* **THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA Nos.627/2005,194/2005, 515/2006, 501/2006 208/2002, 504/2006, 683/2005, 716/2005,1081/2005 899/2007, 668/2008, 296/2010 & 433/2009**

Reserved on : 07.04.2011
Date of Decision : 11.05.2011

Commissioner of Income Tax
Delhi-IV, New Delhi **……Appellant**

Through: Ms. Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Advocate.

Versus

M/s. HLS India Ltd.
(Now HLS Asia Ltd.) **……Respondent**

Through: Mr. Ajay Vohra, Ms. Kavita Jha and Mr. Somnath Shukla, Advocates.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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

M.L. MEHTA, J.

1. By way of this judgment, we are disposing off 13 different Income Tax Appeals, ranging from assessment year 1989-90 to assessment year 2003-2004, pertaining to the same assessee

M/S HLS India Ltd. These appeals, all filed under section 260 A of the Income Tax Act, 1961(hereinafter referred to as the Act), have been clubbed together on the ground that the legal issues involved in these matters are similar, though the financial figures have been kept varying with the assessment years.

2. Before coming to these legal issues it would be pertinent, in the light of facts and circumstances of these cases, first of all to succinctly narrate the genesis of instant prolonged tax dispute between the Revenue and the assessee.

3. The Assessee, HLS India Ltd. (Currently known as HLS Asia Ltd.) is an oilfield services company, which provides petro-physical & completion solutions and services to its clients for the exploration and production of Hydrocarbons. On 04.05.1988 the assessee company entered into a contract with Oil India Limited (In short OIL) to provide “wire-line logging” and “perforation services” to the OIL. A similar contract was also entered into with the ONGC on 11.01.1989 In its Income Tax Returns filed for the assessment years we are concerned with, following claims were made by the assessee (only those claims which are subject matters of this litigation):-

A. Claim under section 32A of the Act- Investment allowance on New Plant and Machinery installed by the assessee in pursuant to aforesaid contracts. [Claims made in the assessment years 1989-90 & 90-91]

B. Claim of deduction on "profit and gains" under section 80-IA (from AY 1991-92 to 1999-00) and 80-IB (from AY 2000-01 to 2003-04). [Section 80-IA was substituted by two sections - 80-IA and 80-IB - by the Finance Act, 1999 w.e.f. April 1, 2000.]

C. Depreciation @ 100% under Rule 5, appendix I, Part 1, III (ix) of the Income Tax Rules, 1962. [For all the assessment years which we are concerned with]

4. As for as claim of "investment allowance" under section 32A is concerned, which was made for assessment year 1989-90 and 1990-91 only and denied by the AO on the ground that the assessee fails to meet the requirements provided in sub-section (2) of section 32 A as the assessee is neither an industrial undertaking nor it is engaged in any manufacturing and production of any article or thing, the assessee succeeded before the CIT(A) and ITAT and the ITAT's order dated 10.08.1998 on this issue is a subject matter of dispute before us in ITA 627 of 2005 and ITA 194 of 2005.

5. As for as the claim regarding deduction under section 80-IA is concerned, which is available in respect of profits and gains from

industrial undertakings or enterprises engaged in infrastructure development, it was made for the first time in the assessment year 1991-92, but the same was denied by the AO on the similar grounds as the assessee, as per AO's view, is not an industrial undertaking engaged in manufacturing or producing an article or a thing. Though, this claim got an affirmative approval at the level of CIT (A), but the ITAT while hearing the appeals of the revenue pertaining to assessment years 1991-92 and 1992-93, restored the matter back to the desk of AO to verify as to whether the other conditions regarding 80-IA are satisfied because it has held in its own decision pertaining to assessment year 1989-90 and 1990-91 that the assessee is an industrial undertaking engaged in manufacturing or production of an article or thing for the purpose of section 32A. Claims regarding 80-IB, as made in the assessment years 2000-01, 2001-02, 2002-03 and 2003-04, were also denied by the AO on the ground that neither the assessee is an industrial undertaking nor it fulfills the basic criteria of employing certain number of persons as required by this section. Forming a contrary opinion against that formed by its predecessors in previous assessment years, the CIT(A) this time held that the assessee is not engaged in manufacturing or production of any article or thing. On appeal ITAT, following its own decision dated 23.09.99 restored the matter back to the

desk of AO. Since then, this cat and mouse game is on between the revenue authorities and the assessee and this issue has been a part of almost every appeal listed before us in the instant batch of appeals.

6. Regarding the claim of the assessee for higher depreciation on equipments used below the earth surface @ 100 % under Rule 5, appendix I, Part 1, III (ix) of the Income Tax Rules, 1962, the AO, from the very first assessment year i.e. 1989-90, was of the view that the same is available to a "mineral oil concern" only and the activities of the assessee do not make it a mineral oil concern. This view of the revenue was reversed by the CIT(A) but on appeal, though the ITAT vide its order dated 10.08.1998 pertaining to assessment years 1989-90 and 1990-91 gave an in principle approval but the matter was restored back to the table of AO to verify as to whether the nature of the operations of these equipments is similar to those used by state run oil production companies. Subsequently, though OIL, an oil PSU certified the similarity of the equipments in question but the AO, on the ground of mobility of the assessee's equipments denied the claim. This order has been reversed by the CIT(A) and the CIT(A)'s order has got approval of ITAT vide its order dated 10.01.2002. Not only this order of the ITAT is challenged before

us in ITA 208/2002 but the previous order of the ITAT whereby it restored the matter to the desk of AO is also appealed against in ITA 627 of 2005 and ITA 194 of 2005.

7. In all these appeals similar questions of law came up for consideration, though these were worded differently at different times of hearings. In the light of above discussion and considering the "substantial questions of law" admitted in the appeals which are part of the instant batch, two legal issues are clearly deducible for our consideration. These issues are as under:

1. Whether, on the facts and in the circumstances of the present case, the assessee can be said to be an "industrial undertaking" engaged in the business of "manufacturing or production of an article or a thing" for the purpose of section 32A and section 80-IA/80-IB of the Income Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the present case, the assessee is entitled to a higher depreciation allowance @ 100% under Rule 5, appendix I, Part 1, III (ix) of the Income Tax Rules, 1962?

8. We can now deal with aforesaid two legal issues separately one by one. The first issue is whether the production of log by the assessee, while providing wireline logging services to its clients,

amounts to manufacturing or production of an article or thing so as to place the assessee at per an industrial undertaking wherefrom it can be entitled to claim various tax incentives as available to these entities under the Act.

9. The Income-tax Act provides various incentives in different sections to the industrial under-takings. Under section 32A a new industrial undertaking can avail investment allowance provided it satisfies the conditions as laid down in sub section (2) thereof. This provision reads as under:

Section 32A: Investment Allowance

(1) .....

(2) The ship or aircraft or machinery or plant referred to in sub- section(1) shall be the following, namely:

(a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft;

(b) any new machinery or plant installed after the 31st day of March, 1976,–

(i) for the purposes of business of generation or distribution of electricity or any other form of power; or

(ii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing; or

10. One of the main conditions under this provision, as applicable to a new industrial undertaking, is that the unit must be engaged in manufacturing or production of an article or a thing. Similarly, under section 80-IA deduction is allowed on profits and gains derived from an industrial undertaking. Though the word 'Industrial Undertaking' has been used many times in the Act but it has not been defined in various incentive provisions. It is only in S. 33B of the Act, that the definition of 'industrial undertaking' has been given by way of Explanation. In this Explanation, the definition of industrial undertaking has been given as akin to 'industrial company' which also includes processing. However, this definition is applicable only in the context of S. 33B whereby the rehabilitation allowance was granted in respect of assessment years 1984-85 and prior thereto. In old S. 80IA before its substitution by Finance Act 1999, it was provided in the Explanation that 'industrial undertaking' had meaning assigned to it as provided in section 33B. However, in the new S. 80IA or S. 80IB as introduced by Finance Act, 1999, there is no similar provision defining the term 'industrial undertaking'. However, where the Section provides that the undertaking must engage in manufacture or production of article or thing, whatever be the way the term industrial undertaking is interpreted; it does not make any difference. This is because in

such case the industrial undertaking must be engaged in manufacturing or production of article or thing. So even if the industrial undertaking were taken to mean processing or assembling activity, the unit would not be eligible for deduction unless it is proved that activity results into manufacturing or production of article or thing. Thus, the phrase 'Manufacture or produce an article or thing' is of paramount importance under both the provisions of the Act. The term 'manufacture or production' has not been defined in the Act and has been interpreted differently in respect of different types of industries by the courts.

11. In the instant case, the AO, while framing the assessment orders for the assessment years 1989-90 and 90-91, denied the claim made under section 32A as it was of the opinion that the assessee is *"just converting into data something which is already there i.e. geo-physical properties of the earth crust which are already there are just being logged with the help of certain sophisticated equipments."* The rationale behind this opinion was that *"the term 'production' means that by the process something new must come into existence"* and to qualify the test of 'manufacturing' there must be transformation resulting in a new and different article having distinctive name, character, and use.

In the view of the AO, the activities of the assessee i.e. production of data could be linked to a typewriter printing out letters on a sheet of paper or a rubber stamp giving impression on a sheet of paper.

12. On appeal, the CIT(A) vide a common order dated 25.05.1992 pertaining to both the assessment years reversed the order of the AO and held that the assessee was an industrial undertaking within the meaning of s. 2(7)(c) of Finance Act 1981, and it was manufacturing within the meaning sub-section (2) of S. 32A of the Act. When the issue came before the ITAT, by way of an appeal filed by the revenue against the aforesaid order of the CIT(A), the ITAT vide its order dated 10/08/1998 upheld the order of the CIT(A). The relevant para of this order is as under:

> "We heard the parties at length and have perused the paper book filed before us. We find that the assessee-company derives its income from wire-line logging and perforation activities for exploration of oil. Wire-line logging is the standard process used to evaluate oil wells both at exploratory and development stage. The aforesaid perforating services are used at the development stage as an essential step in the actual recovery of oil specialised high technology electronic-cum-mechanic equipment is used for data collection. These specialised high-tech equipments termed as

> logging tools are sensitive sensor-electromechanical system working in hostile environment of extreme pressure and temperature. The data collected by these tools is transmitted uphole via an electromechanical cable. The data so processed on surface by an on-line computer which are recorded on digital mechanical tapes. After processing of the data, the computer gives an output termed as 'logs'. These are ideal tools for detailed description of an oil reservoir in terms of petro-physical characteristics geometrical orientation and layering. It is with these petro-physical characteristics that a thorough description of a reservoir emerges and it is based on these pictures the geologists decide to test the well. Further, vital informations are given to geologists for future exploration at the wells. We have further perused the wire-logging process as also the exact process of manufacturing log data logs placed by the assessee in his paper-books at p. 4.16 and at p. 4.17. In our considered opinion in such a situation it cannot be said that assessee is not an industrial undertaking. In view thereof, we find no infirmity either in CIT(A)'s findings or conclusion that assessee is an industrial undertaking. Hence, the Revenue fails and the CIT(A)'s order in directing AO to allow investment allowance on the plant and machinery used by it, is upheld."

13. Claims regarding deduction under section 80-IA / 80-IB, which were made in the assessment year 1991-92 for the first time, were denied by the AO on the similar ground that the assessee is not an industrial undertaking engaged in manufacturing of an article or a thing. On appeal, CIT(A) reversed the order of the AO.

Feeling aggrieved, the revenue filed an appeal before the ITAT, which by a common order dated 23.09.99 pertaining to assessment years 1991-92 and 1992-93 held that the issue whether the assessee is an industrial undertaking engaged in manufacturing of an article or a thing is settled in the favour of the assessee in the light of ITAT's order dated 10th August 1998. However, it reverted back the matter back to the desk of AO to find out whether other conditions as required under section 80-IA are fulfilled. Since then this issue has travelled to the ITAT level in every assessment year either under section 80-IA (till AY 1999-00) or under 80-IB (from AY 2000-01 to 03-04), which in turn, every time, has followed the decision of ITAT dated 23.09.99 and reverted the matter back to the table of AO to find out as to whether other requirements are satisfied.

14. Hence comes this appeal to us on this issue.

15. Ld counsel for the respondent assessee Mr. Ajay Vohra has submitted before us that the assessee is an industrial undertaking engaged in the business of retrieving and producing valuable information in respect of the sub-terranean of the oil fields of mineral oil concern. He has fervently pleaded that the printed logs and statements being final product of data processing amounts to manufacturing of an article or a thing to

satisfy the statutory requirement in regards to the concerned claims made by the assessee. In order to fortify his case, a plethora of judicial decisions have been cited before us by the Ld. counsel for the assessee to support the contention that the *"activity carried on by the assessee with respect of collecting and transmitting of data amounted to manufacturing and producing of an article or thing"*. During the course of arguments, a specifically emphasized limb of his argument has been the analogy between the production of logs by using wireline logging equipments on the one hand and the production of X-Ray and ultrasound report sheets using X-Ray and Ultrasound machines on the other hand which have been held to be eligible for investment allowance under section 32A in various judicial pronouncements.

16. Following judgments have been cited by the learned counsel for the assessee to support its contention:

1. ***CIT Vs. IBM World Trade Corporation*** [130 ITR 739 (Bom)]
2. ***CIT Vs. Datacons (P) Ltd.*** (1985) 155 ITR 66
3. ***CIT Vs. Peerless Consultancy Services Pvt. Ltd.*** [186 ITR 609 (Cal)]
4. ***CIT Vs. Shaw Wallace and Co. Ltd.*** [201 ITR 17 (Cal)
5. ***Ship Scrap Traders Vs. CIT*** [251 ITR 806 (Bom)]
6. ***CIT Vs. Emirates Commercial Bank Ltd.*** [262 ITR 55 (Bom)]
7. ***CIT Vs. Professional Information Systems and Management.*** [274 ITR 242 (Guj)]
8. ***CIT Vs. Oracle Software India Ltd.*** [320 ITR 546 (SC)]

17. In the case of ***I.B.M. World Trade Corporation*** (supra) the question before the Bombay High Court was as to whether E.A. Machines (now called Data Processing Machines) were office appliances not eligible for allowance of development rebate under section 33(1) of the Act. The Court held that the word "appliances" is qualified by the word "office" in Section 33 and those words as they are used in section 33 will, therefore, have to be construed in the context of appliances which are generally used in an office as an aid or a facility for the proper functioning of the office. The Court observed that a computer system or an electronic data processing system is physically a collection of electromechanical and electronic components and devices assembled in metal cases (modules) and cabinets. These contain switching and communication components such as transistors, diodes, capacitors, resistors and integrated circuits, all combined into various types of circuitry, together with memory systems, power supplies , delay lines and various types of magnetic media such as tapes and wires for carrying and transforming data and information, as coded, into instructions and computations. The court further observed that a data processing machine is complicated machinery which could not be easily operated by lay men and special training for a period which may exceed three

months in some cases and a much longer period in others is necessary in order to equip a person with the knowledge and art of operating these machines. The installation and operation of the machines is on a scientific basis and even for the purposes of installation, certain special conditions have to be provided in the form of air-conditioning or a particular temperature. The purposes for which such machines, which can be described as computers, are used are well-known and, in highly scientifically developed systems, they have their own role to play and they cannot be equated with office appliances which would be of a much simpler nature. The Court held that in view of the varied functions which the "system" is capable of performing, data processing machines cannot be classified as "office appliances" and are eligible for allowance of development rebate under section 33(1) of the Act.

18. In the case of ***Datacons (P) Ltd.*** (supra) the assessee was carrying on the activity of processing data furnished by its customers by using IBM Unit Record Machine Computers. The question before the Karnataka High Court was whether the Appellate Tribunal was correct in law in treating the assessee either as a manufacturer of goods or as engaged in the processing of goods within the meaning of section 2(7)(c) of the

Finance (No. 2) Act, 1977. The Court observed that the term "industrial company" has been described as including a company engaged in the processing of goods. The Court discussed at length the activities carried out by the company while processing the data and held as follows:

> "It will be clear from these activities that the assessee receives vouchers and statements of accounts from the customer and they are converted into the required balance-sheet, stock account, sales analysis, etc. They are got printed as per the requirements of the customer. In all these activities, the assessee has to play an active role by co-ordinating the activities and collecting the information. Such activities, in our opinion, could fairly fall within the concept of processing of goods, if not manufacture of goods."

The Karnataka High Court observed that the Gujarat High Court in case of ***CIT Vs. Ajay Printery Private Ltd.*** (1965) 58 ITR 811 had gone a step further and held that the printing balance-sheets, profit and loss accounts, dividend warrants, pamphlets, share certificates, etc., required by companies is a business which consists wholly of "manufacture of goods" within the meaning of clause (ii) of Explanation 2 to section 23A of the Income-tax Act, 1922.

19. ***Peerless Consultancy Services Pvt. Ltd.*** (supra) is a case where the assessee was engaged in the business of providing technical and industrial consultancy. Along with the above activities it was

also undertaking electronic data processing on the basis of computers. While dealing with the issue as to whether the assessee was an industrial company within the meaning of Section 2(7)(c) of the Finance Act, 1981 and entitled to investment allowance under section 32A in respect of a generator installed by it, the Calcutta High Court relied upon ***Datacons (P) Ltd.*** (Supra) and held that the assessee is an industrial company.

20. In the case of ***Shaw Wallace and Co. Ltd.*** (supra) the issue was as to whether the Computer Division of the assessee-company was an industrial undertaking for the purpose of section 32A as opposed to the AO's view that the computer are of the nature of office appliances. The Calcutta High Court dismissed the appeal preferred by the department and held as under:

> "25. Investment allowance is admissible in respect of machinery or plant installed in any industrial undertaking for the purpose of business of construction, manufacture or production of any Article or thing not being an Article or thing specified in the list in the Eleventh Schedule. There is no dispute that "data-processing" or "computer" is not mentioned, in the Eleventh Schedule. If, as held by the Division Bench in Peerless Consultancy Services (Pvt.) Ltd., the assessee-company is an industrial company, there is no reason why such a

company will not be entitled to the benefit of the investment allowance. Investment allowance will not be admissible in respect of office appliances. In our view, having regard to the nature and function of the computer and the data-processing system, it cannot be said that they are office appliances. An industrial company is a company engaged in the manufacture or processing of goods. "Data-processing" means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining, rearranging or printing out) by a computer. "Computer" means "one that computes; specifically a programmable electronic device that can store, retrieve, and process data". There cannot be any doubt that raw data cannot be equated with the result derived. It is different in form and substance.

26. We are, therefore, of the view that the computer division is an industrial undertaking which satisfies the conditions mentioned in Section 32A(2)(b)(iii) of the Income-tax Act, 1961."

21. In the case of ***Ship Scrap Traders*** (supra) the issue before the Bombay High Court was as to whether the business and activity of ship-breaking carried out by the assessee amounted to manufacture or production of article or thing for the purpose of deduction under sections 80HHA and 80-I. While relying upon some direct judicial authorities on the concerned issue the court also tried to look into the matter from an interpretational perspective to decide the issue in favour of the assessee. The relevant part is as under:

14. The Income Tax Act does not define the expression "industrial undertaking". Therefore, reference to its definition in similar enactments or adoption of its ordinary meaning is inevitable. Considering the object of the enactment of the provision under consideration, the said expression will have to be construed liberally in a broader commercial sense, keeping its object in mind. There is not much debate on this aspect of the matter. The concept of industrial undertaking need not be necessarily confined to manufacture and production of articles and even in the absence of either of them there could be an industrial undertaking. The assessees are, therefore, well within the expression of industrial undertaking. In this view of the matter, the only question arises, therefore, is whether the assessees had begun to manufacture or produce the articles after the specified date in any backward area. It is not in dispute that the assessees have commenced their work after the specified date. In short, the limited question is whether the ship-breaking can be characterised as an activity amounting to manufacture or produce an article or articles as the case may be. Whether a particular activity is a manufacturing activity is dependent upon several factors and no straight-jacket formula or principle can be applied. The manufacture implies a change but every change is not manufacture. There must be a transformation of kind and new different item should have been emerged having different features. For manufacture there should be some alteration in the nature or character of the goods. By process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which thing or article is produced or

manufactured may necessarily lose its identity or may become transformed into the basic or essential properties.

15. The manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. Whatever may the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process, which will be part of manufacture. The test to determine whether a particular activity amounts to manufacture or not is : Does new and different goods emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes manufacture takes place. Etymologically, the word manufacture properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and, that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case.

16. The word manufacture used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may

be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases. Vol. 26, from an American judgment. The passage runs thus :

" Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation.
But something more is necessary and there must be transformation a new land, different article must emerge having a distinctive name, character or use."

17. The expression manufacture has in ordinary acceptation a wide connotation. It means making of articles, or material commercially different from the basic components, by physical labour or mechanical process. However, it also needs to be considered that when the word manufacture is appearing in the company of word production which has a wider connotation than the word manufacture, the word production or produce when used in juxtaposition with the word manufacture takes in bringing into existence new goods by a process which may or may not amount to manufacture. The associated words are indicative of the mind of legislature. Where a word is doubtful or ambiguous in nature the meaning has to be ascertained by considering the company in which it is found and the meaning of the word associated with it. The words manufacture and production have received extensive judicial attention both under the Act as well as the Central Excises Act and the various sales-tax laws. The word production has a wider connotation than the word manufacture. In order to appreciate and understand the scope and meaning of the said words, it is necessary to turn to the various

judgments dealing with the said subject and law laid down by the various High Courts including this court and the views expressed by the Apex Court while dealing with such contentions.

The Authorities relied upon by the parties

18. The Apex Court in ***CIT v. N.C. Budharaja & Co.*** (supra) observed :

"The word production has a wider connotation than the word 'manufacture. While every manufacture can be characterised as production, every production need not amount to manufacture . . . ."
It was further observed :

"..... The word production or produce, when used in juxtaposition with the word manufacture, takes in bringing into existence new goods by a process which may or may not amount to manufacture . . . . ."

Then it was observed :

"The expressions manufacture and produce are normally associated with movables articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam . . . . . ."

The Supreme Court also expressed the view that the expressions used in the relevant clause of section 32A must be understood in its normal connotation and according to commercial usage. Viewed from that standpoint and the legislative history of the provisions, their Lordships held that construction of a dam, bridge and the like cannot be understood as a production of article or thing.

> In Websters New International Dictionary, the word produce is defined as "something which is brought forth or yielded either naturally or as a result of effort and work", In Shorter Oxford English Dictionary, the following meaning is given : "to bring forward, bring forth or out : to bring into being or existence".
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> The meaning given in Blacks Law Dictionary to the expression produce is "to bring forward : to show or exhibit : to bring into view or notice : to bring to the surface".
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> 19. Applying the principles spelt out by the Apex Court in the aforementioned decision and the ordinary meaning of the word produce as disclosed by the dictionary and by its ordinary connotation, we are of the opinion that when the word manufacture is appearing in the company of the word production, which has wider connotation than the word manufacture, then in that event, the word manufacture will have to be interpreted in wider sense and will have to be understood at par with the meaning assigned to the word production and if such approach as contemplated by legislature is adopted then in that event it is not difficult to reach to the conclusion that assessee are the industrial undertakings, engaged in manufacture and production of articles and things.

22. In the case of ***Emirates Commercial Bank Ltd.*** (supra) where the issue was as to whether the Tribunal was right in allowing deduction under Section 32A in respect of computers installed in premises of assessee bank, the revenue came forward with the contention that the assessee was in banking business which was

not an industrial undertaking as it was not manufacturing any article or thing. Computers are like calculating machines helping in the proper functioning of the office and, therefore, they were in the nature of office appliances and that they did not constitute plant or machinery under Section 32A(2)(b)(iii). While dismissing the appeal, the Court held as follows:

> "Today, we have computerised accounting in the banks. In the case of computers, which existed during the relevant assessment year and even today, the operation of the computers in principle remains the same. That, commercial data is fed into the computers as inputs as per the requirement of various customers and the data is processed to get necessary information, computation and statements as outputs. These computers cannot be compared to calculators. Today in matters of investments and security transactions, banks have a front office and back office. Today, under customer services, the banks render several services including providing information to customers on the basis of which the customers would make investments. All this is based on the print outs which constitute information, computations and statements. In the circumstances, we are of the view that all the three conditions of section 32A(2)(b)(iii) are satisfied. Our view is supported by the judgment of the Madras High Court in the case of ***CIT v. Comp-Help Services (P.) Ltd.*** [2001] 246 ITR 722 as also by the judgment of the Kerala High Court in the case of ***CIT v. Computerised Accounting and Management Service Pvt. Ltd.*** [1999] 235 ITR 502. We do not find any merit in the argument of the Department that these two judgments do not

> apply because, in those cases, the assessee was in the business of data processing. The nature of the services rendered by the bank to its customers does involve the work of data processing. It is on the basis of this data processing that the balance-sheets are prepared. It is on the basis of this data processing done by the computers that the management information reports come out."

23. In ***CIT Vs. Professional Information Systems and Management*** (supra) the assessee company was engaged in the business of providing computer services to various concerns and received income by way of service charges for such activity. The issue, which aroused for the judicial determination, was as to whether the assessee was entitled to claim investment allowance on computers under Section 32A of the Act. It was contended by the revenue that the activity of the assessee of providing computer services could not be treated as manufacturing activity. It was argued that computers are appliances mainly used for office purposes and could therefore, be classified only as an office appliance. However, the Gujarat High Court dismissed the appeal while observing as under:

> "The analysis of the entire case law makes it clear that the test for determination as to whether machinery/apparatus can be termed as a plant or not would primarily depend upon the function to which the said machinery/apparatus is put, regardless of location where the machinery/apparatus is situated. This is, over and

above the test of the end product being an entirely different commercial commodity vis-a-vis the input. Therefore, in case of computer system or data processing system, the inputs which are fed into are entirely different, in a different form with different indicators. As against that, the end product, viz. balance sheets, various accounts, statements, analysis etc., which emerge by way of print outs are distinct and different from the inputs, in as much as what comes out is having different connotation and use. Thus, the activity of data processing through the use of computers is one which would amount to business of manufacture or production of articles or things and the unit which undertakes such computer services for other concerns would be an industrial undertaking."

24. This court, in the case titled ***M/S Metalite Industries Vs. Commissioner of Sales Tax*** [176 (2011) DLT 792] had an occasion to deal with the meaning to be attached to the term 'manufacture'. The relevant portion can be quoted as under:

> 23. In view of the law as laid down in judicial pronouncements noted above, one of the tests would be as to whether the article produced is regarded in trade, by those who deal in it as distinct in identity from the commodity involved in its manufacture. Though the said article might have undergone a degree of processing, if it retains its original identity, then it would not be within the meaning of 'manufactured'.
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> 24. The expression 'Manufacture' implies a change, but every change is not a manufacture and yet every change in an article is the result of

> treatment, labour and manipulation. But something more is necessary. There must be transformation; a new and different article must emerge, having a distinctive name, character or use. It would depend upon the facts and circumstances of each case ……”.

25. In a recent case titled ***CIT Vs. Oracle Software India Ltd.*** the Apex Court held that the duplication of master media, as imported by Indian subsidiary from the parent company in USA, on CDs for the purpose of commercial selling of the software in India amounts to “manufacturing” for the purpose of section 80-IA of the IT Act, 1961 in the light of duplication process impugned in the instant case. In the same judgment, the Apex Court observed:

> “The term "manufacture" implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needs to be seen in the context of the above process. If an operation/ process renders a commodity or article fit for use for which it is otherwise not fit, the operation/ process falls within the meaning of the word "manufacture". Applying the above test to the facts of the present case, we are of the view that, in the present case, the assessee has undertaken an operation which renders a blank CD fit for use for which it was otherwise not fit. The blank CD is an input. By the duplicating process undertaken by the assessee, the recordable media which is unfit for any specific use gets converted into the programme which is embedded in the Master

> Media and, thus, blank CD gets converted into recorded CD by the afore-stated intricate process. The duplicating process changes the basic character of a blank CD, dedicating it to a specific use. Without such processing, blank CDs would be unfit for their intended purpose. Therefore, processing of blank CDs, dedicating them to a specific use, constitutes a manufacture in terms of Section 80IA(12)(b) read with Section33B of the Income Tax Act."

The Supreme Court further observed as under:

> "The Department needs to take into account the ground realities of the business and sometimes over-simplified tests create confusion, particularly, in modern times when technology grows each day. To say, that contents of the original and the copy are the same and, therefore, there is manufacture would not be a correct proposition. What one needs to examine in each case is the process undertaken by the assessee. Our judgment is confined strictly to the process impugned in the present case. It is for this reason that the American Courts in such cases have evolved a new test to determine as to what constitutes manufacture. They have laid down the test which states that if a process renders a commodity or article fit for use which otherwise is not fit, the operation falls within the letter and spirit of manufacture. See ***United States v. International Paint Co.*** reported in 35 C.C.P.A. 87 C.A.D. 76"

26. It is clear from the aforesaid judicial authorities that in order to find out whether any particular business activity amounts to "manufacturing" or "production" for the purpose of various tax

incentives under IT Act, each case is required to be examined in the light of facts and circumstances of that very case. The most important aspect of this exercise should be the analysis of the process involved in the impugned activity and an enquiry into the nature of transformation that the product has undergone to find out whether it is *distinct in identity from the raw commodity involved in its manufacture.*

27. In the instant case, production of log by way of wireline logging is the concerned activity. We are given to understand by the learned counsel for the assessee that wireline logging assists the mineral oil concerns primarily to ascertain as to whether there is any gas or oil in the well, and if there is such presence, then its availability at what depth and the quantity of such reserves, and whether such gas or oil can be extracted. This is usually done through electrical, acoustic radio-active and electromagnetic analysis of the properties of rocks. The Assessee has stated that it has carried out wireline logging, perforation and related operation by engaging highly experienced engineers and log analysts, using high-tech equipments and computers. The logging tools are sensitive sensors with electromechanical systems which can work in extreme conditions of pressure and temperature as found in down hole below the earth surface.

There, inside the hole, these equipments perform quite sophisticated measurements. The prime target is the measurement of various geophysical properties of the subsurface rock formations. Of particular interest are porosity, permeability, and fluid content. Porosity is the proportion of fluid-filled space found within the rock. It is this space that contains the oil and gas. Permeability is the ability of fluids to flow through the rock. The higher the porosity, the higher the possible oil and gas content of a rock reservoir. The higher the permeability, the easier for the oil and gas to flow toward the wellbore. Logging tools provide measurements that allow for the mathematical interpretation of these quantities.

28. We are explained by the learned counsel that beyond just the porosity and permeability, various logging measurements allow the interpretation of what kinds of fluids are in the pores—oil, gas, brine. In addition, the logging measurements are used to determine mechanical properties of the formations. These mechanical properties determine what kind of enhanced recovery methods may be used (tertiary recovery) and what damage to the formation (such as erosion) is to be expected during oil and gas production. The data collected by these tools is transmitted through an electro mechanical cable to the earth

surface where it is processed by a sophisticated "acquisition software" which acquires and processes the data from the logging tools. After processing the data the computer gives an output called 'logs' which are said to be valuable processed data/ evaluative information/ interpretation imprinted on special film/ papers etc. and recorded on digital tapes.

29. The learned counsel for assessee further submitted that in respect of each of its contract the assessee sets up a full-fledged base at a centralized location and mobilizes/ installs equipments and deputes personnel at each such base. Each such base under each contract is claimed as a separate industrial undertaking. The facilities provided by the assessee for each such base comprise establishment of laboratory workshop, tools calibration facilities, establishment of computer centre, accounts administration/ operation office, godown, stores, communication and transport facilities, special protective storage for radio-active material and residence for personnel.

30. After referring to various activities undertaken at a specific unit, Mr. Vohra, learned counsel for the assessee pleaded that the logs generated by it are "an article or a thing" and the process of generating the same amounts to manufacturing/ production. To counter the submissions of the assessee, Ms. Bansal, learned

senior counsel for the revenue has submitted that geo-physical and petro-chemical properties of the rocks is like information taped into rocks and what assessee is doing is just retrieving the same and printing it on the paper or on other formats. Ms. Bansal, however did not controvert all that was submitted and explained by Mr. Vohra as noted by us in the preceding paragraphs (27, 28 & 29).

31. Having analyzed the submissions of learned counsel of both the parties and the material available for our perusal and the cited case law, we find force in the submissions of Mr. Vohra, learned counsel for the assessee. No doubt, the raw material i.e. the primary input in the impugned activity is the "information" but can we equate this "information" with something which is being copied from there in toto. Whether the characteristics regarding which the information is being sent back to computers on surface from logging tools working inside the down hole can be compared to a characteristic which is available and readable without conducting highly technical scientific tests and calculations down inside the borehole. Even after the geo-physical and petro-chemical properties of the rocks have been measured, further scientific processing is required to be done by dedicated softwares on the computers. It is only after the above

said process, the readable and usable data in the form of logs is provided to technical experts to determine the potentiality and other technical and commercial characteristics of the oil well. Can we say, when a latent physical property of the rocks, which was otherwise unreadable and thus unusable, has been changed by way of sophisticated scientific tests and calculations into scientific data which subsequently has been further changed into logs printed on the papers or recorded on the magnetic tapes, that the character and identity of end product and final product is not distinct. We are unable to uphold such a proposition. It is a clear case where the legal proposition that *"If an operation/ process renders a commodity or article fit for use for which it is otherwise not fit, the operation/ process falls within the meaning of the word "manufacture"" applies.* At this juncture, we reemphasize on the observations made by His Lordship S.H. Kapadia, J. (as His Lordship was then) in ***CIT Vs. Oracle Software India Ltd.*** (Supra) that the Department needs to take into account the ground realities of the business and sometimes over-simplified tests create confusion, particularly, in modern times when technology grows each day.

32. Even from another perspective, which forms the second limb of the assessee's argument, the case tilts in the favour of assessee.

Mr. Vohra has tried to draw an analogy between the production of logs by using wireline logging equipments on the one hand and the production of X-Ray and ultrasound report sheets using X-Ray and Ultrasound machines on the other hand which have been held to be eligible for investment allowance under section 32A in various judicial pronouncements. Aforesaid second limb of the argument of Mr. Vohra is of vital importance because the AO itself, while framing the assessment order dated 23.03.1995 for the assessment year 1992-93 had relied upon the same analogy to come to sharply opposite conclusions. The same can be reproduced as under:

> "Can we say X-Ray machine is manufacturing X-Ray? Obviously no. Because it is only taking the information of the human body and by radiation having a graph on an X-Ray. But, it is not manufacturing X-Ray."

33. Various High courts of India have held that X-Ray machine is qualified for investment allowance under section 32A. In the case of ***Commissioner of Income-tax Vs. Dr. S. Surender Reddy*** [243 ITR 110 (AP)] the Andhra Pradesh High Court has categorically observed as under:

> "9. Next comes the equipment used for purposes of X-ray. By putting the X-ray film in to the X-ray machine a different article is produced. It is a different article from the film which is produced from the X-ray machine and, therefore, it is a thing

> within the meaning of Section 32A(2)(b)(ii). Therefore, the Tribunal is right in its view that when X-ray films are produced the assessee produces a thing and, therefore, he is entitled for investment allowance. As regards the equipment used for conducting the pathological tests the assessee is not qualified to claim investment allowance under Section 32A of the Act. The assessee is also entitled for investment allowance on stabilizer, electric fans, scanner and air-conditioner used to keep the analytical systems, as they are necessary for purposes of production of an article or a thing."

34. Similar view has been expressed by the Gujarat High Court in ***CIT Vs. Down Town Hospital (P) Ltd.*** [267 ITR 439 (guj)]; Karnataka High Court in ***CIT Vs. Upasana Hospital*** [225 ITR 845 (kar)]. The issue, which we are concerned with, is a fiscal issue which is concerned with a central statute. It is desirable that in such a matter there should be uniformity of the judicial opinion. Even on merits, the analogy has some substance. We, therefore, in the light of aforestated, decide this issue in the favour of the assessee and against the revenue.

35. The second legal issue, which is posed before us for adjudication relates to the question as to whether the nature of operations and actual use of the equipments of the assessee company makes it a 'mineral oil concern' so as to put the company in a position where it can claim benefit of 100% depreciation on the

plant and machinery as available to 'mineral oil concerns' as provided under Rule 5, appendix I, Part 1, III (ix) of the Income Tax Rules, 1962.

36. In the instant case, since the assessment year 1989-90, the assessee has adopted a consistent practice of claiming 100% depreciation on the equipments used by it below the earth surface on the ground that these equipments are used below the ground as open-hole equipments in mineral oil concern and the same is covered under the aforesaid provision. This claim had been denied by the AO vide its order dated 23.11.1990 on the ground that the assessee company is not itself producing any oil nor is engaged in the activity of oil drilling. It is, at best, assisting oil companies in oil exploration work and this activity of assistance in exploration does not make the assessee a mineral oil concern. Therefore AO was categorical in its finding that 100% depreciation under aforesaid provision is available to the mineral oil concerns only, and the assessee not being a mineral oil concern, cannot be given benefit of the aforesaid statutory provision. Similar claim was made by the assessee for the assessment year 1990-91. However, this time again the AO was consistent in denying the benefit to the assessee.

37. The CIT (A), while hearing the appeal preferred by the assessee for both the assessment years 1989-90 & 1990-91, reversed the order of the AO vide its order dated 25.05.1992 on the ground that the depreciation is admissible to the owner of the machinery and the rate of depreciation would go by the nature of its employment in a mineral oil concern. Thus, the CIT (A) came to the conclusion that for allowance of depreciation at the rate of 100% for the use of machinery in mineral oil concern it is not necessary that the owner should be a mineral oil concern. If the machinery is used in the mineral oil concern below the ground, the 100% rate of depreciation is admissible thereon to the owner of the machinery whether it is a mineral oil concern or not.

38. Feeling aggrieved by the aforesaid view taken by the CIT (A) the revenue filed an appeal before the ITAT. The ITAT vide its order dated 10.10.1998 agreed in principle with the position adopted by the assessee in this regard however as a matter of prudence the ITAT passed a conditional order thereby directing the AO to re-consider the claim made by the assessee after verifying as to whether the nature and operation of the plant and machinery in question is similar to those employed by the oil concerns like Oil India Ltd. (in short OIL) during their usual course of exploration

operations. The relevant portion of the aforesaid order can be extracted as under:

> "42. There appears to be good reason for the Parliament to classify depreciation table either on asset wise or on concern basis as per the extract given by the CIT(A) at para 18 of his order. In the case of mineral oil concerns, the plant used in field operations (above ground) distribution-returnable package and the plant used in field operations below ground are allowed 100 per cent depreciation. This appears to be due to the fact that the plants used in these operations remained permanently attached either over ground or below ground and there was no scope for removing the same. However, in the case of the assessee, equipments used in the business appear to be mobile and they are not stuck to the ground (either over or under ground). They are moved from place to place. It is not clear how long these equipments are in operation in a particular well. If the normal wear and tear is to the extent of 100 per cent, there is no reason for the assessee to indicate that the normal depreciation is 10 per cent as mentioned in the agreement. It is, however, not possible for us to ascertain the nature of operation and the actual use of the plants and equipments in the present case. It will, therefore, be fair and reasonable to find out these facts and determine whether these plants and equipments can be treated as in the nature of plants used in the mineral concerns. If they are of the same nature, there is no reason not to allow the depreciation as in the case of mineral concerns as the assessee is doing the same operations. If, however, the nature of the operation is basically distinguishable and the plants and equipments are used in a different manner and under different

> circumstances, then the normal depreciation has to be allowed. The AO is directed to re-examine this aspect and decide the claim in accordance with law, after giving full opportunity to the assessee to substantiate the claim. The order of the CIT (A) on this point is accordingly set aside."

39. Thus, the ball was again in the court of AO. Meanwhile, not only the assessee but the AO himself, contacted the OIL to confirm as to whether the wire logging & perforation equipments/tools used by the assessee are similar to those equipments owned and used by the state owned oil giant. The OIL not only confirmed to the similarity of the high-tech equipments/tools but it also clarified that these equipments are meant only for use in underground oil field operations. The relevant portion of the letter dated 13th November 1998 as issued by the OIL to the assessee in this regard can be reproduced as under:

> "M/S HLS India Limited
> 6, Local shopping Centre
> Madangir,
> New Delhi – 110 062
>
> Sir,
>
> We refer to your letter dated 6.11.1998 requesting us to clarify the points regarding depreciation on wireline logging & perforation equipments in the Income-tax assessments.
>
> We confirm that the wireline logging & perforation equipments/tools which are used by you for performing the

wireline logging & perforation operations in our oil fields under the contract, to cope up with our additional workload, are similar to those equipments/ tools owned by us and used for doing the similar operations inhouse.

We also confirm that as such wireline logging & perforation equipments/tools are meant only for use in underground oil field operations, we are entitled to depreciation @ 100% as per provisions of Income –tax Rules.
Trust the above clarifies the position.

Yours faithfully,
OIL INDIA LIMITED"

40. In a similar letter dated 11th January 2000 issued to the AO, in pursuance to the inquiries made by the revenue, the OIL informed that theses equipments, known as logging tools, are provided, maintained and operated by the assessee in their field operation below the ground and these equipments operate inside the well in hostile environment of extreme pressure and temperature. They further informed that these services are needed during exploration stage and also throughout the productive life of a reservoir. In the same letter OIL reaffirmed that the operations and activities carried out by the assessee by using logging equipments are similar to the nature of activities carried out in use for which similar equipments and tools are used. It was further added that the replacement cost of these equipments is normally worked out after considering a depreciation rate of 3% per month with a maximum depreciation

limited to 50%. However, the AO was of the opinion that the lower hole used by the assessee for the wireline logging work are mobile and capable of being shifted from one well to another. These equipments are put down the hole only temporarily for the purpose of collection of data regarding the exploration of mineral oil. In the case mineral oil concerns, the equipments plant and machinery are required to be permanently affixed down the hole for monitoring their production. However, this is not the case with the assessee company which is able to shift its tools from one site to another site as operational area of the assessee ranges from Assam to Arunachal Pradesh. Therefore the AO disallowed depreciation claim made by the assessee at 100% and consequently restricted the relief at 20%.

41. Aforesaid approach of the AO came up before the CIT(A) for consideration while the proceedings in respect of the assessee's own case for the assessment year 1997-98 were on before it. The CIT (A) vide its order dated 24.10.2000 held that the AO could not disregard the certificate as well as the written reply issued by OIL, which is the best authority on the point. Accordingly, the CIT(A) allowed the claim of depreciation at 100% under Item III(B) (ix)(b) in Appendix-I to the Income Tax

Rules, 1962. The relevant portion from the order of CIT (A) can be reproduced as under:

> "10. Having referred the matter to M/S Oil India Ltd. for determining whether the nature of the operation and nature of machinery deployed by the appellant and the public sector concern are similar, it was not correct on the part of the AO to reject categorically the opinion given by Oil India on the ground that they are partly correct. The only reasons for discrediting this opinion is that in the case of ONGC the equipments are permanently installed in the oil well whereas in the case of the appellant the equipments are mobile and are shifted from one well to another. The AO has given no reasons or documents to support this distinction bought by him. Even if the facts stated by the AO regarding permanent establishment of the equipments in operations by ONGC and OIL are correct, these would not constitute basically distinguishable operations nor would it amount to user of plant and equipment in a different manner and under different circumstances as compared to OIL/ONGC. In view of the letter of OIL addressed to the AO and the certificate of the OIL submitted by the appellant both of which confirms that the plant and equipment used by the assessee are similar and engaged in the same operation as the mineral oil concerns there is no reason to deny the claim of 100% depreciation."

42. Feeling aggrieved by the order of the CIT(A), the revenue preferred further appeal before the ITAT. In order to convince the ITAT, the revenue forwarded a two fold argument. First limb of this argument was that the business of the assessee company is

of leasing certain high-tech plant and machinery for electro logging and perforation services for on-shore operation and therefore it cannot be allowed depreciation at 100% under Appendix-I of Income Tax Rules, 1962, which is allowable to mineral oil concerns only. The second limb of the argument as adopted by the revenue was that the depreciation at 100% was allowable to "concerns" only and not on the plant and machinery used in the business. If the parliamentary intention has been to give benefit to other concerns then the classification would have been different i.e. on the basis of plant machinery and equipments as found in other categories. However, both the arguments could not find any support in the judicial wisdom of ITAT which turned down the abovementioned pleas in the following manner vide its order dated 10.01.2002.

> "On careful consideration of the rival submissions in the light of the material on record, we are of the view that there is no infirmity in the order of the learned CIT (Appeals). There is no doubt about the fact that the assessee is engaged in carrying out full range of open-hole , logging, perforation and other well completion activities as well as formation, evaluation and data processing services etc. for M/s Oil India Ltd. and ONGC which are mineral concerns. The first issue is in regard to the status of the assessee as a leasing company which leased out high-tech plant, machinery and equipment for performing the contract work on behalf of the mineral concerns. However, this

issue is no more resintegra in view of the decision of the Supreme Court in the case of ***CIT Vs. Shaan Finance Pvt. Ltd.*** 231 ITR 308 wherein it was held that leasing and finance company is entitled to investment allowance u/s 32A in respect of hiring of machinery for manufacture by third party. On the same analogy, the plant and machinery and equipments used by the assessee for carrying out the contract with Oil India Ltd. and ONGC cannot be denied depreciation on the reasoning that it was carrying out the business of other concerns and not its own business.

8. With regard to the question regarding grant of higher deprecation as concerns and not on the plant and machinery etc. used in the business, the argument of the learned D.R. cannot be accepted. Depreciation is the measure of the effective life of an asset owing to use or obsolete during the given period. The object of providing for deprecation is to spread the expenditure incurred on the asset over its effective life time and the amount written off during an accounting period is intended to represent the proportion of such expenditure which has expired during the period. Therefore, the mineral oil concerns also will not be entitled unless the plant is used either for field operation above ground or below ground However, if these plants, machineries and equipments are used in the business then plant, machinery and equipments so used will have to be allowed depreciation on functional basis. There is, therefore, no reason to deny the higher depreciation to the assessee as the plant, machinery and equipments are used for the same activities as in the nature of ONGC and Oil India Ltd.

9. With regard to the claim of the learned D.R. that the higher depreciation is to be given only to mineral oil concerns, it is seen that this point is

> already decided by the Hon'ble Delhi High Court (supra) wherein it was held that the expression "mineral oil concerns under Item M(2) of Para (iii) of Pt. I of Appendix-I to the Rules was intended to cover not only concerns which produce, refine or manufacture mineral oils but also to concerns which only deal with or distributed them. The assessee is, therefore, entitled to higher depreciation on the same basis as mineral oil concerns. There is therefore, no infirmity in the order of the learned CIT (A) on this point. It is accordingly upheld."

43. Now the question before us in this regard is as to whether the assessee can be termed as a "mineral oil concern" so as to put it in a position from where it can be entitled to claim depreciation @ 100% under the Item III (3) (ix) (b) in Appendix-I to the Income Tax Rules, 1962; and further, even if the assessee is not a mineral oil concern, can it be given benefit of the aforesaid provision on the basis of nature of operation of its high-tech wireline logging & perforation equipments.

44. At this point, it would be interesting to note that while the appeal against the order of the ITAT dated 10.01.2002, whereby it has upheld the action of the CIT (A) to reverse the fresh assessment order passed by the AO in pursuance of the direction of the ITAT dated 10.10.1998 to do so is filed in this court in the year 2002 [listed before us as ITA 208/2002], however, the appeal against the original order of the ITAT dated 10.10.1998 whereby it had

reverted the matter back to the table of the AO was filed by the revenue in the year 2005 only [listed before us as ITA 194/2005]. It is not hard to understand that filing of the appeal, though at a delayed stage of the case, against the original order of the ITAT is an act of prudence on the part of the Department. The reason being is that had not there been this appeal against the order dated 10.10.98 as passed by the ITAT, it would have been taken by assessee as acceptance of the approach, as adopted by the ITAT, on the part of the revenue that if the public Oil giants are able to give a technical certificate to the assessee regarding the similarity of the equipments and the nature of operations then the matter would become a subject of technical interpretation of the real world operations of the equipments in question rather a question which is to be determined by way of giving judicial interpretation to the statutory provisions and in case if the certification thing comes in favour of the assessee then the entire genesis of the arguments as build by the revenue in order to push forward its case, would start crumbling on its feet.

45. This takes us to the order of the ITAT dated 10.10.98 to revert the matter back to the table of the AO to re-examine the matter after verification as required under the said order. The arguments, which Ms. Bansal, the learned senior counsel for

revenue has advanced to destroy the case of the assessee have been, more or less, similar through-out the prolong history of the instant dispute. These arguments have been evolving and revolving around the department's position that the depreciation under Item-III(3), (IX) (a) and (b), in the schedule of rates of depreciation in Appendix I to the IT Rules, 1962 is allowable to the mineral oil concerns only as the words 'plant used in field operation (below ground)' is required to qualify the term "mineral oil concerns" as found in the aforesaid provision and therefore the assessee, having not being engaged in drilling or oil production, cannot be given a status of a mineral oil concern. The learned senior counsel Ms. Bansal has vehemently contended before us that the business of the assessee is that of leasing and the equipments so leased by the assessee, only supplies the data to OIL and ONGC which are mineral oil concern. It is also submitted by her that the nature of the assessee's equipments is different from those used by state run mineral oil concerns as the assessee's equipments are mobile in nature while the equipments used by ONGC and OIL are permanently affixed down the hole. Hence, it is not entitled to 100 per cent depreciation. As opposed to this Mr. Vohra, though admitting that assessee is not a mineral oil concern, has submitted that even if it is not producing any oil nor has been engaged in the

activity of oil drilling, even then it is lawfully entitled to depreciation allowance in respect of the plant and equipment owned and used by it in carrying out wire-line logging operations below the ground in the oil wells of mineral oil concerns at the rate of 100 per cent of the actual cost/written down value thereof as prescribed in item III(3)(ix)(b) of the table of rates of depreciation in Appendix-I to the IT Rules, 1962.

46. After hearing learned counsels for the parties at length on this issue, we are of the opinion that the Revenue's stand on this issue lacks substance. Sec. 32(1) of the Act provides for a deduction in the computation of business income, on account of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession. This provision reads as under:

Depreciation.

32. (1)[In respect of depreciation of—

(i) buildings, machinery , plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned , wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—]

[(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power,

such percentage on the actual cost thereof to the assessee as may be prescribed ;]

(ii) [in the case of any block of assets, such percentage on the written down value thereof **as may be prescribed:**]

47. Rule 5 of the IT Rules, 1962 provides that the depreciation allowable under s. 32(1)(ii) of the Act in respect of any block of assets shall be calculated at the percentages specified in the II column of the table of rates of depreciation in Appendix I to the Rules, on the written down value of such block of assets as are used for the purpose of the business or profession of the assessee at any time during the previous year. The concerned entry in the Appendix I is Part 1, III (ix). This entry reads as under:

> *"(ix) Mineral oil concerns:*
>
> *a. Plant used in field operations (above ground) distribution returnable packages.*
>
> b. *Plant used in field operations (below ground), but not including kerbside pumps including under-ground tanks and fittings used in field operations (distribution) by mineral oil concerns."*

Column 2 corresponding to the above entry provides depreciation @ 100% for the items described in the said entry.

48. The table of rates of depreciation in Appendix I to the Rules prescribes a single rate of depreciation for the assets falling

within a particular block of assets. It does not prescribe differential rates of depreciation with reference to the ownership of the asset It would be pertinent to note here that the special rate of depreciation for the main item "III- Machinery and Plant" have been prescribed with reference to the nature of the particular asset and the character of its user including the types of business and the environmental conditions in which it is used. When the OIL has certified in this regard, that *the wireline logging & perforation equipments/tools which are used by the assessee are similar to those equipments/ tools owned and used by mineral oil concerns* and when there is no shadow is casted over the fact that the similar assets would qualify for a depreciation @ 100% under the said entry if these are owned by a mineral oil concern like OIL, we do not find any substance in the department's approach to deny the same to the assessee on the ground that the owner of the similar assets, we are concerned with, will not be so entitled. *Mentioning of the fact, in the letter of OIL dated 13 Nov 1998 that these equipments/tools are meant only for use in underground oil field operations for wireline logging & perforation leaves no iota of doubt that the nature of assessee's equipments and its user is similar to those equipments which are owned by the mineral oil concerns and eligible for depreciation under the aforesaid entry. The artificial*

distinction regarding the mobile nature of the assessee's equipments, which has been created and relied upon by the department, is of no use because even if such a distinction exists it would neither alter the nature of the assessee's equipments nor the character of its user. We, therefore, are of the considered opinion that the assessee's wireline logging and perforation equipments are eligible for a higher depreciation @ 100% under cl. (ii) of s. 32(1) of the Act, r/w item III(3)(ix)(b) of the schedule of rates of depreciation in Appendix I to the Income Tax Rules, 1962.

49. Having decided the issue in the aforesaid terms, we may take liberty to look into this issue from a different point of view. Depreciation allowance is a kind of tax benefit which is given to the business concerns for promotion of business activities in any particular field of business. In the instant case depreciation is allowable to mineral oil concerns @ 100% on the equipments used below the earth surface. If the same depreciation is not allowed to other business concerns on the ground that the owner of these equipments is not a mineral oil concern but it is just providing an assistance or leasing these equipments to a mineral oil concern then definitely this 'other concern' will charge more for these services and consequently the mineral oil concerns will

be commercially forced not to outsource wireline logging activities to other companies but to do it themselves. However, practically this is not a viable option because oil companies are facing immense pressure to increase the output to meet the energy needs of our growing economy and this has resulted in extra work load.

50. From the above discussion, both the legal issues, as formulated by us in para (7) above are found to be in favour of the assessee. Accordingly, all substantial question of law involved in the instant batch of appeals are decided in the favour of the assessee and against the revenue. Consequently, all the appeals are dismissed.

51. Instant batch of appeals is dismissed accordingly.

M.L.MEHTA
(JUDGE)

A.K. SIKRI
(JUDGE)

May 11, 2011
'Ashish'