INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
(Through Video Conferencing)

BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 4657/Del/2014
Asstt. Year 1997-98

GAIL (India) Ltd. Mr. L.R. Gupta ED(F&A), Gail (India) Limited, 16, Bhikaji Cama Place New Delhi – 110 066 PAN AAACG1209J	Vs.	DCIT LTU New Delhi.
(Appellant)		(Respondent)

ITA No. 5091/Del/2014
Asstt. Year 1997-98

DCIT (LTU) NBCC Plaza, Pushp Vihar. Sector –III New Delhi – 110 017	Vs.	Gail (India) Ltd. 16, Bhikaji Cama Place, New Delhi – 110 066 PAN AAACG1209J
(Appellant)		(Respondent)

Assessee by:	Shri Rohit Jain, Advocate Ms. Deepashree Rao, Shri Vibhu Gupta, CA
Department by :	Ms. Sunita Singh, CIT(DR)
Date of Hearing	23.11.2020
Date of pronouncement	26.11.2020

O R D E R

PER N.K. BILLAIYA, AM

ITA No. 4657/Del/ 2014 and ITA No. 5091 Del 2014 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A)-LTU, New Delhi dated 30.06.2014 pertaining to assessment year 1997-98. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. We will first address to the appeal of the assesee in ITA No. 4657/D/2014. The grievance of the assesee read as under :-

1. *That the Commissioner of Income-tax (Appeals) (CIT(A)) erred on facts and in law in holding that "Lean gas" is manufactured/ produced only at the two LPG Plants at Vaghodia (Gujarat) and Vijaipur (MP) for the purpose of allowing deduction under sections 801/ 801A of the Income-tax Act, 1961 ("the Act") and not at various customer terminals, as claimed by the appellant following the order of CIT (A)for the preceding assessment year.*

1.1 *That on facts and circumstances of the case and in law, the CIT(A) erred in holding that the activities undertaken by the appellant at its customer terminals did not constitute "manufacture or production of any article or thing", so as to be eligible for deduction under sections 801, 80IA and 80HH of the Act.*

1.2 *That on the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating that the various activities/ processes undertaken*

by the appellant, including removal of impurities, condensate and moisture and for regulating temperature and pressure at various customer terminals, as part of mandatory contractual obligations, in order to render lean gas in usable state and tradable condition, constituted "manufacture"/ "production" of processed "Lean Gas".

1.3 That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that the aforesaid activities undertaken by the appellant at customer terminals were merely for the enabling supply of lean gas at customer terminals , which could not be regarded as "manufacture or production of any article or thing".

1.4 That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that the AO had not allowed the deduction under section 80HH, 801 & 801A in the initial assessment year 1992-93.

2. *That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that no deduction under section 80HH of the Act was admissible in respect of the customer terminals situated in backward areas, on the ground that "no manufacturing is carried out at the customer terminals" thereby disallowing claim of the appellant.*

3. *That on facts and circumstances of the case and in law, the CIT(A) erred in holding that interest income of Rs. 14260.93 lakhs (except interest on customers outstanding and interest on loans and advances given to employees of LPG Plants Vijaipur and Vaghodia) and miscellaneous income of Rs.81.85 lakhs, was not eligible for deduction under sections 80HH, 801 and 80IA of the Act, on the ground that the said receipts were not "derived from" the eligible business of the appellant.*

4. *That on facts and circumstances of the case and in law, the CIT(A) erred in not directing the assessing officer to reduce the amounts capitalized and transferred to "expenditure during construction" from interest and miscellaneous income excluded from eligible profits for the purpose of computing deduction under sections 80HH, 801 and 80IA of the Act.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in deleting addition to the extent of Rs. 2,68,16,119/- only on account of reimbursement of expenses received from MGL instead of Rs. 3,01,17,428/- which was added to income of the appellant.*
6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in disallowing guarantee fee of Rs 13,07,71,000/- debited as prior period interest in the relevant assessment year on the ground that the said liability had not crystallized during the year under consideration.*

6.1 That the CIT(A) erred on facts and in law in holding that appellant was not bound by the directions of C& AG and that it was just a constitutional body whose advice was internal and subject to revision.

6.2 That the CIT(A) erred on facts and in law in not appreciating that the claim of the appellant should have been allowed in the relevant assessment year as the same has been offered to tax in assessment year 2007-08 and also accepted by the assessing officer.

3. Briefly stated the facts of the case are that the appellant is engaged in the business of production/processing transmission and distribution of various gases. The appellant has set up and operates gas pipeline running /located in north western India known as HBJ pipeline. The appellant acquires rich natural gas at Hazira which is transmitted to its 2 LPG plants located at Vaghodia (Gujarat) and Vijaipur (MP) and various customer terminals.

4. The appellant claimed deduction u/s 80-IA and 80HH on production of LPG and Lean Gas undertaken at LPG plants and

various customer terminals by treating the same as separate and independent units. The deduction claimed is as under :-

S.No.	Particulars	Amount
1.	Deduction under section 80HH	92,61,48,000
2.	Deduction under section 801	3,69,27,000
3.	Deduction under section 80IA	114,26,46,000
	Total	Rs. 210,57,21,000

5. The aforesaid claim of the assessee was denied by the AO and the matter travelled up to the Tribunal and in the first round of litigation the Tribunal following its orders passed for assessment year 1996-97, 1992,93 and 1993-94 set aside the matter to the file of the AO to decide afresh.

6. In the second round of proceedings, the AO once again denied the claim of deduction in respect of profits from production of lean gas/processed natural gas at various customer terminals. However in principle allowed the claim for deduction in respect of LPG plants. The first appellant authority relying upon the order of the CIT(A) for asstt. Year 1996-97 are allowed benefit

of deduction u/s 80IA and held that lean gas was manufactured/produced at the two LPG plants at Vijaipur and Vaghodia and not at customer terminals as claimed by the assessee. Aggrieved by this both the assessee and revenue are in appeal before us.

7. At the very outset the counsel for the assessee stated that the issue has been decided in favour of the assesee and against the revenue by the Tribunal in assessee's own case. In ITA No. 4454/Del/2013 and 4642/Del/ 2013 the DR strongly supported the findings of the AO.

8. We have carefully considered the order of the authorities below. We find force in the contention of the counsel. On identical set of facts the impugned issue has been decided by the coordinate bench in asstt. Year 1996-97 (supra). The relevant finding of the Tribunal read as under :-

"21. We have heard both the parties and perused all the relevant material available on record. The CIT(A) accepted that benefit of deduction under Section 801/ 801A of the Act is admissible on Lean gas manufactured/ produced, but held that such deduction is admissible at the stage of two LPG plants at Vijaipur and Vaghodia. The CIT(A) held that activities undertaken by the assessee at its customer terminals did not constitute "manufacture or production of any article or thing " so as to be eligible for deduction under Section 801/ 80IA of the Act. As a consequence of the aforesaid, the assessee has been denied deduction in respect of profits derived from supply of

processed natural gas at various customer terminals, which are not routed through LPG plant. Moreover, since deduction is admissible for specified years, as a consequence of the order of the CIT(A), deduction in respect of profits derived from processed Lean Gas shall be considered from the year of setting up of the LPG Plant and not the relevant customer terminal at which such processed Lean Gas is supplied to the customer. Extensive processing activities undertaken by the assessee at the customer terminals to make lean gas and natural gas marketable and fit for use, clearly constitute "manufacture ". **The contention of the assessee is *that the claim of deduction made by the assessee under section 80I/80IA/80HH are genuine as the similar claims have been allowed in the earlier years by the revenue. Deduction allowed in earlier years cannot be denied in subsequent years. Since deduction under section 80IA of the Act in respect to profit derived from eligible units has been allowed by Revenue till assessment year 1995-96, the same cannot be denied subsequently. The Ld. AR made reference to the decision of the CIT(A) in assessee's own case for the assessment year 1994-95. Therefore, the CIT(A) has not taken into account the revenue's stand in the earlier years and deviated from the same without any substantial reasons or evidence on record. Thus, the claim of deduction made by the assessee under section 801/801A/80HH are genuine in this year as well, Ground No. Ground No. 1 and 2 of the assessee's appeal are allowed and Ground No. 1 and 2 of revenue's appeal are dismissed."***

9. Respectfully following the findings of the coordinate bench (supra) we are of the considered view the appellant is eligible to the deductions/tax holding u/s 80HH/801 and 801A of the Act on lean gas at the stage of customer terminals. Ground No. 1 and 2 are accordingly allowed.

10. Facts relating to ground No. 3 and 4 are that the assessee has shown interest income of Rs. 14260.93 lacs which comprised of the following :-

(a) Interest on fixed deposits, bonds and inter-corporate deposits Rs. 13,233.37 lacs

(b) Interest on employees loans and advances Rs. 172.56 lacs

(c) Interest on customer outstanding Rs. 855 lacs

11. Out of the aforementioned income an amount of Rs. 215.87 lacs was reduced from income and transferred to IEDC account which was capitalised and the balance interest income of Rs. 14,045.06 lacs was credited to profit and loss account. The assessee has also received miscellaneous income of Rs. 81 lacs which was in the nature of dividend. The AO denied the claim of deduction u/s 801A/801/80HH on the aforementioned interest income. The first appellate authority allowed the claim of deduction in respect of following :-

(a) Loans and advances to others

(b) Loans and advances to employees

(c) Interest on customer outstanding

And other interest income were denied of any deduction u/s 801/801A/80HH.

12. Against this finding of the CIT(A) both the assessee and the revenue are in appeal before us.

13. At the very outset the Ld. Counsel for the assessee drew our attention to the order of the Tribunal in assessee's own case for asstt. Year 1996-97 and pointed out that on similar facts the Tribunal has allowed the claim of deduction in respect of interest on fixed deposits, bonds etc. Interest on employees, loans and advances, interest on customer outstanding and miscellaneous income. Ld. DR strongly supported the findings of the AO .

14. We have carefully considered the underlined facts in the issues. We find force in the contention of the Counsel. The issue on identical set of facts have been decided by the coordinate bench in ITA No. 4454 and 4642/Del/2013 for asstt. Year 1996-97. The relevant findings read as under :-

"19. We have heard both the parties and perused all the relevant material available on record. <u>As regards to Misc. Income, the assessee has produced all the relevant evidence as regards to how the scrap sale is derived from the.</u>

industrial undertaking. As regards to interest on fixed deposits, various decisions of the Hon 'ble High Court categorically held that the deduction in respect of interest on fixed deposits under Section 80IA is allowable. The revenue has not pointed out as to why the same should be denied to the assessee. The case laws given by the Revenue in fact reiterate the stand of the assessee. Hence, it is pertinent to remand back the matter to the file of the Assessing Officer and we direct the Assessing Officer to allow deduction in respect of interest on fixed deposits under Section 80IA of the Act. So far as interest on employees' loans and advances is concerned, the interest on loan provided to employees in our opinion is inextricably linked to the business of the assessee and constitutes business income eligible for deduction. As regards to interest on customer outstanding is profit derived from eligible undertakings and entitled for deduction under Section 80IA/80I, in department's appeal, the issue is covered in favour of the assessee by various decisions of High Court. As regards to miscellaneous income, the said income is inextricably linked to and have first degree nexus with the profits and gains of the eligible undertaking and the same were eligible for deduction. Therefore, Ground No. 3 in assessee's appeal is allowed and Ground No. 3 in revenue's appeal is dismissed."

15. As no distinguishing facts have been brought to our notice, respectfully following the findings of the coordinate bench we allow ground No. 3 and 4.

16. The underlying facts in respect of ground No. 5 are that on 2.4.1996 the appellant entered into the Asset Transfer Agreement with M/s. Mahanagar Gas Ltd.. The said agreement has the following salient features :-

1. Agreement was for transfer of business of CNG distribution network in the state of Maharashtra as capital contribution to the JV entity.

2. Assets of the aforesaid business were transferred to the JV entity aggregating to Rs. 18,13,13,311.

3. Appellant was issued 1,81,31,331 equity shares of Rs. 10 each by the JV entity.

Further the sale proceeds of depreciable assets were adjusted from WDV of relevant block of assets and depreciation was computed accordingly.

17. In addition to the shares the appellant also received reimbursements of certain costs aggregating to Rs. 2,68,16,119/- which was duly offered to tax in the computation of income.

18. In the first round of litigation the AO made his own calculation and made an addition of Rs. 3,01,17,428/- alleging

the same to be the payment received towards the reimbursement of expenses. The first appellate authority set aside the matter to the file of the AO for deciding afresh.

19. In the fresh assessment proceedings the AO made the same computation error and repeated the addition. On appeal before the CIT(A), the CIT(A) deleted the addition to the extent of Rs. 2,68,16,119/- observing that the said amount was already offered for tax and confirmed the balance addition of Rs. 33,01,309/-. Before us the Counsel for the assessee drew our attention to the computation made by the AO and pointed out that the AO has grossly erred in computing the figure of Rs. 91,23,657/- which pertains to material earmarked for Bombay Project which is part of total value of assets transferred amounting to Rs. 18,13,13,311. It is the say of the counsel that the computation of Rs. 3,01,17,428/- which was alleged by the AO as reimbursement of cost is factually incorrect. The counsel once again stated that the actual reimbursement of Rs. 2,68,16,119/- had already been offered and nothing further remained to be taxed. Per contra Ld. DR strongly supported the findings of the AO but could not say anything about the error in the calculation made by the AO.

20. We have given a thoughtful consideration to the order of the authorities below. The Asset Transfer Agreement which is at page 548 of the paper book and on particular page 553 the total value of assets to be transferred is mentioned which is Rs. 18,13,13,311/-. We further find that on this total value appellant was issued shares of Rs. 10/- each at 18131331. We have carefully considered the computation of additional reimbursement computed by the AO at Rs. 3,01,17,428/-. We find that the AO has simply proceeded by erroneous figures without applying his mind. The actual reimbursement of cost of Rs. 2,68,16,119/- has already been offered therefore in our considered opinion nothing further remained to be added more particularly on erroneous figures and computation. We accordingly direct the AO to delete the impugned addition. Ground No. 5 is accordingly allowed.

21. The underlying facts in ground No. 6 are that the Central Government has given guarantee on behalf of the assessee in lieu thereof instructed for levy of guarantee fee @ 1.2% per annum on the outstanding amount of loan. Since there was no mention regarding the payment of guarantee fee the appellant did not provide for any liability on this account and in fact made a representation to Ministry of Petroleum and Natural Gas for

waiver of the guarantee fee. However the CAGI in its report stated that there was short provision on account of guarantee fee. Accordingly the appellant made provision for guarantee fee payable aggregating to Rs. 13,07,71,000/- which was relatable to earlier years and debited the same to the profit and loss account as interest in Schedule 13 as Prior Period Adjustment.

22. In the first round the AO disallowed the amount of interest of Rs. 13,07 crores. Before the ITAT assessee pointed out that this has been reversed back in financial Year 2006-07 relevant to assessment year 2007-08 and has been duly offered to tax. In the light of these facts the Tribunal vide order dated 22.1.2010 set aside the issue to the file of the AO with the direction to verify whether the assessee had reversed the entry regarding the said provision of fee and offered the same as income in assessment year 2007-08.

23. Without applying his mind on the binding directions of the Tribunal the AO repeated the addition of Rs. 13.07 crores. The first appellate authority confirmed the disallowance made by the AO holding that such liability has not crystallized. However the CIT(A) directed the AO to verify whether such liability was offered

to tax in asstt. Year 2007-08 and if yes then allow the relief in that assessment year.

24. Before us the counsel for the assessee vehemently stated that pursuant to the adverse remark of the CAG the assessee made the provision. It is the say of the counsel that though the provision was made and the crystallized liability was claimed as deduction, the assessee maintained its stand before the Ministry for the waiver of the same. The counsel pointed out that when the Government accepted the claim of the assessee the guarantee fee was waived and accordingly the same was offered for taxation in the year of waiver for asstt. Year 2007-08. The Counsel vehemently stated that so far as the year under consideration is concerned there was crystallized liability and therefore the claim of Rs. 13.07 crores as guarantee fee is allowable. Per contra the Ld. DR strongly supported the findings of the AO.

25. We have given a thoughtful consideration to the orders of the authorities below. It is not in dispute that the C&AG made adverse remark and pursuance to which the assessee created the liability. In our considered opinion the assessee has rightly created the liability as such liability was properly ascertainable. We are of the considered view that merely because the assessee

was pursuing the matter with the Ministry of Petroleum and Natural Gas the same can not make the liability a contingent liability. Moreover this is not an estimated liability but the same is in line with the office Memorandum F-12 (1)-B/SB/92 dated 4.6.1993 by which the Central Government has instructed for levy of guarantee fee @ 1.2% per annum on the outstanding amount of loan. As per the said OM the guarantee fee was to be levied on the date of guarantee and thereafter on first day of April every year. Considering the facts of the case in totality we are of the considered view that such liability has to be allowed in the year under consideration. We accordingly direct the AO to delete the impugned addition on account of guarantee fee. Ground No. 6 is allowed. In the result the appeal filed by the assessee is allowed.

26. We will now address to revenue's appeal of ITA No. 5091/Del/2014 the grievance read as under :-

1. *"On the facts and circumstances of the case and in Saw Id. CIT(A) has erred in directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of manufacturing of lean gas at the 02 LPG plants.*

2. *On the facts and circumstances of the case and in Saw Ld. CIT(A) has erred in directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of interest income from loans and advances to others including contractor and suppliers (other than customers) which have direct nexus with the operations of the 2 LPG plants.*

3. On the facts and circumstances of the case and in law Ld. GST(A) has erred in directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of interest income from customers.

4. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in directing the directing the Assessing Officer to give the benefit of deduction u/s 80IA in respect of interest income from loans and advances given to employees employed in the 2 LPG plants.

5. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in allowing the claim of Horticulture expenses of Rs. 10,10,94,960/- holding the same to be a business expenditure of Revenue nature.

6. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 2,68,16,119/- out of total addition of Rs. 3,01,17,428/- without appreciating that submission of assessee in this regard had already been considered by the AO while making the disallowance.

6.1. On the facts and circumstances of the case and in law Ld. CI(TA) has erred in deleting the addition of Rs. 2,68,16,119/- out of total addition of Rs. 3,01,17,428/- without bringing on record any reconciliation to prove that the amount of relief of Rs. 2,68,16,119/- is a part of disallowance of Rs. 3,01,17,428/-.

7. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in directing the Assessing Officer to allow the investment allowance after verifying only part aspects of the issue.

7.1. On the facts and circumstances of the case and in law Ld. CIT(A) has eerred in directing the Assessing Officer to allow the investment allowance after verifying amount of reserve only without appreciating that assessee's claim had been rejected on more than one ground,which have been ignored by him.

8. The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.

27. The grievance raised vide ground No. 1 to 4 are identical to the grievance raised by the assessee vide ground No. 1 to 4 of its appeal. For our detailed discussion in ITA No. 4657/Del/2014 (supra) ground No. 1 to 4 are dismissed.

28. The facts relating to ground No. 5 are that during the year under consideration the assessee has incurred Horticulture expenses amounting to Rs. 10.10 crores which comprises of expenditure incurred on planting on trees ,maintenance of lawns and areas in the close vicinity of the offices / plants of the appellant in accordance with the mandate of the Government. The AO denied the claim of the assessee and made the disallowance of Rs. 101094960/-. The CIT(A) deleted the addition holding that the same has been incurred for the purpose of business.

29. Before us the DR strongly supported the findings of the AO per contra the Counsel for the assessee drew our attention to the decision of the coordinate bench for asstt. Year 1996-97 and pointed out that on similar facts the Tribunal has confirmed the deletion of the horticulture expenses.

30. We have carefully perused the orders of the authorities below. We find force in the contention of the counsel. The Tribunal in ITA No. 4454 and 4642/Del/2013 in assessment year 1996-97 on similar set of facts has confirmed the deletion of the disallowance. The relevant finding read as under :-

> *"26. We have heard both the parties and perused all the relevant material available on record. The horticulture expenses on planting of trees, maintenance of lawns and*

areas in the close vicinity of the offices/plants of the assessee in accordance with the mandate of the Government and the assesee has to comply with the government regulations for environmental cause. ***Thus, the CIT(A) has given a categorical finding while allowing these expenses. Ground No. 4 of Revenue's appeal is dismissed."***

31. Following the findings of the coordinate bench we decline to interfere with the findings of the CIT(A) ground No. 5 is dismissed.

32. Grievance raised vide ground No. 6 and 6.1 are identical to the grievance raised vide ground No. 5 by the assessee in its appeal in ITA No. 4657/Del/2014. For our detailed discussion therein ground No. 6 is dismissed.

33. The underlying facts in the issues raised vide ground No. 7 and 7.1 are that the assessee had awarded a contract for laying of HBJ pipeline to consortium led by M/s. Spice Capag. The plant and machinery was put to use before 31.3.1990 and was capitalized during the assessment year 1989-90.

34. Spice Capag lodged claims against the assessee amounting to USD 450 million and the matter was referred to Joint Committee set up by Indo French Government. The dispute was settled pursuant to which the assessee was instructed to pay an amount of Rs. 99 crores. The assessee claimed investment

allowance aggregating to Rs. 17.39 crores u/s 32A of the Act on this additional amount paid Rs. 99 crores. The AO denied the claim in the first round of litigation.

35. When the matter travelled up to the Tribunal the Tribunal in principle agreed with the allowability of deduction u/s 32A on the enhanced cost of assets and set aside the issue holding as under :-

> ***13:From the record, we found that the pipeline in respect of which enhanced claim of investment allowance was made was set up in the AY 1989-90. Even though the assessee has claimed investment allowance with*** *respect* ***to the original cost of plant & machinery, which was not declined, but due to inadequacy of profit, the assessee could not take the benefit of the same. During the AY 1997-98 under consideration. the claim of investment allowance was not in dispute, but the issue in dispute was only with respect to increase in claim of investment allowance due to additional bill raised by the supplier of pipeline and to which the assessee agreed to pay.***
>
> ***14. There is no dispute to the well settled legal proposition that any cost incurred towards plant & machinery including enhanced cost payable due to revision in cost or due to exchange fluctuation, is required to be***

considered while determining the actual cost and with reference to this actual cost, claim for deduction on account of depreciation, investment allowance etc. is to be considered. As the facts with regard to quantum of actual expenditure incurred towards additional cost is not clear from the orders of lower authorities, we arc restoring the matter back to the file of the AO with a direction to consider assessee's claim of investment allowance with reference to the enhanced cost of plant & machinery, after due verification. The AO is to *verify* ***the*** *facts and figures and assessee is directed* ***to*** *furnish details of* ***the*** *additional* ***cost so*** *incurred. AO* ***is to recomputed the eligible amount of investment allowance. AO is to verify the other conditions for eligibility of claim of investment allowance before allowing the same. Assessee is directed to furnish the required documents as per the provisions of section 32A of IT Act. We direct accordingly. "***

36. In the fresh assessment proceedings the AO repeated the addition of Rs. 17.39 crores. The first appellate authority allowed the deduction of investment allowance holding that the Tribunal has already held that enhanced cost is eligible for deduction u/s 32A of the Act and the assessee was only directed to furnish the necessary evidences which have been furnished by the assessee.

37. Before us Ld. DR simply relied upon the findings of the AO but could not controvert to the findings of the CIT(A). Per contra the Counsel for the assessee reiterated whatever has been stated before the lower authorities.

38. We have carefully considered the orders of the authorities below. The fact is that in the first order of litigation the Tribunal has categorically allowed the claim of deduction u/s 32A of the Act. Though certain verifications were to be done by the AO. However without following the directions of the Tribunal the AO simply repeated the addition. However the first appellate authority after considering the findings of the Tribunal in the first order of litigation allowed the claim of deduction with the following remarks :-

> *"L2.4.3.2 So far as the satisfaction of relevant conditions u/s 32 is concerned, the AO in the original order had expressed reservation on the grant of investment allowance during the current year as in his view, 75% of the reserves were not created in the current year. In terms of the provisions of sub-section (4) of section 32A of the Act, an assessee is required to debit an amount equivalent to 75% of investment allowance to P&L A/c and credit it to investment allowance reserve of any previous*

year in respect of which deduction under that section is being claimed or in any earlier previous year.

The appellant has claimed that since 1989-90, it had claimed in different years, £gate amount of investment allowance of Rs.351.41 Crores, while during the same period, it had created investment allowance reserve of Rs.413.01 Crores, which is more than 118% of the aggregate amount of investment allowance claimed by the appellant during this period. In view of this, the appellant satisfies this condition as well.

The Ld. AO is directed to verify only the aggregate amounts of investment allowance and investment allowance reserve, respectively, claimed by the reliant during this period. If the aggregate amount of reserves created are more than 75% of the aggregate amount of investment allowance claimed by the appellant, the claim of deduction u/s 32A is to be allowed. Accordingly, this ground is allowed in favour of the appellant."

39. We have given a thoughtful consideration to the aforestated findings of the Ld. CIT(A). We could not find any error or infirmity in the directions of the CIT(A) and hence we do not find any reason to interfere with the same ground No. 7 and 7.1 are accordingly dismissed.

40. In the result the appeal filed by the revenue is dismissed and the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26th November, 2020.

sd/-	sd/-
(MS. MADHUMITA ROY)	**(N.K.BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: /11/2020

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi