with Government of India for Exploration, Development and Production of Crude Oil.*

(ii) *The Production Sharing Contract has been placed before the Parliament pursuant to Section 42 of the Income Tax Act, 1961.*

(iv) The claim of Development Expenditure (u/s 42) includes Provision for Abandonment Sinking Fund amounting to Rs 2,71,200/- made in accordance with Production Sharing Contract provisions.

(v) Tax Credits in respect of Tax Paid under Sub Section (1) of Section 115JA carried forward as per provisions of Section 115JAA is Rs. 3,31,073/- as per given below:"

12. What is also not disputed is that in the notes attached to the statement of total income filed by the assessee for assessment year 1999-2000 (which has been extracted hereinabove) it has taken the stand that commercial production was started during the financial year 1997-98. It is also not disputed that before the authorities below the assessee chose to shift its stand by claiming that since the commercial production commenced in the financial year relevant for assessment year 2000-01, that should be taken as the initial year for the purposes of deduction under Section 80-IB. These documents which undisputedly have been generated by the assessee and the statements made therein were put to the learned senior counsel for the assessee Mr. S. Ganesh. Mr Ganesh in fairness submitted that while he would find it hard to get out of the statements made therein, he would, therefore, seek the indulgence of this Court that the matter be remanded to the Tribunal to decide the matter de novo so as to enable it determine as a matter of fact as to when commercial production commenced for the purposes of

fixing the initial assessment year for the purposes of the assessee's claim for deduction under Section 80-IB of the Act.

13. Having given a careful thought to the suggestion made by the learned senior counsel for the assessee we are of the opinion that the remand is not called for, in view of the fact that these very documents have been specifically considered by the Tribunal whereupon it has returned a categorical finding of fact that commercial production commenced in the year relevant for assessment year 1996-97. In our view this finding is a pure finding of fact. If that be so, according to us, no question of law, much less a substantial question of law arises for our consideration. These appeals are thus dismissed.

RAJIV SHAKDHER, J

May 04, 2009 **VIKRAMAJIT SEN, J**
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