

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 607 of 2025**

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 3
Versus
GUJARAT GAS LTD.

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Appearance:

MR. AADITYA BHATT, ADVOCATE FOR MS MAITHILI D MEHTA(3206) for
the Appellant(s) No. 1

MR B S SOPARKAR(6851) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 15/10/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1 Heard learned advocate Mr.Aaditya Bhatt
appearing for learned Senior Standing Counsel
Ms.Maithili Mehta for the appellant and learned
advocate Mr.B.S.Soparkar for the respondent on
caveat.

2 This tax appeal is filed under Sec.260A of the
Income Tax Act, 1961 (for short 'the Act') proposing
the following substantial questions of law by the
appellant - revenue arising out of the order dated

21.11.2024 passed by the Income Tax Appellate Tribunal, 'C' Bench, Ahmedabad (for short 'the Tribunal') in ITA No. 969/Ahd/2024 for the Assessment Year 2018-19:

“(I) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT erred in setting aside the order passed u/s 263 of the Act by the PCIT on the issue of additional depreciation u/s 32(1)(iia) of the IT Act of Rs.80,89,04,325/- and deduction u/s 35DD of the IT Act of Rs.5,39,64,837/- not appreciating that the assessment order passed by the AO was erroneous and prejudicial to the interest of revenue?”

(ii) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT erred in not appreciating that AO has not made any conscious attempts or verification and accepted the submission of assessee without application of mind.

(iii) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT erred in not appreciating that the then PCIT had dealt with the issues relating to “manufacturing” in details in order u/s. 263 and also relied on decision of DCIT Vs. Central U.P Gas Ltd [2019] 106 taxmann.com 371, wherein SLP on this issue is pending before Hon’ble Supreme Court and the matter has not reached to finality as yet. Hence, the jurisdictional CIT under 263 is not precluded till the issues are considered and decided in appeal as per decision of Hon’ble

Supreme Court in the case of CIT Vs. Shree Arbuda Mills Limited 231 ITR 150?”

2.1 The respondent - assessee filed Return of Income for the Assessment Year 2018-19 on 28.08.2018 declaring total income of Rs.3,69,07,13,240/-. The case of the assessee was selected for scrutiny assessment and the Assessment Order was passed under Sec.143(3) read with sec.144B of the Act on 19.04.2021 accepting the return income.

2.2 The Principal Commissioner of Income Tax (for short 'the PCIT'), on verification of the case record found that the assessee company had claimed additional depreciation on certain block of assets. The respondent assessee is engaged in the business of City gas distribution business including sale, purchase, supply, processing, distribution and and transportation of Natural Gas. In order to supply the gas, the respondent - assessee was carrying out

process of compression of natural gas. According to the PCIT, such process cannot be considered as manufacturing activity for the purpose of claim of additional depreciation. Moreover, the respondent - assessee claimed deduction under Sec.35DD of Rs.5,39,64,837/- and the PCIT, on perusal of the notes forming parts of accounts found that the assessee made provision for stamp duty which was categorized as contingent liability, and therefore, was of the opinion that the claim of the assessee to the extent of Rs.5 crores was not allowable.

2.3 The PCIT, therefore, issued notice under Sec.263 of the Act on the ground that the Assessment Order is erroneous and prejudicial to the interest of the Revenue.

2.4 After considering the submissions made by the respondent - assessee, the PCIT was of the view that

mere process of compression of natural gas cannot be considered to be manufacturing activity for the purpose of claim of additional depreciation which was allowed by the Assessing Officer and further was of the opinion that the deduction claimed under Sec.35DD of the Act cannot be allowed to the tune of Rs.5 crores as the assessee had made the provision for stamp duty categorizing as contingent liability.

2.5 The PCIT, therefore, passed the order under Sec.263 interpreting the definition of “manufacture” under Sec.2(29A) of the Act which provides for transformation into a new and distinct product to qualify to be a manufacture which was not found in the facts of the case.

2.6 Being aggrieved, the respondent – assessee preferred an appeal before the Tribunal regarding non granting of claim of additional depreciation

amounting to Rs.18.89 crores on plant and machinery and also disallowing the deduction under Sec.35DD of the Act.

2.7 The Tribunal, after considering the submissions of the assessee held as under:

“8. During the course of arguments, the Counsel for the assessee drew our attention to a table showing summary of orders in favour of the assessee for claim of deduction under Section 80-IA of the Act, which have accepted that the assessee company is an industrial undertaking and carrying out “manufacturing activities”, thereby granting deduction under Section 80-IA of the Act to the assessee company. The table giving the decision in favour of the assessee are reproduced below for ready reference:

Summary of order in favour of the assessee accepting that the assessee company is an industrial undertaking and carries out “Manufacturing Activity” thereby granting deduction under 801A of the Act				
Sr No.	F.Y	A.Y	Authority passing order	Appeal No.
1	1991-92	1992-93	ITAT	ITA No. 2672/Ahd/2002 ITA No. 1266/Ahd/1999
			High Court	Appeal No. 85/2009
2	1992-93	1993-94	ITAT	ITA No. 1895/Ahd/2002
3	1993-94	1994-95	ITAT	ITA No.

			High Court	2606/A/2002 Appeal No. 60/2009
4	1994-95	1995-96	ITAT	ITA No. 2607/A/2002
			High Court	Appeal No. 62/2009
5	1995-96	1996-97	ITAT	ITA No. 2608/A/2002
			High Court	Appeal No.64/2009
6	1996-97	1997-98	CIT(A)	CIT(A)-VIII/ 87/DC. Cir 4/2014-15 Now CIT(A) – 2/DC. Cir 4/2014-15
			ITAT	ITA No. 3628/Ahd/2015
7	1997-98	1998-99	ITAT	ITA No. 2211/Ahd/2004
8	1998-99	1999-00	ITAT	ITA No. 2212/Ahd/2004
			High Court	Appeal 06/2014
9	1999-00	2001-02	ITAT	ITA No. 3446/Ahd/2004
			High Court	Appeal No. 888/2010
10	2000-01	2001-02	ITAT	ITA No. 36/Ahd/2005
			High Court	Appeal No. 1059/2011

9. Further, we observe that the Gujarat High Court, in Tax Appeal No. 60 of 2009 in the case of CIT Vs. Gujarat Gas Company Ltd has made the following observations:

“6.1 Taking into account the observations made by the Tribunal while allowing the

claim of the assessee, that there is a process of altering gas for making it consumable for industrial or domestic purpose or making it more user friendly for the industrial undertaking. In that view of the matter, we are of the opinion that the Tribunal has rightly taken the view that the assessee carries out manufacturing activity. No interference is called for with the order of the Tribunal. Therefore, we answer the question in favour of the assessee and against the revenue."

10. Accordingly, in light of the above facts and the decision in which it has been held that the assessee company is manufacturing activity, we are of the considered view that the Ld. PCIT has erred in facts and in law in holding that the A.O erred in allowing assessee's claim for additional depreciation under Section 32(1)(iia) of the Act, thereby making the assessment order erroneous and prejudicial to the interest of the Revenue."

2.8 So far as the ground of non granting deduction under Sec.35DD of the Act of Rs.5 crore is concerned, the Tribunal held as under:

"13. On going through the facts of the instant case, we observe that the assessee has given the necessary proof of payment of a sum of Rs. 42.86 crores towards these Stamp Duty expenses in two installments on December 2016 and March 2019. Therefore, the fact that the assessee has made actual payment of Rs. 42.86 crores (which included the Rs. 25 crores provision) is not under

the dispute. Secondly, we observe that this identical issue came up for consideration in the case of the assessee for A.Y. 2017-18 as well, wherein with respect to similar issue, the assessment proceedings initiated under Section 147 of the Act to examine this issue were dropped in light of the submissions made by the assessee, with the following observations:

"Having gone through the reply and the contention of the assessee which were put forth by CA Shri Chintan Shah during the video conference, I am of the opinion that the assessee has not only provided for the expense, but also incurred the expenses to the tune of Rs 10.88 crores up to the year-end of FY 2016-17, therefore, rightfully, the claim of the assessee cannot be denied in respect of sec 35D of the IT Act. Further, in mercantile system of accounting once the expenses are provided/charged and committed, they no longer remain contingent, but they are said to have incurred for the purpose for which they were provided. In this case the assessee has actually paid the stamp duty, which it is claiming as deduction under section 35D. Therefore considering the facts and circumstances of the case, the income of the is determined at Rs. 14,191,04,230/-."

14. Accordingly, looking into the above facts and also taking into consideration that the assessee has given actual proof of payment of Stamp Duty charges and also in light of the assessment order dated 30 03 2022 for A.Y. 2017-18, wherein re-assessment proceedings, which were initiated to

examine this issue for dropped by the A. O after taking into consideration the assessee's written submissions on this, we are of the considered view that the A.O. has not erred in facts and in law in not making addition on this issue issue."

2.9 After recording the above reasons, the Tribunal held that the PCIT erred in fact and in law in holding that the Assessment Order is erroneous and prejudicial to the interest of revenue cannot be accepted and allowed the appeal filed by the respondent - assessee.

2.10 Learned advocate Mr.Aaditya Bhatt for the appellant - Revenue submitted that the Tribunal ought to have considered that the compression of gas could not have been treated as manufacture and reliance was placed on the analogy of the process of manufacture as held by the Hon'ble Apex Court in the case of ***Commissioner of Income tax Vs. Gem India Manufacturing Co.,*** reported in

MANU/SC/0855/2001 , wherein, it is held as under:

“6. There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached.”

2.11 It was further submitted that the Revenue had preferred an appeal against the order passed by this Court in Tax Appeal No. 60 of 2009 and other allied matters and Civil Appeal before the Hon'ble Apex Court being No. 9424 of 2018 which was withdrawn due to low tax effect.

3 On the other hand learned Advocate Mr. Bandish Soparkar submitted that both the issues are no more res integra in view of the order passed by this Court in Tax Appeal No. 60 of 2009 and other allied matters in the case of the respondent - assessee which is followed by the Tribunal, and therefore, no

substantial question of law would arise so far as the issue of disallowance of additional depreciation of Rs.18.89 crore for the year under consideration. It was further submitted that the Tribunal has also recorded a finding of fact for the issue of disallowance under Sec.35DD of the Act, as such issue was considered in the re-assessment proceedings by the Assessing Officer and the same was dropped later on.

4 Having heard the learned advocates appearing for the respective parties and considering the fact that the issue of additional depreciation is already considered by this Court in Tax Appeal No. 60 of 2009 and other allied matters, which is followed by the Tribunal. This Court, in the case of **The Commissioner of Income Tax-II vs. Gujarat Gas Company Ltd.**, in **Tax Appeal No. 60 of 2009** and other allied matters, has held as under:

"6. We have heard learned counsel for the parties. We have perused the order of the Tribunal and gone through the evidence on record. The Tribunal while allowing the claim of the assessee has observed as under.

"2.7(vii) After examining the issue from various angles now keeping in view all that discussion we return back to main issue whether the assessee engaged in producing any article or thing. The natural gas is a product of oil extraction activity. This occurs in natural form along with other fossils fuel. As such the gas in this natural is crude and cannot be used by industrial or domestic consumers. The gas is supplied by Gas Authority of India (GAIL) as it is extracted by ONGC from oil wells. At assessee, company's stage the process of making as consumable for industrial or domestic purpose takes place such process is a highly technical, controlled and regulated process as the gas is very inflammable and hazardous. For this purpose the plant is maintained as per American National Standard Institute and British Standard. The crude gas is as such distributable but the same cannot be put to industrial commercial use. This is evident from the fact that GAIL supplies crude gas without making it decontaminated odorized suitable for consumption. The assessee company is processing gas for receiving chemical and physical impurities such as water, dust particles and oil, odorizing and optimally pressuring through filtration and depressurizing that makes the raw gas an

unsaleable commodity which has distinct functional attributes. Thus the assessee company is engaged in producing the decontaminated odorized and optimally pressurized gas with the help of high precision instruments, in rigid atmospheric and pressure conditions which are of great importance in ensuring the final quality of the gas which has to confirm the quality standards. At every stage of process, there have to be rigid quality standards and even a very minute variations or defect could render the gas totally worthless. It, therefore, follows that the assessee company is an industrial undertaking engaged in producing the decontaminated, odorized and optimally pressurized gas satisfied the condition of producing article or thing for being entitled to deduction u/s. 80-1/80-IA".

6.1 Taking into account the observations made by the Tribunal while allowing the claim of the assessee, that there is a process of altering gas for making it consumable for industrial or domestic purpose or making it more user friendly for the industrial undertaking. In that view of the matter, we are of the opinion that the Tribunal has rightly taken the view that the assessee carries out manufacturing activity. No interference is called for with the order of the Tribunal. Therefore, we answer the question in favour of the assessee and against the revenue."

5 So far as the issue of disallowance under

Sec.35DD is concerned, the Tribunal recorded finding of fact that the Assessing Officer has considered the issue in the assessment proceedings, wherein, it was found that the respondent - assessee actually paid the stamp duty which was claimed as deduction under Sec.35DD of the Act.

6 In view of the above reasons, no question of law, much less any substantial question of law arises from the impugned order of the Tribunal. The appeal, therefore, being devoid of any merit is accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

BIMAL

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: BIMAL B CHAKRAVARTY(HC01089), PRIVATE SECRETARY, at High Court of Gujarat on 04/11/2025 18:20:45