आयकरअपीलीयअधिकरण"गुवाहाटी" न्यायपीठगुवाहाटीमें।

IN THE INCOME TAX APPELLATE TRIBUNAL "GUWAHATI" BENCH, GUWAHATI

श्रीएस.एस. गोदारा , न्यायिकसदस्यएवंडॉए.एल.सैनीलेखासदस्यकेसमक्ष।

BEFORE SHRI S.S. GODARA, JM AND DR. A.L. SAINI, AM

Assessee`s Appeals

ITA No. 5/GAU/2014- Assessment Year 2007-08
ITA No. 6/GAU/2014- Assessment Year 2008-09
ITA No. 7/GAU/2014- Assessment Year 2009-10
ITA No. 8/GAU/2014- Assessment Year 2010-11
ITA No. 89/GAU/2016-Assessment Year 2011-12
ITA No. 90/GAU/2016-Assessment Year2012-13
ITA No. 27/GAU/2017- Assessment Year 2013-14

Numaligarh Refinery Limited 122A, G.S. Road, Christian Basti, Guwahati- 781005	Vs.	The Dy. Commissioner of Income Tax, Circle-3, Guwahati, Aayakar Bhawan, G.S. Road, Christian Basti, Guwahati-781005
(Assessee)	..	**(Respondent)**
स्थायीलेखासं./PAN No. AAACN6984B		

Revenue Appeals

ITA No. 97/GAU/2016-Assessment Year 2011-12
ITA No. 98/GAU/2016- Assessment Year 2012-13
ITA No. 28/GAU/2017-Assessment Year 2013-14
ITA No. 29/GAU/2018-Assessment Year 2014-15
ITA No. 278/GAU/2018-Assessment Year 2015-16

The Dy. Commissioner of Income Tax/Asstt. Commissioner of Income Tax, Circle-3, Guwahati, Aayakar Bhawan, G.S. Road, Christian Basti, Guwahati-781005	Vs.	Numaligarh Refinery Limited 122A, G.S. Road, Christian Basti, Guwahati- 781005
(Assessee)	..	**(Respondent)**
स्थायीलेखासं./PAN No. AAACN6984B		

अपीलार्थीकीओरस **/ Assessee by**	:	Shri Jayanta Dutta, AR
प्रत्यर्थीकीओरस **/ Respondent by**	:	Shri Sanjay Sarma, DR

सुनवाईकीतारीख **/ Date of hearing:**	05.07.2019
घोषणाकीतारीख**/ Date of pronouncement :**	13.09.2019

आदेश / O R D E R

PER Dr. Arjun Lal Saini,

The caption seven appeals filed by the assessee, and five Appeals filed by the Revenue are directed against the separate orders dated 08-10-2013, 06-07-2016, 08-07-2016, 13-12-2016, 30-11-2017 and 31-07-2018 passed by the commissioner of income Tax (Appeals/Appeals-2), Guwahati in Appeal No. (i) Guwa-98/2009-10, (ii) Guwa-95/2010-11, (iii) Guwa-211/2011-12, (iv) Guwa-105/2012-13, Guwa-255/2015-16, Guwa-259/2015-16, Guwa-18/2016-17 .for the assessment years 2007-08, '08-09, '09-10, '10-11, '11-12, '12-13, '13-14, '14-15 and '15-16, which in turn arise out of separate assessment orders dated 29.12.2009, 23.12.2010, 23.12.2011 and 30.11.2012, 30.01.2014,31.03.2015, 29.01.2016, 30.12.2016 and 30.12.2017 passed by the assessing officers.

2.Although, these appeals filed by the Assessee and Revenue for different Assessment Years, contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue as well as Assessee. Most of the grounds raised by the Revenue as well as Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee as follows:

3. The Common Grounds raised by assessee in Assessment Years, 2007-08 to 2013-14, are as follows: -

(1) Disallowance of claim of deduction under section 80-IB(9) of the Income Tax Act, 1961 for the Motor Spirit New Industrial undertaking of the Assessee Company, commissioned on 25-07-2006.

Ground and Assessment Year:	Amount
Ground No. 4. A.Y. 2007-08	Rs. 38,65,11,189/-
Ground No. 3 A.Y. 2008-09	Rs. 172,37,79,956/-
Ground No. 3 A.Y. 2009-10	Rs. 127,81,23,636/-
Ground No. 6 A.Y. 2010-11	Rs. 156,85,51,986/-
Ground No. 4 A.Y. 2011-12	Rs. 156,46,99,775/-
Ground No. 1 A.Y. 2012-13	Rs. 150,01,80,829/-
Ground No. 1 A.Y. 2013-14	Rs. 132,81,10,853/-

(2) Disallowance of claim of deduction under section 80-1C of the Income Tax Act, 1961.

Ground and Assessment Year	Amount
Ground No.(4) for the Assessment Year 2008-09;	Rs.351,28,35,732/-
Ground No.(4) for the Assessment Year 2009-10;	Rs.221,27,40,983/-
Ground No.(7) for the Assessment Year 2010-11	Rs.170,67,11,811/-

(3). Disallowance of claim of expenses under the head 'Prior Period Exp.'

Ground and Assessment Year	Amount
Ground No.(1) for the Assessment Year 2007- 08;	Rs.2,36,95,427/-
Ground No.(1) for the Assessment Year 2008- 09;	Rs.2,87,62,938/-
Ground No.(5) for the Assessment Year 2012- 13	Rs. 1,24,06,614/-

(4) Disallowance of claim of expenses under the head 'Retirement Benefit of Employees'.

Ground and Assessment Year	Amount
Ground No.(3) for the Assessment Year 2007- 08;	Rs. 1,00,22,722/-
Ground No.(2) for the Assessment Year 2008- 09;	Rs. 1,02,74,000/-
Ground No.(1) for the Assessment Year 2009- 10;	Rs. 96,67,000/-
Ground No.(2) for the Assessment Year 2010-11;	Rs. 8,37,000/-

(5) Rejection of Additional Ground raised before the CIT(A) relating to claim of deduction of expenditure on account of corporate social responsibility.

Ground and Assessment Year	Amount
Ground No.(5) for the Assessment Year 2007- 08;	Rs.309,08,755/-
Ground No.(5) for the Assessment Year 2008- 09;	Rs.350,25,274/-
Ground No.(6) for the Assessment Year 2009- 10;	Rs.402,89,573/-

(6) Disallowance of claim of deduction of expenditure for 'Corporate Social Responsibility' made following Guidelines issued by the Government.

Ground and Assessment Year	Amount
Ground No.(6) for the Assessment Year 2007-08;	Rs. 309,08,755/-
Ground No.(6) for the Assessment Year 2008-09	Rs. 350,25,274/-
Ground No.(7) for the Assessment Year 2009-10	Rs. 402,89,573/-
Ground No.(5) for the Assessment Year 2010-11	Rs. 470,96,316/-
Ground No.(2) for the Assessment Year 2011-12	Rs. 497,43,581/-
Ground No.(3) for the Assessment Year 2012-13	Rs. 586,21,435/-
Ground No.(3) for the Assessment Year 2013-14	Rs. 536,19,001/-

(7) Disallowance of claim of deduction under the head 'Provisions for Stores and Consumables' and 'Capital work in progress'.

Ground No.(2) for the Assessment Year 2007-08	Rs. 16,17,31,186/-
Ground No.(1) for the Assessment Year 2010-11	Rs. 13,56,00,000/-
	Capital work in progress Rs. 20,00,000/-
Ground No.(1) for the Assessment Year 2011-12	
	Capital work in progress Rs. 12,90,738/-
Ground No.(4) for the Assessment Year 2012-13	
	Capital work in progress Rs. 4,22,70,535/-

Ground No.(4) for the Assessment Year 2013-14 Rs. 37,19,83,895/-

(8) Disallowance of claim of deduction for Interest paid u/s 234D of the Income Tax Act,1961.“ Interest on excess refund”

Ground and Assessment Year	Amount
Ground No.(3) for the Assessment Year 2011- 12 ;	Rs. 3,83,88,266/-
Ground No.(2) for the Assessment Year 2012- 13;	Rs. 6,54,39,202/-
Ground No.(2) for the Assessment Year 2013-14;	Rs. 7,35,87,056/-

(9). Disallowance of claims of deduction under the head 'Provision for Doubtful Debt'

Ground and Assessment Year	Amount
Ground No.(2) for the Assessment Year 2009-10 ;	Rs. 13,97,827/-

(10). Disallowance of claims of deduction of 'Prior period Depreciation'.

Ground and Assessment Year	Amount
Ground.No.(5)for the Assessment Year 2009-10,	Rs.2,58,27,259/-
AndRs.22,83,310/-	

(11). Disallowance of claim of deduction for "Provision for Allowance for Non-Management Staff"

Ground and Assessment Year	Amount
Ground No.(3) for the Assessment Year 2010-11;	Rs. 17,46,80,387/-

(12). Disallowance of claim of deduction for 'Other Provisions'.

Ground and Assessment Year	Amount
Ground No.(4) for the Assessment Year 2010-11;	Rs.5,61,254/-

4. Now, we shall take above grounds, one by one. Common ground No.1 raised by the assessee is as follows:

(1) Disallowance of claim of deduction under section 80-IB(9) of the Income Tax Act, 1961 for the Motor Spirit New Industrial undertaking of the Assessee Company, commissioned on 25-07-2006.

Ground and Assessment Year:	Amount
Ground No. 4. A.Y. 2007-08	Rs. 38,65,11,189/-
Ground No. 3 A.Y. 2008-09	Rs. 172,37,79,956/-
Ground No. 3 A.Y. 2009-10	Rs. 127,81,23,636/-
Ground No. 6 A.Y. 2010-11	Rs. 156,85,51,986/-
Ground No. 4 A.Y. 2011-12	Rs. 156,46,99,775/-

Ground No. 1 A.Y. 2012-13	Rs. 150,01,80,829/-
Ground No. 1 A.Y. 2013-14	Rs. 132,81,10,853/-

5. The facts of the case which can be stated quite shortly are as follows:The assessee company is a Public Sector Undertaking engaged in the business of refining of mineral oil and it began its activities on 01-10-2000.The assessee company claimed deduction u/s 801B(9) of the Act for the original undertaking till assessment year 2007-08 and the same was allowed.A new undertaking i.e. a Motor Spirit Plant (MS Plant hereinafter) was commissioned on 25-07.2006.Hence, the assessee claimed deduction available for the new Industrial Undertaking u/s 801B(9) of the Act for seven assessment years from Assessment Year 2007-08 to Assessment Year 2013-14. During assessment proceedings details relating to the M.S. Plant were submitted before the ld AO.

The ld AO did not accept the claim of the assessee on two counts. First, he was of the view that, naphtha, the raw material of the new undertaking is not 'mineral oil' and secondly, the activities carried out by the new undertaking are not 'refining'. He followed para 19.1 of the CBDT Circular No. 1/2009, dated 27-03-2009 where it has been stated that the term 'mineral oil' does not include petroleum and natural gases, unlike in other sections of the Income Tax Act. The ld AO was of the view that since naphtha is a petroleum product, the term mineral oil does not include it within the meaning of mineral oil for the purpose of section 80-IB(9) of the Act. Further, Theld AO was also of the view that to 'refine' means to make fine or to purify without involving any change in the basic product. This way, ld AO disallowed the deduction under section 80-IB(9) of the Act.

6. Aggrieved by the stand so taken by the assessing officer, the assessee carried the matter in appeal before the ld CIT(A), who has confirmed the disallowance made by assessing officer under section 80-IB(9) of the Act. While dismissing the ground of the assessee, the ldCIT(A) observed that the deduction has been claimed by the assessee under clause (iii) of section 80IB(9) of the Act under which deduction is admissible only if the assessee is engaged in refining of mineral oil. According to IdCIT(A), the raw material used by the assessee is Naphtha which is a product of refining of crude oil. Relying on the Circular No. 1/2009 dated 27-03-2009 where it has been stated that the term 'mineral oil' does not include petroleum and natural gas.The 1dCIT(A) held that when petroleum is not included under mineral oil, there is no question of Naphtha to be considered as mineral oil because Naphtha, is not petroleum but it is a petroleum product made by refining of crude petroleum oil. Thus, the 1dCIT(A) held that Naphtha is not mineral oil for the purpose of section 80IB(9) of the Act . He also held that production of motor spirit from Naphtha is not a process of refining for the purpose of section 801B(9)(iii) of the Act. The ld CIT(A) held that a process of refining means to make fine or to purify, without involving any significant change in the substance and if the process involves conversion of one substance into another and especially when it also involves change of chemical composition of the substance, then the process cannot be said to be one of refining . Thus, he held that as process of conversion of Naphtha into Motor spirit involves change of chemical composition and conversion of one substance (Naphtha) into another i.e. Motor Spirit (Gasoline) with the help of catalysts, this process cannot be a process of refining. He, thus, held that the assessee company did not fulfill the two requirements prescribed u/s 80IB(9) of the Act and upheld the disallowance of the claim of assessee u/s 80IB(9) of the Act by the ld AO.

7. Aggrieved by the order of the ld CIT(A), the assessee is in further appeal before us.

8.We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Before us, ld Counsel reiterated the submissions made before the authorities below.On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

We note that the assessee company commenced its commercial production of its original undertaking in the previous year relevant to Assessment Year 2001-02. The company is engaged in the business of a refinery and as it fulfills the required conditions u/s 80IB(9)(iii) of the Act.The assessee company claimed deduction u/s 80IB(9)(iii) for seven assessment years consecutively from Assessment year 2001-02 to Assessment year 2007-08 and the same were allowed by the Department. The company decided to set up a new undertaking, the Motor Spirit Plant, (referred in brief asthe MS Plant), since the assessee company was willing to refine Naphtha generated by its old plant. Earlier, the assessee company had to sell Naphtha, which is also a petroleum product, to power sector industries where it is used as fuel. Now, with the new MS Plant, the assessee company was in a position to refine 'Naphtha'generated by the original plant to produce gasoline which is known in the common parlance as petrol. Had the Motor Spirit Unit been set up along with the original plant, there would not have been any issue of using Naphtha, an intermediary product, in the refining process and the assessee company could have availed the benefit under section 80IB(9)(iii) of the Act in full. It is submitted that Naphtha is also a petroleum product which fall within the definition of 'Mineral oil' and hence the assessee company is entitled to deduction u/s 80IB(9)(iii) of the Act in respect of the new Motor Spirit Unit (M S Plant) which was commissioned on 25-07-2006.

We note that section 80IB of the Act allows deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings in computing the total income of an assessee an amount equal to such percentage and for such number of assessment years as specified in the section. A perusal of legislative history of section 80IB(9) of the Act shows that the Finance Act,1999 restructured old section 80IA into two sections, section 80IA and 80IB,w.e.f. 01-04-2000.

(i).Sub section (9) of section 80IB of the Act as introduced by Finance Act,1999 w.e.f. 01-04-2000 reads as under :

"(9) The amount of deduction to an undertaking which begins commercial production or refining of mineral oil shall be hundred per cent of the of the profit for a period of seven consecutive assessment years including the initial assessment year :

***Provided** that where the undertaking is located in North Eastern Region, it has begun or begins commercial production of mineral oil before the 1st day of April,1997 and where it is located in any part of India, it begins commercial production of mineral oil on or after the 1st day of April,1997:*

***Provided** further that where the undertaking is engaged in refining of mineral oil, it begins refining on or after 1st day of October ,1998."*

(ii) Sub section (9) of section 80IB of the Act was amended by the Finance Act,2008 w.e.f. 01-04-2008, which reads as under :

"(9) The amount of deduction to an undertaking which begins commercial production or refining of mineral oil shall be hundred per cent of the profit for a period of seven consecutive assessment years including the initial assessment year :

***Provided** that where the undertaking is located in North Eastern Region , it has begun or begins commercial production of mineral oil before the 1st day of April,1997 and where it is located in any part of India, it begins commercial production of mineral oil on or after the 1st day of April,1997:*

***Provided** further that where the undertaking is engaged in refining of mineral oil, it begins refining on or after 1st day of October,1998.*

Provided also *that where such undertaking begins refining of mineral oil on or after the 1st day of April,2009, no deduction under this section shall be allowed in respect of such undertaking unless such undertaking fulfils all the following conditions, namely:-*

(i) It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine per cent of the voting rights;

(ii) It is notified by the Central Government in this behalf on or before the 31st day of May,2008 and

(iii) It begins refining not later than the 31st day of March, 2012."

(iii) However, the above provisions of sub-section (9) of section 80IB of the Act has been substituted by the Finance (No.2) Act,2009 with retrospective effect from 01-04-2000. Thus, section 80IB(9) of the Act with retrospective effect from 01-04-2000 reads as under :-

"(9)The amount of deduction to an undertaking shall be hundred percent of the profit for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfills any of the following, namely:-

(i) Is located in North Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997.

(ii) Is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997.

(but not later than 31st day of March,2017); inserted by Finance Act,2016 ,w.e.f 01-04-2017)

(Provided that the provisions of this clause shall not apply to blocks licensed under a contract awarded after the 31st day of March,2011 under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL,dated the 10th February,1999 or in pursuance of any law for the time being in force or by the Centre or a State Government in any other matter); inserted by Finance Act,2011 w.e.f 01-04-2012)

(iii) Is engaged in refining of mineral oil and begins such refining on or after the 1st day of October ,1998; but not later than the 31st day of March,2012.

(iv) Is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (hereinafter referred to as

'NELP –VIII') under the New Exploration Licencing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.VL, dated 10th February,1999 and begins commercial production of natural gas on or after the 1st day of April,2009. (inserted w.e.f.01-04-2010)

(but not later than 31st day of March,2017); inserted by Finance Act,2016 ,w.e.f 01-04-2017

(v) Is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April,2009;

(but not later than the 31st day of March.2017); Inserted by Finance Act,2016 w.e.f.01-04-2017)

***Explanation-** For the purpose of claiming deduction under this sub-section, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.VL, dated 10th February,1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by the Central or a State Government in any other manner, shall be treated as single 'undertaking'."*

Thus, deduction of hundred percent of the profit for a period of seven consecutive assessment years is allowed to an undertaking u/s 80IB(9)(iii), if it is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 and but not later than 31st day of March, 2012 as amended by Finance (No.2) Act,2009. Since the new MS Plant started commercial production from 25-07-2006 which is within the specified period and fulfills all the conditions, the assessee company, without prejudice, is entitled to deduction u/s 80IB(9)(iii) of the Act.

9. We note the old section 80IA of the Act, prior to its restructure into two parts, as section 80IA and 80IB by Finance Act,1999, w.e.f 01-04-2000, was inserted by Finance (No.2)Act,1991 w.e.f. 01-04-1991 and later on various amendments were made to the section .Sub-section (4E) was inserted by the Finance Act,1997 which granted relief to undertaking which began commercial production of

mineral oil in the North Eastern Region. Sub-section (4E)of section 80IA inserted by Finance Act,1997w.e.f1st April ,1998 reads as under :-

" (4E) This section applies to any undertaking which begins commercial production of mineral oil in the North Eastern region".

The sub-section was further amended by the Income Tax (Amendment) Act,1998 w.e.f 1st April, 1998 and this sub-section was made applicable all over India and after the words "North Eastern Region", the words " or in any part of India on or after the 1st April,1998" were inserted.

Further amendments were made by the Finance (No.2) Act, 1998 and in sub-section (4E), after the words "commercial production", the words " or refining" were inserted and also the following proviso was inserted w.e.f01-04-1999:

"Provided that the provisions of this section shall apply in case of refining of mineral oil where the undertaking begins refining on or after the 1st day of October,1998."

The issues of disputes in respect of the claim of the assessee are,(i) whether the raw material 'Naphtha' processed by the new unit falls within the definition of 'Mineral oil' and (2) whether the process of conversion of 'Naphtha' to gasoline and other products falls within the meaning of 'refining'? We note that both the terms are not defined in section 80IB(9) of the Act and hence the meaning of the words has to be derived from other sections of the Act, definitions given in other statutes and from common parlance meaning.

10. Now we shall examine the term 'Mineral oil' which is defined by various Acts as under :-

(i) The term 'Mineral oil' is defined in section 42, section 44BB and section 293A of the Act and as per these sections; the term 'mineral oil' includes petroleum and natural gas.Since, 'mineral oil' is not defined in section 80IB(9) of

the Act, the definition in other part of the same Act can be imported to find out the true meaning of the definition.

(ii) CBDT in their Circular No. 57 dated 23-03-1971 used the term 'mineral oil' to cover both crude oil (crude petroleum) and liquid products derived from crude petroleum which are in the nature of mixture of the hydrocarbons, namely , motor spirit, kerosene and other allied articles.

(iii) The Mines Act, 1952 defines 'mineral' as 'all substances which can be obtained from the earth by mining digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes 'mineral oil' (which in turn include natural gas and petroleum).

(iv).The Mine and Minerals (Development and Regulation) Act, 1957 defines by Section 3(b), the term 'mineral oil' to include petroleum and natural gas.

(v). Section 3(h) of the Oil Industry(Development) Act,1974, defines 'mineral oil' to include petroleum and natural gas.

(vi) Under the Mines Act, 1952 in section 2(jj) 'mineral' means substances which can be obtained from the earth by mining, digging, drilling, dredging, hydrolyzing, quarrying or by any other operation and includes mineral oil.

(vii) The Oil Fields (Regulation & Development) Act,1948 defines 'Mineral Oil' in section 3(c) as " Mineral Oils" include natural gas and petroleum.

11. At this juncture, it would be important to see the meaning of the words 'Petroleum', 'Petroleum Products' and 'Crude Oil' as these terms are associated with the definition of 'Mineral Oil'. The various Acts define these terms as follows:

(i) The Petroleum Act, 1934 has defined Petroleum in section 2(a) as, 'Petroleum' means any liquid hydrocarbons or mixture of hydrocarbons and any inflammable mixture (liquid, viscous or solid) containing any liquid hydro-carbon.

(ii) In the "Petroleum and Carbide Manual" issued by the Chief Inspector of Explosive of India in 1959, there is an opinion to the following effect:-

" Comments by the Chief Inspector of Explosive—The following more common articles of commerce fall within the definition of 'petroleum'- liquid hydrocarbons or mixture of hydrocarbons, asphalt, aviation spirit, benzene, benzene… ethyl, white oil, white spirit, xylene, xylol,

Inflammable mixture (liquid, viscas or solid) containing liquid hydrocarbons (or acetone, wood naphtha or methyl alcohol), cellulose enamels, lacquers and paints cement (patent), cleaning soaps, metal polices, paint removers, rubber solution, thinners…"

(iii) Petroleum and Natural Gas Rules, 1959 defines Petroleum Product in Rule 3(n) as "Petroleum Product" means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas gasoline, naphtha, distillate, gasoline, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by-products derived from oil condensate, gas or petroleum hydrocarbons, whether herein enumerated or not".

(iv) The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act,1962 defines as :

Section 2(c) "Petroleum" has the same meaning as in the Petroleum Act, 1934, and includes natural gas and refinery gas".

(v) The Oil Industry (Development) Act,1974 defines 'Petroleum Product' as :-

2(m) " petroleum product" means any commodity made from petroleum or natural gas and includes refined crude oil, processed crude petroleum , residuum from crude petroleum, cracking stock, unczracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas, gasoline, naphtha, distillate, gasoline, kerosene, bitumen, asphalt and tar, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by products derived from oil or gas and blends or mixture of two or more liquid products or by products derived from oil condensate and gas or petroleum hydrocarbon not specified herein before."

(vi) The Oil Industry (Development) Act, 1974 has defined Crude Oil in section 2(e) as:-

"Crude Oil" means petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted."

12. Now coming to the meaning of 'Naphtha', it has been defined as under:-

(i) Naphtha is the first petroleum product produced during the distillation process and subsequently upgraded to make major components of gasoline.

(ii) Naphtha consists in crude oil. According to Columbia Encyclopedia, naphtha, the term usually restricted to a class of colorless product obtained as one of the more volatile fraction in the crude (petroleum naphtha), in the fractional distillation of coal wood (wood naphtha).

(iii) According to Wikipedia Encyclopedia, naphtha normally refer to a number of different flammable liquid mixtures of hydrocarbons,i.e. a distillation product from petroleum or coal tar boiling in a certain range and containing certain hydrocarbons, a broad term encompassing any volatile, flammable liquid hydrocarbon mixture. Like many hydrocarbon products, they are product of a refinery process in which a complex soup of chemicals is broken into another

range of chemicals which are then graded and isolated mainly by their specific gravity and volatility.

(iv).The word naphtha came from Latin and Greek. It is an ancient Greek word that was used to refer to any sort of petroleum or pitch. It appears in Arabic as 'naft' and Hebrew as 'neft'. Arabic and Persian have used and distilled petroleum for tar and fuel from ancient times, as attested in local Greek and Roman histories of the region. In olden usage 'naphtha' simply means crude oil. The Ukrainian word and Russian word mean exactly 'crude oil'. Also in Italy, naphtha is colloquially used to indicate diesel fuel. There is a conjecture that the word 'naphtha' came (via Greek where it means any sort of petroleum) from Vedic God name ApamNapat.

(v) In modern times, naphtha is obtained in petroleum refineries as one of the intermediate products from the distillation of crude oil. It is a liquid intermediate between the light gases in the crude oil and the heavier liquid kerosene. Naphthas are volatile, flammable and have a specific gravity of about 0.7. The generic name 'naphtha' describes a range of different refinery intermediate product used in different applications. To complicate the matter further, similar naphtha types are often referred to by different names. Naphtha is used primarily as 'feedstock' for producing a high octane gasoline component (via the catalytic reforming process). It is also used in the petrochemical industry for producing olefins in steam cracker and in the chemical industry for solvent (cleaning) applications.

(vi)Petroleum naphtha is an intermediate hydrocarbon liquid stream derived from refining of crude. It is most usually desulfurized and then catalytically reformed, which rearranges or restructures the hydrogen molecules in the naphtha as well as breaking some of the molecules into smaller molecules to produce a high octane component of gasoline.

(vii) There are quite literally hundreds of different petroleum crude oil sources worldwide and eachcrude has its own unique composition or assay. There are also hundreds of petroleum refineries worldwide and each one of them is designed to process either a specific crude oil or specific types of crude oil. That means that it is virtually impossible to provide a definitive, single definition of the word naphtha. In other words, naphtha is a 'generic term' rather than a 'specific term'

(viii) Again, Naphtha has been defined to fall within the meaning of" petroleum product" in section 2(m) by The Oil Industry (Development) Act,1974.

(ix) Naphtha has been defied in the Naphtha (Acquisition, sale, storage and Prevention of use in Automobiles) order,2000 in clause 2(5) as , " Naphtha" is a light hydrocarbon liquid with 90% volume distillation by ASTM D-86 distillation method of 190 degree Centigrade or less.

(x) Reference is also made to the opinion of Indian Institute of Petroleum which was filed before the ld AO to explain that naphtha is covered within the definition of 'mineral oil'. The same was also referred to in written submissions filed before the ldCIT(A). The Indian Institute of Petroleum (IIP) is one of the leading constituent laboratories of the Council of Scientific and Industrial Research (CSIR) established in 1960. The Institute is devoted to multidisciplinary areas of research and development in the downstream sector of hydrocarbon and related industry. The Institute undertakes R & D work in areas of petroleum, natural gas, alternative fuels, petrochemicals, utilization of petroleum products in I C Engines and in industrial and domestic combustion. The Institute also provides technical and analytical services to petroleum refinery and related industries including technology transfer for developing novel state of art technologies and product.

The Indian Institute of Petroleum (IIP) opined as under :-

"As per technical and commercial understanding of the term 'Mineral' within the oil and gas industry, petroleum (which includes crude oil and petroleum products obtained therefrom) and natural gas can be categorized as 'Minerals'

Considering the fact that both the input i.e. crude oil and the output i.e. petroleum products are 'Minerals' a refinery involved in refining of crude oil to produce petroleum products such as Naphtha, Motor Spirits, Aviation Turbine Fuel, Superior Kerosene Oil, High Speed Diesel etc. can be considered a 'Mineral based Industry'.

IIP has relied upon various industry parlance, technical understanding, definitions and dictionary meaning of the term 'Mineral' to arrive at such an opinion. IIP, while giving such an opinion, have not taken cognizance of the interpretations given by any court of law on the subject and any definition in the tax laws. This opinion is purely guided by the technical and commercial understanding of the term 'Mineral' within the oil and gas industry."

We note that from the above definitions, it is abundantly clear that 'naphtha' is a 'petroleum product' or 'petroleum' and as 'petroleum' and 'petroleum product' fall within the definition of ' mineral oil', therefore the assessee company is, entitled to benefit of deduction u/s 80IB(9)(iii) of the Act.

13. We note that ld CIT(A) also mentioned in his consolidated appellate order dated 08-10-2013 for the Assessment years 2007-08 to 2010-11 in page 9 in first para that , 'Naphtha, after all is not petroleum but it is a petroleum product made by refining of crude petroleum oil'. As the ldCIT(A) accepted 'Naphtha' as a 'petroleum product', theassessee company is entitled to deduction u/s 80IB(9)(iii) of the Act following various definitions referred to herein above. We note that for the Assessment Year 2007-08, the ld AO accepted the same when he mentioned in para 17.08 in page 10 of the assessment orderthat "….. Naphtha is nothing but a petroleum product produced from crude oil." When crude petroleum oil itself is not to be considered as 'mineral oil'; Naphtha being a product of refining of crude petroleum oil can much less be said to be included in 'mineral oil'." It is abundantly clear from the orders of the ld AO as well as from the consolidated appeal order of the ld CIT(A) that conclusions were drawn based

on para 19.1 of the Circular No.1/2009 dated 27-03-2009 where it is mentioned that. "For the purpose of this section, the term 'mineral oil', does not include petroleum and natural gas, unlike in other sections of the Income Tax Act."

As we stated earlier that the term 'mineral oil' has not been defined in section 80IB(9) of the Act. Hence, the meaning of the term has to be derived from the meaning given in other sections of the Act,other statutory definition given in other Acts and technical and commercial use of the term in related industries. There is no restriction u/s 80IB(9) of the Act that the meaning of the term cannot be imported from other statutes or from the technical or commercial definition available in the industry or common parlance meaning. Normally, when the intention of Legislature is to give a narrow meaning of any term in the Act, restriction forms part of the section or a deeming fiction is created in the section. However, no such intention is found in section 80IB(9) of the Act and hence meaning of the term 'mineral oil' has to be wide and the same cannot be restricted to the meaning given in para 19.1 of Circular No.1/2009 dated 27-03-2009. We have mentioned above paras of this order, the meaning of 'mineral oil', 'petroleum', 'petroleum product' in different statutes, which clearly justify that 'Naphtha' will fall within the definition of 'mineral oil'. The ld AO as well as ld CIT(A) even admitted that 'Naphtha' is a 'Petroleum Product'. It seems both the authorities below could not accept the contention of the assessee because of para 19.1 of Circular No.1/2009 dated 27-03-2009 which excluded even 'Petroleum and Natural Gas' from the meaning of 'mineral oil'.

14. We note that the opinion of the Indian Institute of Petroleum (IIP) was filed before the ld AO and the same was also mentioned in the submission before the ld CIT(A). The ld AO held that the opinion did not consider interpretation given by Court of law or any definition in tax law. The ld CIT(A) did not consider the same. The authorities below did not consider any interpretation given by law and concluded the issue based on Circular No.1/2009 dated 27-03-2009 of the CBDT.

It is well settled that Circular issued by CBDT is not binding on any court of law or on an assessee. The opinion of the IIP was based on technical and commercial understanding of the meaning of 'mineral oil' followed in Oil and Gas Industries in the Country and such opinion must be followed in defining the term 'Mineral Oil' in tax laws.Thus, we note that the finding of the authorities below, was based on the Circular 1/2009 dated 27-03-2009. However, intention of the Legislature does not go with the meaning of 'Mineral Oil' given in the Circular. Where the intention of the Legislature is to expand the meaning of the words 'Mineral oil', CBDT has given a narrow and restrictive meaning to the words.

We note that Circular No.1/2009 dated 27-03-2009 was issued explaining the provisions of Finance Act, 2008. Section 80IB(9) was amended by Finance Act,2008 by making a sun set provision that where an undertaking is engaged in refining of mineral oil, it should begin refining on or after 1st October, 1998 with a rider that where such undertaking begins refining of mineral oil on or after 01-04-2009, such undertaking must fulfill the conditions that (a) it is a public sector company or any company in which a public sector company or companies hold at least 49% of the voting rights, (b) it is notified by the Central Government in this behalf on or before 31st day of May,2008 and (c) it begins refining not later than 31-03-2012. Thus, section 80IB(9) was amended to disallow benefit to undertakings if it does not begin refining of mineral oil on or before 01-04-2009 and a concession was given to the public sector and other companies in which public sector companies hold 49% of the voting rights with notification by the Central Government who could avail the benefit of section 80IB(9) if it begins refining of mineral oil on or before 31-03-2012. It clearly shows that benefits were extended to public sector and specific companies which could not begin refining of mineral oil till 01-04-2009. Thus, scope of section 80IB(9) was extended to public sector and specific companies by the amendment in Finance Act,2008. The meaning of the term 'mineral oil' was not restricted by the

amendment in Finance Act,2008 in section 80IB(9) of the Act. In para 19.1 of the Circular no 1 dated 27-03-09, while explaining the Finance Act,2008,CBDT opined that the term 'mineral oil' does not include petroleum and natural gas. The said Circular was issued on 27-03-2009 explaining the provisions of Finance Act 2008. It appears that the Revenue through the Circular tried to force its view on the assessee without considering the intention of the Legislature to provide relief to public sector and specific company owned refineries. It shows that spirit of the amended provisions was not reflected in para 19.1 of the Circular No.1/2009. The assessee is a public sector undertaking and its M S Plant began refining in the Financial Year 2006-07, relevant to assessment year 2007-08. Thus, the assessee company began refining before 01-04-2009 and it did not require special concession introduced in the amendment in section 80IB(9) of the Act by Finance Act,2008. However, no restriction should be imposed on the assessee company where its claim is allowable within normal provisions of section 80IB(9) without special attention. Thus, para 19.1 of Circular No.1/2009 dated 27-03-2009 is contrary to the intention of the Legislature as it restrict the scope of section 80IB(9) rather than giving concession to public sector and specific companies in the amended section.

15. We note that Circular No.1/2009 dated 27-03-2009 had created a lot of controversy. Therefore, at this juncture it is relevant to note the extracts from the speech of the Finance Minister to the debate in the LokSabha on 29-04-09 on Finance Bill 2008, which is given below:

"11. Some concerns have been expressed regarding the scope of section 80IB(9) of the Income Tax Act. As Honourable Members are aware, this sub section allows 100 per cent tax exemption in respect of an undertaking which begins 'commercial production or refining of mineral oil for a period of seven consecutive assessment years. The scope of this section is under adjudication since assessment year 2001-02 before different tax authorities. In my view, we should allow the disputed issues to be resolved in the normal course by the tribunals and courts. Nevertheless, I wish to clarify certain doubt that may have arisen because of the 'Notes on Clauses' attached to the Finance Bill. The statement in the Notes on clauses is a mere re-statement of the Income Tax

Department's known position before the Tribunals/ Courts which are adjudicating the matter. Besides, it is well settled proposition of law that Notes on clauses have no legal effect and are not binding on the courts. I may assure the potential bidders that the benefit of section 80IB(9), as finally interpreted by the courts, will be applicable to all exploration and production contracts, whether obtained through nomination or bidding."

It is well settled that Speech made by the Finance Minister at the Parliament may be used in interpreting the meaning of the words used in the Act. Reference may be made to the decision of K.P.Varghese Vs. ITO (1981) 131 ITR 597(SC) where the H'ble Supreme Court has held that Speech made by the Finance Minister while moving the amendment is extremely relevant. It is held that this speech made by the mover of the bill explaining the reason for the introduction of the bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. The H'ble Apex Court in the case of Kerala State Industrial Development Corporation (2003) 259 ITR 51 (SC) has held that the Finance Minister's Speech can be relied upon to throw light on the object and purpose of the particular provisions introduced by the Finance bill. Moreover, if petroleum is not included in the meaning of 'mineral oil', there was no reason to extend concession to public sector companies till 31-03-2012.The speech of the Hon'ble Finance minister shows that the contents of the 'Notes on Clauses' are mere restatement of the positions of the Income-tax Department and the same cannot be binding on Courts and Tribunals. Hence, the Circular is not sacrosanct and it is not binding on the assessee company. The interpretation given by the Tribunals and the Courts will only be binding.

The following is the extract from the reply of the Hon'ble Finance Minister to the debate in the LokSabha on 29-04-2008, on Finance Bill, 2008:

" 10. Sir, clause 15 of the Finance Bill,2008 seeks to insert a new proviso in sub section(9) of section 80-IB so as to provide that no deduction shall be allowed to an undertaking engaged in refining of mineral oil, if it begins refining on or after 1st April,2009. Consequent to this proposal, three public sector refineries under

construction in Paradeep, Bina and Bathinda may not complete before 1st April,2009. With a view to ensuring that the benefit to these refineries is not denied on account of their inability to adhere to this deadline, it is proposed to amend the proposal to provide that such refineries would be eligible to avail of the benefit if they begin refining not later than 31st March,2010"

Following the statement of the Hon'ble Finance Minister in the LokSabha, Vide Notification No.66 of 2008 dated 30-05-2008, eight mineral based refineries were notified by the Central Government for the purpose of section 80-IB(9). A perusal of the processes of these refineries clearly shows that their processes are similar to the process employed by the MS Plant of the assessee. The Panipat Refinery Complex of IOC is a Naphtha cracker & downstream polymer unit (naphtha Cracker Unit). The Paradip Refinery has a 10000bpd diesel hydrotreater, a 8,000 bpd naphtha hydrotreater and 10000 alkalination unit. The Bina Refinery has also commissioned a naphtha hydrotreater and a continuous catalyst reformer. **Thus, the intention of the Legislature is clearly manifested in this notification and as the raw material and the processes of these refineries are similar to the raw material and processes employed by the MS Plant of the assessee company, there is no justification on the part of the ld AO to deny the benefit of section 80-IB(9) to the MS Plant of the assessee company where the Central Government has notified these refineries to be eligible to get benefit u/s 80-IB(9).** If the intention of the amendment of section 80IB(9) was to restrict the meaning of the term 'mineral oil', there was no reason to notify Eight Refineries akin to the new MS Plant of the assessee company to avail benefit of section 80IB(9) of the Act till 31-03-2012. We note that based on the reasons stated above, the assessee is entitled to benefit of section 80IB(9)(iii) of the Act.

16. We note that section 80IB(9) was again amended by Finance (No.2) Act,2009 w.e.f 01-04-2000 and restrictions put by Finance Act, 2008 were removed. The only conditions u/s 80IB(9)(iii) is that the undertaking is engaged in refining of mineral oil and begins such refining on or after 01-10-1998 but not

later than 31-03-2012. Again, the amendment has been made retrospective from 01-04-2000. This clearly shows that the scope of section 80IB(9) of the Act has been extended by the Finance (No.2) Act,2009 and benefit extended to Public Sector Companies in Finance Act,2008 is also available to other companies w.e.f.01-04-2000. As Circular No.1/2009 dated 27-03-2009 was issued to explain the provisions of Finance Act,2008 and para 19.1 explained scope of section 80IB(9) of the Act, after the amendment of section 80IB(9) of the Act by the Finance (N0.2) Act,2009, such narrow explanation of the Circular does not hold good. As the scope of section 80IB(9) has become wider and conditions put by Finance Act, 2008 were removed, the contents of the Circular No.1/2009 in para 19.1 has also become ineffective. Hence, meaning enunciated by para 19.1 of the Circular does not hold good w.e.f.01-04-2000. Moreover, scope of section 80IB(9) has also been extended to production of natural gas in blocks licensed under the VIII Round of bidding in NELP –VIII by insertion of para (iv) in section 80IB(9) of the Act by Finance (No.2) Act,2009 w.e.f 01-04-2010. When the scope of the section 80IB(9) has been made wider, there was no justification in following a narrower meaning enunciated by the Circular, that too, explaining the scope of the Finance Act,2008 where the required conditions for section 80IB(9) to be followed were removed. Thus, there is an enlargement of the benefits under the provisions of section 80IB(9) and restrictive meaning given by the Circular does not hold good if the Golden Rule of Interpretation is considered. Therefore, there is no justification of giving narrower meaning of the words 'mineral oil'. For that we rely on the judgment of the Hon'ble Bombay High Court in Burmah Refineries Ltd reported in 61 ITR 493 (Bom) wherein the court was construing the meaning of the expression 'mineral oil' in a different context, actually, the decision fully supports the stand taken by the assessee company. The Hon'ble High Court categorically observed in page 501 (from 501 to 503 discussed) of the order that, " it is clear that the expression 'mineral oil' is wide enough to include both , the petroleum in its crude form as well as the

product secured or obtained from the crude oil by refining.In this case, the Revenue contended that the petitioner company was not a company engaged in the manufacture or production of mineral oil. On the other hand, it is contended that the petitioner company is a company doing business of refining crude oil. The argument of the Revenue was that the expression 'Mineral Oil' means crude oil and not its product". In para 9 of the order, the Hon'ble High Court observed that the expression 'Mineral Oil' has not been defined anywhere in the Act. The Hon'ble High Court discussed the meaning of 'Mineral Oil' in para 10 , which is given as under:

"We have already stated that the combined effect of various provisions of the Act to which we have already made reference is that if the company is engaged in doing business of manufacturing or production of mineral oil, then it is entitled to 35 per cent rebate. We have referred to the meaning given to the term 'Mineral Oil' and 'Crude Oil' in the aforesaid dictionaries which indicates that the crude oil means petroleum in its raw form as it comes from the ground and the expression 'Mineral Oil' is wide enough to include both petroleum as well as the product produced from petroleum by refining or the products secured from raw petroleum or crude oil. Prima facie, the company appears to have been engaged in the business of manufacturing or production of mineral oil."

Further in thecase of Add. CIT Vs. Distillers Trading Corporation Ltd (1982) 137 ITR 894(Del), the Hon`ble Delhi High Court has observed in para 5 of the order that:

"The AAC pointed out that the term 'Mineral Oil' covers both crude oil and liquid products derived from liquid petroleum which are in the nature of mixture of hydrocarbons such as motor spirit, aviation kerosene and other allied articles. In order to find out whether ethyl alcohol was a mineral oil, it is necessary to see whether this product comes within the meaning of the word petroleum. The AAC referred to the definition of 'petroleum' under the Petroleum Act,1934, and the Inflammable Substances Act,1952, and, reading the two provision together came to the conclusion that ethyl alcohol was 'petroleum' within the meaning of Petroleum Act."

Similarly,in case of Indian Oil Corporation V DCIT (2005) 4 SOT 1 (Mum) the Coordinate Bench of Mumbai Tribunal has held that petroleum products manufactured by the assessee,namely, naphtha, diesel and fuel oil fall under the expression 'mineral oil' and do not qualify for deduction u/s 80HHC. Though the decision was relating to section 80HHC, the Tribunal discussed the meaning of 'mineral oil' which is also not defined in section 80HHC.

17. We note that Circular issued by CBDT cannot restrict a statutory interpretation. The interpretation as enunciated by Tribunals and Courts cannot be overwritten by a Circular. The Hon`ble Apex Court in case of Hindustan Aeronautics Ltd V CIT (2000) 243 ITR 808(SC) has held that Circulars or Instructions given by the Board are no doubt binding in law on the authorities under the Act, but when the Supreme Court or the high Court has declared the law on the question arising consideration, it will not be open to a court to direct that a circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. The Apex Court in case of KeshavjiRavji& Co Vs CIT (1990) 183 ITR 1(SC) has observed in para 13 of the order that the Board cannot pre-empt a judicial interpretation of the scope and ambit of a provision of the Act by issuing Circulars on the subject. This is too obvious a proposition to require any argument for it. A circular cannot even impose on the tax payer a burden higher than what the Act itself, on a true interpretation envisages. The task of interpretation of law is the exclusive domain of the courts. The Tribunal, much less the High Court, is an authority under the Act. The Circulars do not bind them. But the benefits of such Circulars to assessee have been held to be permissible even though the Circulars might have departed from the strict tenor of the statutory provisions and mitigated the rigour of the law. But that is not the same thingas saying that such circulars would either have binding effect in the interpretation of the provisions itself or that the Tribunal and the High Court are supposed to interpret the law in the light of the

Circular. The Apex Court in case of Kerala Financial Corporation V CIT (1994) 210 ITR 129(SC) has observed that circulars, orders, instruction or direction of the Board cannot override the provisions of the Act; that would be destructive of all known principles of law as the same would really amount to giving power to delegated authority to even amend the provisions of law enacted by Parliament. Such a contention cannot seriously be even raised. In case of Madura Chit & Investment (P) Ltd Vs. ITO (1994) 208 ITR 228(Mad) it is held that instructions and guidelines cannot override the specific provision of the Income Tax Act. In case of CIT V Sirpur Paper Mills (1999) 237 ITR 41(SC) and CIT V Mahindra Sintered Products Ltd (2001) 252 ITR 576 (Bom) it is held that notification issued by the CBDT cannot curtail the scope of deduction granted by the Income Tax Act. In case of Associated Cement Co Ltd V CIT (1994) 210 ITR 69(Bom) it is held that the memorandum explaining the provisions of the Finance Act or the Circular of the Board cannot be used to curtail or modify the clear meaning of an expression used in the Statute. Thus, a Circular cannot override the provision of law. For that we rely on the judgment of the Hon`ble Bombay High Court in the case of BanqueNationale de Paris Vs. CIT (1999) 237 ITR 518 (Bom).

18. Further, our view is fortified by the recent Judgment of the Coordinate Bench of Guwahati in the case of ACIT Vs.Oil India Ltd, in ITA No.120 to 123/Gau/2008, for A.Y.2003-04 to 2006-07, order dated 28.08.2019, wherein, on identical facts, it was held as follows:

"23. We further notice after a deeper scrutiny that the assessee's main produce "crude oil" is treated as interchangeable to mineral oil includinig Natural Gas and Petroleum as per sec. 3(c) of the Oil Fields (Regulation and Development) Act, 1948 (No.53 of 1948) or the Oil Fields (Regulation and Development) Amendment Act 1969 (No. 30 of 1969). Section 42 read with its Explanation, Section 44BB Explanation (ii) and Section 293A Explanation (a) also define "mineral oil" as having the very inclusive meaning. We observe in this backdrop that the assessee is engaged in a "mineral based industry" as per the foregoing clinching expression employed as in 14th Schedule.

24. The Revenue's case that this crude oil production does not amount to mineral based industry as per item No.16 in 14th Schedule of the Act carries no substance since the above stated expression has to be construed in ordinary connotation without having regard the further classification of minerals i.e. ferrous or nonferrous and metallic or non-metallic etc.

25. We also wish to make it clear that there is further no dispute about the impugned statutory provision requiring in assessee to maintain its books of account qua each undertaking to be treated as separate unit in sec. 80IC(7) of the Act incorporating the very legislative intent as is there in sec. 80IB(13) (supra).

26. The Revenue's last argument is that assessee's oil exploration activity cannot be taken "manufacture or production" as prescribed in sec. 80IC(2)(b) of the Act. Hon'ble apex court's landmark judgment in CIT vs. N.C.Budharaja and Co. and Another (1993) 204 ITR 412 (SC) held long back that the statutory expression "produce" has wider connotation than the word "manufacture". The former; when used in juxtaposition with the latter, brings into existence new goods by a process which may or may not amount to manufacture. And that the same also includes in all the by products; intermediary or residuary hon'ble Delhi high court's decision in HLS India Ltd. (supra) also holds that whether or not any particular business activity amounts to manufacture or production for the purpose of various incentives schemes under the Act is required to be examined in the light of facts and circumstances in each case. These can be no denial of the fact that crude oil contains hydrocarbons as paraffin, cycloparaffin, napthene and araomaticcomprcands which is obtained from beneath the earth's surface. We reiterate that this assessee admittedly drills / explores crude oil for the purpose of refining the same to various by-products. This we thus conclude that assessee's crude oil exploration very much amounts to production going by the relevant facts in the light of the preceding legal position. The Revenue's instant last argument is also rejected. We hold that CIT(A) has rightly granted sec. 80IC(2)(b) deduction to the taxpayer in assessment years 2005-06 and 2006-07. The Revenue's two corresponding appeal(s) ITA No.122 and 123/Gau/2018 also fails.

27. Next comes the assessee's four appeal(s) ITA No.87/Gau/2010, 33/Gau/2018, 325/Gau/2013 & 09/Gau/2014 relevant to assessment year(s) 2007-08 to 2010-11; respectively. Learned representatives inform us very fairly that the lower authorities' have declined the assessee's sec. 80IC(2)(b) deduction claims in these four years. The CIT(A) has identically held that it ought to have raised its claim u/s. 80IB(9) of the Act. The assessee has pleaded its identical additional ground therefore seeking to claim the impugned deduction u/s80IB(9) of the Act. We conclude in this factual backdrop that our findings holding it eligible for sec. 80IC deduction for assessment years 2005-06 and 2006-07 would apply mutatis mutandis in these four latter assessment year(s) as

well. Its additional ground is therefore rendered infructuous. Both the lower authorities action denying Revenue's sec. 80IC(2)(iii) deduction involving varying sum (supra) stands reversed. The assessee succeeds in its instant four appeal(s) in above terms."

Therefore, the meaning of 'mineral oil' deserved to be considered in a wider manner. Moreover, the meaning of refining should be construed in the context of a refinery and it should not be restricted to simple purification process as opined by the ld AO and upheld by the ldCIT(A). The ld AO and the ldCIT(A) has held that 'Naphtha', the raw material used by the M S Plant is a 'Petroleum Product'. The 'Mineral oil' would include petroleum and petroleum products. Moreover, the MS Plant of the assessee company is engaged in processeswhich fall within the meaning of 'refining', if the intention of the Legislature is considered. Thus, the MS Plant of the assessee company is an undertaking engaged in refining of mineral oil and fulfills all the conditions of section 80IB(9)(iii) of the Act, as a result of which the assessee company is entitled to benefit of section 80IB(9)(iii) consecutively for seven assessment years starting from assessment year 2007-08. Based on these facts and circumstances, we direct the assessing officer to allow deduction under section 80IB(9) of the Act, for the Seven Assessment Years 2007-08 to 2013-14 .

18. Common Ground No.2 raised by the assessee reads as follows:

"(2) Disallowance of claim of deduction under section 80-1C of the Income Tax Act, 1961.

Ground and Assessment Year	Amount
Ground No.(4) for the Assessment Year 2008-09;	Rs.351,28,35,732/-
Ground No.(4) for the Assessment Year 2009-10;	Rs.221,27,40,983/-

Ground No.(7) for the Assessment Year 2010-11 Rs.170,67,11,811/"-.

19. We have already adjudicated the issue of the assessee company relating to deduction under section 80-IB(9) of the Act in para No. 4 to 17 of this order. We note that assessee company claimed benefit under section 80IB((9) of the Act from assessment years 2001 to 2007-08 for the original plant. The assessee company found that entitled to under section 80IC(2)(b)(iii) of the Act, for ten assessment years as all the conditions contained in the section were fulfilled by it. Since, the company availed deduction of 100% of its profit under section 80IB(9) of the Act for seven years, the assessee company claimed deduction under section 80IC for balance three assessment years starting from assessment year 2008-09. We have already explained the meaning of 'mineral'in para No. 4 to 17 of this order, therefore, we do not repeat the same.

Under section 80-IC(2)(iii), a 100% deduction from the profit of an assessee is allowed if the gross total income of the assessee includes profit of an undertaking producing article specified in Fourteenth Schedule subject to certain conditions. Section 80-IC is a special provision in respect of certain undertakings or enterprises in certain special categories states. The intention of the legislation is clear that certain underdeveloped states should be developed to the extent of national level for which special benefit is given to new undertaking in those states under the provisions of the Act. We note that assessee company has satisfied the conditions of section 80IC(2)(b)(iii) of the Act, therefore, entitled to claim deduction under section 80IC(2)(b)(iii) of the Act.

It is well settled that that the beneficial provisions should be liberally construed while interpreting taxing statute. Since, section 80-IC is a beneficial provision giving incentives to specified industries in specific states, it has to be interpreted liberally to achieve the objectives for the purpose for which it was enacted. We have relied on a number of decisions, while adjudicating the issue relating to

80IB(9) of the Act that beneficial provisions should be liberally interpreted and such decisions will also be applicable to section 80-IC of the Act.From the facts and issue of law, it is clear that the ld CIT(A) is not justified in upholding the decision of the ld AO is disallowing the benefit of section 80IC of the Act to the assessee company for the assessment years 2008-09, 2009-10 and 2010-11. We direct the AO to allow the deduction under section 80IC(2)(b)(iii) of the Act, for the assessment years 2008-09, 2009-10 and 2010-11.

20. Common ground No.3 raised by the assessee is as follows:

"(3). Disallowance of claim of expenses under the head 'Prior Period Exp.'

Ground and Assessment Year	Amount
Ground No.(1) for the Assessment Year 2007- 08;	Rs.2,36,95,427/-
Ground No.(1) for the Assessment Year 2008- 09;	Rs.2,87,62,938/-
Ground No.(5) for the Assessment Year 2012- 13	Rs. 1,24,06,614/"

21. We note that Ground No. (1) for the Assessment Year 2007-08, Ground No.(1) for the Assessment Year 2008-09 and Ground No.(5) for the Assessment Year 2012-13 are against disallowance of claim of deduction of expenses under the head 'Prior Period Expenses'. Brief facts qua the issue are that from the Tax audit Report u/s 44AB of the Act, the ld AO observed that the Tax Auditor had certified that an amount of Rs.77,14,27,745/- had been debited in the Profit and loss account under the head 'Prior Period Expenses'. The relevant portion of the Report 'Annexure –V' which is Schedule W of the Report of Tax Auditor has been incorporated in Para 5 of the Assessment order. From the Schedule –W, the ld AO observed that the assessee credited Rs.8,37,58,169/-on account of purchase for resale and other operating and administrative expenses and debited

Rs.85,51,85,914/- on account of sale of products, raw material consumed and depreciation, effecting net debit to the profit and loss at Rs.77,14,27,745/-. The ld AO further observed that Sale of Product of Rs.8,81,913/-, Raw Materials Consumed worth Rs.2,28,13,514/- and depreciation amounting to Rs. 83,14,90,487/- relates to earlier years, but debited in the accounts during the assessment year 2007-08. The ld AO asked for an explanation for the amounts debited to profit and loss account and reply of the assessee company is also incorporated in the assessment order. The assessee company explained the facts and also submitted that Prior period depreciation of Rs.83,14,90,487/- has already been added in computation of income.The ld AO was of the view that under the Scheme of the Act, tax is levied on the income of the previous year.The ld AO considered the issue in para 5 to 7 of his assessment order dated 29-12-2009 for the Assessment Year 2007-08. As mentioned in para 7 of the assessment order, the ld AO held that in mercantile system of accounting, only income that has accrued during the previous year and the expenses incurred during the said period can only be considered in the taxable income. Hence, the ld AO disallowed prior period expenses being Sale of Product of Rs.8,81,913/- and Raw Materials Consumed amounting to Rs.2,28,13,514/-; in total Rs.2,36,95,427/- (Rs.8,81,913 + Rs.2,28,13,514) debited to profit and loss Account .

22. Aggrieved by the order of AO, the assessee carried the matter in appeal before the ld CIT(A), who has confirmed the addition made by the assessing officer. Aggrieved, the assessee is in appeal before us.

23. We have heard both the parties and perused the material available on record, we note that in para 7 of the assessment order, the ld AO held that under scheme of the Act, tax is levied on income of the previous year. In mercantile system of accounting, only the income that has accrued during the previous year and the expenses incurred during the said period can only be considered in computing the

taxable income of a particular previous year, each year being a separate self contained unit of assessment. Hence, the ld AO disallowed prior period expenses.

We note that in mercantile system of accounting, an assessee had not earlier debited his account with the expenditure which accrued in law in an earlier year, would not, in the absence of a barring provisions under the law, disentitle to debit his account later when an enforceable demand is made by the appropriate authority. There is no express bar in law which disallows expenditure relating to a period other than the previous year. For that we rely on the judgment of the Hon`ble Gauhati High Court in case of CIT Vs.NathmalTolaram (1973) 88 ITR 234 (Gau). Further, the Hon'ble Gujarat High Court in case of Saurashtra Cement & Chemical Industries Ltd V CIT (1995) 213 ITR 523 (Guj) has held that if any liability though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years, cannot be disallowed as deduction merely on the basis that the accounts are maintained on mercantile basis and that it related to a transaction of the previous year.In case of CIT V Jatia Manufacturing Investment Co (P) Ltd (1983) 142 ITR 536 (Cal) it is held that liability to pay interest to creditors having arisen or accrued to the assessee only on the final rejection of its request for waiver of interest in the previous year relevant year to assessment year 1970-71, the interest was an allowable expenses for assessment year 1970-71. In CIT V Khaitan Chemicals & Fertilizers Limited (2008) 307 ITR 150 (del), the Hon'ble High Court has observed that Accounting Standard (AS-5) stipulates that prior period items are income or expenses which arise 'in the current period' as a result of errors or omissions in the preparation of the financial statements of one or more prior periods. Therefore, incomes or expenses relatable to prior period items are those which arise in the current period i.e. the period relevant for the purposes of computing the net profit or loss. Prior period items are to be included in the determination of the net profit or loss.

Respectfully following the above cited judgments we allowGround No. (1) for the Assessment Year 2007-08, Ground No.(1) for the Assessment Year 2008-09 and Ground No.(5) for the Assessment Year 2012-13 relating to claim of deduction of expenses under the head 'Prior Period Expenses'.

24. Common ground No.4 raised by the assessee is as follows:

"(4) Disallowance of claim of expenses under the head 'Retirement Benefit of Employees'.

Ground and Assessment Year	Amount
Ground No.(3) for the Assessment Year 2007- 08;	Rs. 1,00,22,722/-
Ground No.(2) for the Assessment Year 2008- 09;	Rs. 1,02,74,000/-
Ground No.(1) for the Assessment Year 2009- 10;	Rs. 96,67,000/-
Ground No.(2) for the Assessment Year 2010-11;	Rs. 8,37,000/"-.

25. We note that Ground No. (3) for the Assessment Year 2007-08, Ground No.(2) for the Assessment Year 2008-09 , Ground No.(1) for the Assessment Year 2009-10 and Ground No.(2) for the Assessment Year 2010-11 are against disallowance of claim of deduction of expenses under the head 'Retirement Benefit of employees'. The brief facts qua the issue are that for the assessment year 2007-08, the assessee claimed deduction of Rs.1,00,22,722/-being provisions for retiring benefits of employees, in computation of income under the general provisions of the Act as well as in determining income u/s 115JB of the Act, which was arrived at based on actuarial valuation. The ld AO added the amounts both in computation of income under general provisions of the Act as well as in determining of income u/s 115JB of the Act holding that the amounts are not ascertained liabilities. The ld AO considered the issue in para 9 to 12 (In page 5 and 6) of his order dated 29-12-2009. Before the ldCIT(A), the assessee raised two grounds, namely Ground No.(3) for addition of Rs.1,00,22,722/- made

under the general provisions of the Act and Ground No.(7) for addition of Rs.1,00,22,722/- made in determining book profit u/s 115JB of the Act.

For the assessment year 2008-09, the assessee claimed deduction of Rs.1,02,74,000/-being provisions for retiring benefits of employees, in computation of income under the general provisions of the Act as well as in determining income u/s 115JB of the Act, which was arrived at based on actuarial valuation . The ld AO added the amount in computation of income under general provisions of the Act holding that the amount is not an ascertained liability. However, the ld AO did not compute income u/s 115JB of the Act as income under the general provisions of the Act was on the higher side and book profit as shown by the assessee was taken in the assessment order. The ld AO considered the issue in para 8 and 9(page 5) of his order dated 23-12-2010. Hence, only Ground no.(2) was taken before the ld CIT(A) against additions of Rs.1,02,74,000/- under the general provision of the Act.

For the assessment year 2009-10, the assessee claimed deduction of Rs.97,67,000/-being provisions for resettlement benefits of employees, in computation of income under the general provisions of the Act as well as in determining income u/s 115JB of the Act, which was arrived at based on actuarial valuation. The ld AO added the amount in computation of income under general provisions of the Act holding that the amount is not an ascertained liability. However, the ld AO did not compute income u/s 115JB of the Act as income under the general provisions of the Act was on the higher side and book profit as shown by the assessee was taken in the assessment order. The ld AO considered the issue in para 5.0 to 5.03 (page 2 to 4) of his order dated 23-12-2011. Hence, only Ground no.(1) was taken before the ld CIT(A) against additions of Rs.97,67,000/- under general provisions of the Act.

For the assessment year 2010-11, the assessee claimed deduction of Rs.8,37,000/- being provisions for re-settlement benefits of employees, in computation of income under the general provisions of the Act as well as in determining income u/s 115JB of the Act, which was arrived at based on actuarial valuation. The ld AO added the amount in computation of income under general provisions of the Act holding that the amount is not an ascertained liability. However, the ld AO did not compute income u/s 115JB of the Act as income under the general provisions of the Act was on the higher side and book profit as shown by the assessee was taken in the assessment order. The ld AO considered the issue in para 05.00 to 05.2.1 (page 4 to 6) of his order dated 30-11-2012 Hence, only Ground no.(2) was taken before the ld CIT(A) against additions of Rs.8,37,000/- under the general provisions of the Act.

26. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the ld CIT(A) who has confirmed the addition made by the assessing officer. Aggrieved, the assessee is in further appeal before us.

27. We have heard both the parties and perused the material available on record, we note that for the assessment year 2007-08 , the assessee submitted that as the amounts were arrived at based on actuarial valuation, the same are ascertained liability and the amount should be allowed while computing book profit u/s 115JB of the Act. The submission of the assessee is included in the Paper Book for the assessment Year 2007-08 in para 10 in page 53 to60. For the Assessment 2008-09 , the assessee made submissions that provisions for retirement benefit of Rs.1,02,74,000/- should be allowed as the same was arrived at based on actuarial valuation. The submission of the assessee is included in the Paper Book for the assessment Year 2008-09 in para 5 in page Nos. 34 to 38.For the Assessment 2009- 10, the assessee made submissions that provisions for resettlement benefit of Rs.97,67,000/- should be allowed as the same was arrived at based on actuarial valuation. The submission of the assessee is included in the Paper Book for the

assessment Year 2009-10 in para 4 in page 31 to 36.For the Assessment 2010-11, the assessee made submissions that provisions for resettlement benefit of Rs. 8,37,000/- should be allowed as the same was arrived at based on actuarial valuation. The submission of the assessee is included in the Paper Book for the assessment Year 2010-11 in para 6 in page 29 to 34.

We note that the ld CIT(A) decided the issues in para (F) in page 7 of his consolidated order dated 08-10-2013. The CIT(A) allowed the grounds partly by directing the ld AO to verify the actual sums debited to the Profit and Loss Account based on actuarial and consider such amounts as ascertained liability. The ldCIT(A) followed the order of his predecessor in Appeal No.Guwa-223/2006-07 dated 22-06-2007 for the Assessment Year 2004-05. An apparent mistake was corrected and a rectification order by the ldCIT(A) was passed on 28-02-2014 and ground no.(1) for the Assessment Year 2009-10 was taken into account in para (F) of his order.However, The ld CIT(A) in para (F) of the consolidated order considered the issue as whether 'retirement benefit for employees' is to be added to book profit for the purpose of section 115JB of the Act and followed the appeal order of his predecessor where the decisions of Apex Court in case of Metal Box Co. Of India Vs Their Workmen 73 ITR 53(SC) and Bharat Earth Movers Ltd Vs CIT 245 ITR 428(SC) were followed. The ld CIT(A) directed the ld AO to verify the actual sums debited to P &L account based on actuarial valuation and to consider the amount as ascertained liability. He also stated that the Assessing Officer would re-compute the book profit u/s 115JB of the Act in accordance with the direction.

However, the ld CIT(A) did not mention that such ascertained liability should also be deducted in computation of income under the general provisions of the Act.Thus, the ld CIT(A), in effect, only considered the Ground No.(7) for the

Assessment Year 2007-08 which is related to allowability of deduction of 'retirement benefit for employees' in determining book profit u/s 115JB of the Act. As stated para 5.1 to 5.5 hereinabove, the assessee company had another Ground (3) for the Assessment Year 2007-08, Ground No.(2) for the Assessment Year 2008-09, Ground No.(1) for the Assessment Year 2009-10 and Ground No.(2) for the Assessment Year 2010-11 relating to deduction of 'Retirement Benefit for Employees' under general provisions of the Act and the ld CIT(A) inadvertently did not address the same in his consolidated order though he agreed with the contention of the assessee company that amounts based on actuarial valuation will be treated as ascertained liability and held that third and Seventh Grounds for the Assessment Year 2007-08, Second ground for the assessment Year 2008-09, First ground for the Assessment Year 2009-10 and Second Ground for the assessment year 2010-11 are partly allowed for statistical purposes.

28. We note that the ldCIT(A) in para 6 in page 4 and 5 of his appeal order No. Guwa-255/2015-16/128 dated 06-07-2016 for the Assessmentyear 2011-12 has held that provisions of resettlement benefit arrived at based on actuarial valuation is allowable deduction and the same is not hit by the provisions of section 43B of the Act. We note that the Coordinate Bench of Mumbai Tribunal in case of Hindustan Petroleum Corporation Ltd in ITA No.1294/Mum/2001 dated 26-09-2012 has held in para 1 to 10 that provisions of post retirementbenefits based on actuarial valuation is an allowable expenses u/s 37(1) of the Act. Therefore, respectfully following the judgment of the Coordinate Bench in case of Hindustan Petroleum Corporation Ltd (Supra), we direct the assessing officer to allow provisions of post- retirement benefits based on actuarial valuation as expense u/s 37(1) of the Act, after due verification and in accordance to law.

29.Common ground No. 5 raised by assessee reads as follows:

"(5) Rejection of Additional Ground raised before the CIT(A) relating to claim of deduction of expenditure on account of corporate social responsibility.

Ground and Assessment Year	Amount
Ground No.(5) for the Assessment Year 2007- 08;	Rs.309,08,755/-
Ground No.(5) for the Assessment Year 2008- 09;	Rs.350,25,274/-
Ground No.(6) for the Assessment Year 2009- 10;	Rs.402,89,573/"-

30. Ground No. (5) for the Assessment Year 2007-08, Ground No.(5) for the Assessment Year 2008-09, Ground No.(6) for the Assessment Year 2009-10 are against rejection of additional grounds raised before the ld CIT(A) regarding claim of deduction of expenditure on account of corporate social responsibility. Brief facts qua the issue are that during the appellate proceedings before the ld CIT(A), the assessee company raised additional grounds for the above-mentioned years claiming deduction of expenses incurred by it following guidelines issued by the Government on corporate social responsibility.It was submitted by the assessee company that the expenditures under the Corporate Social Responsibility Scheme were debited in the profit and loss account. However, while making computation of income, the same were added back under erroneous impression of the Act and wrong understanding of the provisions of law, that the same were not allowable expenditures. The matter was not raised before the ld AO and realising the mistake, the issue was raised for the first time before ldCIT(A). It was prayed before the ldCIT(A) that the grounds should be accepted and the issue should be considered on merits.

However, the CIT(A) did not accept the submissions of the assessee company. The ldCIT(A) considered the issue in para (C) of page 6 of the consolidated order dated 08-10-2013. The ldCIT(A) held that the claim made during appellate

proceedings for the first time cannot be entertained in view of Apex Court decision in case of Goetze(India) Ltd Vs. CIT 284 ITR 323(SC). Hence, the ldCIT(A) rejected the claim of deduction of expenses on account of Corporate Social Responsibility activities and additional grounds raised by the assessee company were dismissed.

31. Aggrieved by the order of the ld CIT(A), the assessee is in appeal before us.

32. We note thatldCIT(A) is not justified in not considering the additional grounds raised before him for the first time. It is well settled that the ld CIT(A) has ample power to consider an issue though not raised before the ld AO during assessment proceedings. It is a settled law that an appeal being a continuation of assessment proceedings, it would be permissible for an assessee to agitate its grievances before the first assessee authority. In case of CWT V Smt. VimlabenVadilal Mehta (1984) 145 ITR 11(SC) it is held that when an appeal is filed against an assessment order before the AAC, the assessment case is thrown open and appellate proceedings constitute a continuation of the assessment proceedings. In case of CIT V Kanpur Coal Syndicate (1964) 53 ITR 225(SC)it is held that scope of AAC's power is co-terminus with that of the ITO. CIT(A) has plenary power in disposing of an appeal. He can do what the ITO can do and also direct him what he has failed to do. In case of Jute Corporation of India Ltd Vs. CIT (1991) 187 ITR 688(SC) it is held that the observation of the Supreme Court in case of Kanpur Coal Syndicate (Supra) are squarely applicable in the interpretation of section 251(1)(a). It is held that power of the AAC is co-terminus with that of the ITO. If that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. An appellate authority while hearing an appeal against the order of a sub-ordinate authority has all the powers which the original authority may have in deciding the question before it. The Hon'ble Supreme Court in case of CIT V NirbheramDaluram (1997) 224 ITR 610(SC)

has held that the High Court was in error in holding that the appellate power conferred on the AAC u/s 251 was confined to the matter which had been considered by the ITO. The Apex Court held that the power of the AAC is plenary and co-terminus with the power of the ITO. The Hon'ble Calcutta High Court in case of Ranicherra Tea Co Ltd (1994) 207 ITR 979 (Cal) has held that power of CIT (A) is not confined only to the materials on records at the time of assessment. CIT (A) has plenary powers and can make such further enquiries as he thinks fit and has all the power of original authority. The power of CIT (A) is discussed in case of Hukumchand Mills Ltd V CIT(1967) 66 ITR 232(SC). It is observed that power of AAC is not confined to the subject matter of the appeal, but extends to the subject matter of assessment. The entire assessment is thrown open before the AAC. The AAC may deal with all points and grounds which arise from not merely the subject matter of appeal, but even from larger area of subject matter of assessment. In case of Cellulose Products India Ltd (1985) 151 ITR 499(Guj)(FB) while interpreting the power of Tribunal, the full Bench of Hon'ble Gujarat High court has held that the powers of the AAC are wider than the power of the Tribunal. The principle laid down in earlier decisions was also approved in the Full Bench decision that the jurisdiction and power to deal with the matter in issue must be from the perspective as what was subject matter of assessment and not merely what was the subject matter of appeal. Reference may also be made to another decision of Hon'ble Gujarat High Court in case of CIT V Ahmedabad Crucible Company (1994) 206 ITR 574(Guj). In case of SmtPrabhavati S Shah V CIT (1998) 231 ITR 1 (Bom) it is held that on a plain reading of Rule 46A, it is clear that this rule is intended to put fetters on the right of the assessee to produce before AAC, any evidence, whether oral or documentary, other than the evidence produced by him during the proceedings before the ITO, except in the circumstances set out therein. It does not deal with the powers of the AAC to make further enquiry or to direct the ITO to make further enquiry and report the result of the same to him. This position has been

made clear by sub-rule (4) which specifically provides that the restrictions placed on the production of additional evidence by the assessee would not affect the power of the AAC to call for the production of any document or the examination of any witness to enable him to dispose of the appeal.

Considering the legal position explained above, we admit the additional grounds raised by the assessee and the same is being adjudicated in the subsequent para of our order.

33. Common ground No.6 raised by the assessee reads as follows:

"(6) Disallowance of claim of deduction of expenditure for 'Corporate Social Responsibility' made following Guidelines issued by the Government.

Ground and Assessment Year	Amount
Ground No.(6) for the Assessment Year 2007-08;	Rs. 309,08,755/-
Ground No.(6) for the Assessment Year 2008-09	Rs. 350,25,274/-
Ground No.(7) for the Assessment Year 2009-10	Rs. 402,89,573/-
Ground No.(5) for the Assessment Year 2010-11	Rs. 470,96,316/-
Ground No.(2) for the Assessment Year Social2011-12	Rs. 497,43,581/-
Ground No.(3) for the Assessment Year 2012-13	Rs. 586,21,435/-
Ground No.(3) for the Assessment Year 2013-14	Rs. 536,19,001/"-

34. We have heard both the parties and perused the material available on record, we note assessee incurred these expenses by following specific guidelines on Corporate Social Responsibility(CSR) for public sector enterprises. The ldCIT(A) is not justified in bringing a new issue of application of income for CSR expenditure in terms of Circular No.1/2015 dated 21-01-2015 which has been issued in relation to Explanation 2 to Section 37(1) of the Act which is

prospective and applicable from Assessment Year 2015-16 relating to expenses incurred with reference to section 135 of the Companies Act,2013.

The CSR expenditure is always an expense to be reflected in the Statement of Profit and Loss Account. Such treatment is considered in generally accepted principles of accounting. Regarding preparation of budget of CSR expenditure based on Net Profit as per Guidelines of CSR issued by the Government, it is submitted that a measuring rod has to be decided to finalise the quantum of CSR expenses and net profit is the best measuring rod. In the Guidelines, loss making Enterprises are exempted from incurring CSR expenses on the logic that the Enterprise must survive on its own before contributing for the welfare to the State. The CSR expenses are mandated to all profit making Central Public Sector enterprise. Hence, Gross Receipt or Turnover of an enterprise is not considered to determine the quantum of CSR expenses. Thus, simply because Net Profit is taken as base for determining the budget of CSR expenses, it need not lead to the conclusion that the expenses are application of funds and not allowable expenses. In accounting treatment of CSR expenditure, these are revenue in nature and the same should be charged as expenses to the Statement of Profit and Loss Account. However, when an 'asset' is created from such expenditure, the definition of the word 'asset' as per 'Framework for Preparation and Presentation of Final Statement' issued by the Institute of Chartered Accountants (ICAI) should be followed and when the control of the asset is transferred to others, the same should be charged to Profit and Loss Account.

35. We note that regarding Circular No.1/2015 dated 21-01-2015 where it is stated that CSR expenditure is an application of income and not an expenses incurred wholly and exclusively for the purpose of carrying of business, it is submitted that Circular No.1/2015 dated 21-01-2015 has been issued explaining the provisions of Finance (No.2) Act,2014 and the same should be read with the provisions of Explanation 2 to section 37(1) of the Act inserted by the Finance

(No.2)Act,2014 w.e.f 01-04-2015. The Explanation states that expenditure incurred by an assessee on activities relating to corporate social responsibility referred to section 135 of the Companies Act,2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession. As a deeming fiction has been created in the Explanation and hence its scope is limited to the purpose for which it is created. The deeming fiction has been created for CSR expenses referred to in section 135 of the Companies Act,2013 and the same cannot be extended to expenses incurred following mandated Guidelines on CSR for Central Public Sector Enterprises. Moreover, the deeming fiction of the Explanation has been effective from 01-04-2015 and the same is applicable from the Assessment Year 2015-16 onwards and the same cannot be applied retrospectively for earlier years. The creation of a deeming fiction establishes that the same has been introduced to negate another available view and hence the scope of Explanation 2 to section 37(1) of the Act is limited to the fiction created and the same cannot be extended to earlier years. For that we rely on the judgment of the Coordinate Bench of Raipur in case of ACIT Vs. Jindal Power Limited in ITA No.99/BLPR/2012, for the Assessment Year 2008-09, where it has been held that expenditure on Corporate Social Responsibility though voluntary, is allowable as business expenditure. It is also held that Explanation 2 to section 37(1) inserted w.e.f. 01-04-2015 is not retrospective. It applies only to Corporate Social Responsibility expenditure referred to in section 135 of the Companies Act,2013 and not to voluntary Corporate Social Responsibility expenditure. The Tribunal has observed that the amendment in the scheme of section 37(1) which has been introduced with effect from 1st April,2015 cannot be construed as to disadvantage to the assessee in the period prior to the amendment. This disabling provisions, as set out in Explanation 2 to section 37(1), refer only to such corporate social responsibility expenses as under section 135 of the Companies Act,2013 and, as such, it cannot have any application for the period not covered by this statutory provisions which itself

come to existence in 2013. Explanation 2 to section 37(1), is therefore, inherently incapable of retrospective operation and prospective in nature. From the facts of the case and issue of law discussed hereinabove, it is clear that the assessee company is entitled to claim of deduction of its Corporate Social Responsibility expenses u/s 37(1) of the Act. Therefore, we allow assessee`sGround No. (6) for the Assessment Year 2007-08, Ground No.(6) for the Assessment Year 2008-09 , Ground No.(7) for the Assessment Year 2009-10 and Ground No.(5) for the Assessment Year 2010-11, Ground No.(2) for the Assessment Year 2011-12, Ground No.(3) for the Assessment Year 2012-13,Ground No.(3) for the Assessment Year 2013-14, relating to claim of deduction of Corporate Social Responsibility expenses.

36. Common ground No. 7 raised by the assessee reads as follows:

"(7) Disallowance of claim of deduction under the head 'Provisions for Stores and Consumables' and 'Capital work in progress'.

Ground No.(2) for the Assessment Year 2007-08 *Rs. 16,17,31,186/-*

Ground No.(1) for the Assessment Year 2010-11 *Rs. 13,56,00,000/-*

Capital work in progress Rs. 20,00,000/-

Ground No.(1) for the Assessment Year 2011-12

Capital work in progress Rs. 12,90,738/-

Ground No.(4) for the Assessment Year 2012-13

Capital work in progress Rs. 4,22,70,535/-

Ground No.(4) for the Assessment Year 2013-14 *Rs. 37,19,83,895/-*

The assessee informs us by way of written submission that he does not want to press this ground, therefore, we dismiss the common ground No. 7 raised by the assessee as not pressed.

37. Common ground No. 8 raised by the assessee reads as follows:

"(8) Disallowance of claim of deduction for Interest paid u/s 234D of the Income Tax Act, 1961. " Interest on excess refund"

Ground and Assessment Year	*Amount*
Ground No.(3) for the Assessment Year 2011- 12 ;	*Rs. 3,83,88,266/-*
Ground No.(2) for the Assessment Year 2012- 13;	*Rs. 6,54,39,202/-*
Ground No.(2) for the Assessment Year 2013-14;	*Rs. 7,35,87,056/"-*

The assessee informs us by way of written submission that he does not want to press this ground, therefore, we dismiss the common ground No. 8 raised by the assessee as not pressed.

38. Common ground No. 9 raised by the assessee reads as follows:

"(9). Disallowance of claims of deduction under the head 'Provision for Doubtful Debt'

Ground and Assessment Year	*Amount*
Ground No.(2) for the Assessment Year 2009-10 ;	*Rs. 13,97,827/-*

The assessee informs us by way of written submission that he does not want to press this ground, therefore, we dismiss the common ground No. 9 raised by the assessee as not pressed.

39. Common ground No. 10 raised by the assessee reads as follows:

"(10). Disallowance of claims of deduction of 'Prior period Depreciation'.

Ground and Assessment Year	*Amount*

Ground.No.(5) for the Assessment Year 2009-10, Rs.2,58,27,259/-

And Rs. 22,83,310/-

40. We have heard both the parties and perused the material available on record, we note that the assessee company claimed that there was an apparent mistake in computation of income for the Assessment Year 2009-10 as prior period depreciations amounting to Rs.2,58,27,259/- and Rs.22,83,310/-were not adjusted in computation of income. It was claimed that the two amounts should have been added to current depreciation. During assessment proceedings, the assessee company realised the mistake and informed the ld AO in its written submission in para 3(c) of the submission dated 12-08-2011 which is given in page 4 of the Paper Book for the Assessment Year 2009-10.

On appeal, the ld CIT(A) has held that the proper course of action for the assessee was to revise the return of income u/s 139(5) of the Act. The assessee having failed to revise the return u/s 139(5) within prescribed time, the same cannot be allowed in view of the decision of Apex Court in Goetz (India) Ltd V CIT 284 ITR 323(SC). Therefore, the ld CIT(A) dismissed the ground of the assessee in para (L) in page 12 of his consolidated order dated 08-10-2013.

Aggrieved by the order of ld CIT(A), the assessee is in appeal before us. We note that ld CIT(A) is not justified in not considering the matter on merit. The mistake was informed to the ld AO and the ld AO accepted the contention of the assessee. Only at the time of passing of the order, the ld AO forgot to consider the matter. As the matter was raised during assessment proceeding as evidence of submission of the assessee before the ld AO was on record (Page 4 para 3(c) of the Paper book for the Assessment Year 2009-10) and the ld AO failed to consider the same in the assessment order, the ld CIT(A) should have considered the matter on merits. It is well settled the ld CIT(A) has a plenary power to consider the issue in merits.

We note that in case of Ahmedabad Electricity Co. Ltd (1993) 199 ITR 351 (Bom)(FB) it is held that the basic purpose of an appeal procedure in an income tax matter is to ascertain the correct tax liability of the assessee in accordance with law. Therefore, the appellate authority can consider the proceedings before it and the material on record before it for the purpose of determining the correct tax liability of the assessee. There is nothing in section 254 or section 251 which would indicate that the appellate authorities are confined to consider only the objections raised before it or allowed to be raised before it either by the assessee or by the Department, as the case may be. They can consider the entire proceedings to determine the tax liability of an assessee. In case of CWT V Smt. VimlabenVadilal Mehta (1984) 145 ITR 11(SC) it is held that when an appeal is filed against an assessment order before the AAC, the assessment case is thrown open and appellate proceedings constitute a continuation of the assessment proceedings. Considering the facts and circumstances narrated above, we direct the assessing officer to allow the prior period depreciation.

41. Common ground No. 11 raised by the assessee reads as follows:

"(11). Disallowance of claim of deduction for "Provision for Allowance for Non-Management Staff"

Ground and Assessment Year	*Amount*
Ground No.(3) for the Assessment Year 2010-11;	*Rs. 17,46,80,387/-*

The assessee informs us by way of written submission that he does not want to press this ground, therefore, we dismiss the common ground No. 11 raised by the assessee as not pressed.

42. Common ground No. 12 raised by the assessee reads as follows:

"(12). Disallowance of claim of deduction for 'Other Provisions'.

Ground and Assessment Year	*Amount*

Ground No.(4) for the Assessment Year 2010-11; *Rs.5,61,254/-*

The assessee informs us by way of written submission that he does not want to press this ground, therefore, we dismiss the common ground No. 12 raised by the assessee as not pressed.

43. Now, we shall take Revenue's appeal.

Ground No. 1 and 2 raised by Revenue in ITA No.97/Gau/16, A.Y. 2011-12 relates to claim of deduction Rs. 17,46,80,387/- being the amount paid during the previous year 2010-11 for pay revision of non-managerial staff" as no such deduction was claimed by the assessee in its return of income A.Y. 2011-12.

44. We have heard both the parties and perused the material available on record, we note that ld CIT(A) allowed the claim of the assessee observing the following:

" As the amount was not allowed in the previous year as not accrued or not paid basis, the same should be allowed as deduction on payment basis. If the payment is made during the relevant assessment year 2011-12, the assessee company is entitled to deduction of the amount of Rs. 17,46,80,387/-. I direct the Assessing Officer to verify the facts and allow the deduction on payment basis, if not allowed in the earlier year."

It appears from the books of the accounts of the assessee that in the month of November, 2010i.e. A.Y. 2011-12, Rs.25,70,98,017/- was paid to the non-management staff including amount of Rs. 4,53,62,446/- pertaining to the period Apr'2010 to Oct'2010 and the balance arrear amount of Rs. 21,17,35,571/- was pertaining to the period 01.07.2007 to 31.03.2010. The liability provided for this arrear amount as on 31.03.2010 was Rs. 20,64,46,406/- (out of which was provided for in F.Y. Rs. 17,46,80,387/-, was provided for in 2009-10 i.e. A.Y. 2010-I1). Considering this factual position, we do not find any

infirmity in the order of ld CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

45. Ground No. 3 and 4 raised by Revenue in ITA No.97/Gau/16, A.Y. 2011-12 relates toallowing claim of deduction of Rs.5,61,254/- for the reversal entry of other provisions passed in the books of account.

46.We have heard both the parties and perused the material available on record, we note that ld CIT(A) allowed the claim of the assessee observing the following:

"If the amount of Rs. 5,61,254/- was allowed and taxed in the assessment year 2010-11, the same amount should not be taxed again in the assessment ear 2011-12.If entries are passed in the books of account by crediting the amount in the profit and loss account. otherwise, the same amount will be fixed in two assessment years. I direct the Assessing Officer to verify the facts and allow deduction of the mount if the same is taxed twice."

We note that the assessee had debited an amount of Rs. 38,92,108/- towards other provisions (unsettled Tour bills, Medical Expenses, etc.) in its submission for A.Y. 2010-11. The assessee had furnished details of bills amounting to Rs. 33,30,854/- only and for the balance amount of Rs. 5,61,254/-(Rs. 38,92,108- Rs. 33,30,854), the assessee had not submitted any bill and it was purely a provision. The A.O. had disallowed the amount of Rs. 5,61,254/-and added to the total income of the assessee for the A.Y. 2010-I1. It appears from the books of the accounts of the assessee that the amount of Rs. 5,61,254/- were reversed and credited to P&L Account in the relevant A.Y.2011-I2. Considering this factual position, we do not find any infirmity in the order of ld CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

47. Ground No.5 raised by Revenue in ITA No.97/Gau/16, A.Y. 2011-12 relates to in directing the assessing officer to verify the facts relating to the issue of Rs. 2,09,46,273/- under the head 'Provision for Stores' as giving direction for verifying the facts and allowing it is not within the purview of section 251(a) of the Income Tax Act, 1961.

48. We have heard both the parties and perused the material available on record, we note that ld CIT(A) allowed the claim of the assessee observing the following:

"If the amount of Rs.2,09,46,273/- was disallowed and taxed in earlier assessment years, the same amount should not be taxed again in the assessment year 2011-12, if entries are passed in the books of account by crediting the amount in the profit and loss account. Otherwise, the amounts will be taxed in two assessment years. I direct the Assessing Officer to verify the facts and allow deduction of the amount if the same is taxed twice."

We note that on perusal of the assessment order 2010-11, it is observed that the assessee had debited Rs.13,56,00,000/- on account of Provisions for Stores in Profit & Loss. The Assessing Officer in the assessment for AY 2010-11, had disallowed the said amount as the amount claimed by the assessee was only provisions and not any ascertained liabilities. However, it appears from the schedule –'O'- 'Miscellaneous Income of Profit & Loss Account for AY 2011-12 of the assessee, the amount of Rs. 2,09,46,273/- being the provisions of stores was reversed by crediting the amount to profit and loss account. Considering this factual position, we do not find any infirmity in the order of ld CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

49. Ground Nos. 1 and 2 in Revenue's appeal in ITA No. 98/Gau/2016, for A.Y.2012-13 and Ground Nos. 1 and 2 in Revenue's appeal in ITA No. 28/Gau/2016, for A.Y.2013-14 relate to deletion of addition of Rs.1,88,88,019/- and Rs.2,84,55,706/- respectively relate to disallowance under section 40(a)(ia) of the Act.

50. We have heard both the parties and perused the material available on record, we take the lead case for A.Y.2012-13 and we note that ld CIT(A) allowed the claim of the assessee observing the following:

The Ld. CIT(A)-2 Guwahati has made the following observation for A.Y.2012-13.

"The only contention of the Assessing Officer against the provisions is that the assessee company preferred for further litigation. However, appeal before higher authorities need not make an ascertained liability into a contingent liability in all cases. The assessee company clearly explained why and how the provisions are made following different paragraphs of the Accounting Standard AS-29. Moreover, subsequent

developments of the events of dismissal of the appeals by the Golaghati Court fortify the justification of the assessee to make provisions of the interest liability in the previous year relevant to assessment year 2012-13. Hence, the assessee is entitled to deduction of Rs. 1,88,88,019/- being the provisions made for interest liability for the previous year relevant to assessment year 2013-13. I am of the view that the provisions of section 194A are not applicable to the facts of the case. Section 194A of the Act is applicable at the time of credit of the income to the account of the payee or at the time of payment thereof whichever is earlier. In case of the assessee company, an unilateral action is taken by the assessee company to recognize its liability and a sum of money is kept separately as provisions in its books of account for the liability. The liability is recognized and provided for in the books of account, but the claim of the party is not accepted and communicated to the party is not credited to the account of the party or the amount is not credited to any account whether called interest payable account or suspense account or by any other name in the books of account. Only a liability has been created in the books of account and no income by way of interest is credited to any account. Hence, I am of the view that provisions of explanation to section 194A are not applicable. Since there is a view that interest from part of judgement debt, following the well settled trite of law that if two views are possible, the favourable view to the assessee should be taken, the assessee company deserves benefit of doubt for non-deduction of tax at source under section 194A of the Act. As I hold that provision of section 194A is not attracted to the facts of the case and the assessee, provisions of section 40(a)(ia) is not attracted."

After going through the order of ld CIT(A) on this issue, as noted above, we do not find any infirmity in the order of ld CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue are dismissed for A.Y. 2012-13 and 2013-14.

51. Ground Nos. 1 and 2 in Revenue's appeal in ITA No. 29/Gau/2018, for A.Y.2014-15 and Ground No. 1 in Revenue's appeal in ITA No. 278/Gau/2018, for A.Y.2015-16 relate to deletion of addition of Rs.261,88,998/- and Rs.1,54,25,500/- respectively relate to disallowance under section 14A of the Act.

52. We have heard both the parties and perused the material available on record. We note that ld. CIT(A) viewed that, the AO failed to consider the accounts of the appellant company which shows that the company earned huge profits and utilized only a very small portion of it for investment in mutual funds which generated exempted income. No nexus between the borrowed funds & mutual funds was established by the AO, hence, ld CIT(A) deleted the addition. Aggrieved by the order of ld CIT(A), the Revenue is in appeal before us.

53.After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. AR, we find that the issue involved in the present appeal is no longer res integra. We note that Special Bench of ITAT in the case of Cheminvest Ltd. Vs CIT 121 ITD 318 (Delhi) (SB) held that the disallowance u/s 14A of the Act can be made even in the year where there is no exempt income earned or received by the assessee. The decision of the Special Bench on which the CIT(A) placed reliance has since been reversed by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs CIT 317 ITD 33 (Delhi), wherein it was held that if there is no exempt income earned or received by the assessee, no disallowance is warranted under section 14A read with rule 8D of the Rules. We note that Coordinate Bench of ITAT Kolkata in the case of REI Agro Ltd. Vs. DCIT 144 ITD 141 (Kol-Trib) has held that it is only the investments which yields dividend during the previous year that has to be considered while adopting the average value of investments for the purpose of Rule 8D(2)(ii) & (iii) of the Rules. The aforesaid view of the Tribunal has since been affirmed as correct by the Hon'ble Calcutta High Court in G.A.No.3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd. (supra).

We note that there is no disallowance under Rule 8D(2)(i). Besides under rule 8D(2)(ii) no disallowance can be made as the assessee has own funds which is more than investments made by assessee. However, for disallowance under Rule 8D(2)(iii) only the dividend bearing securities should be considered; for that we rely on the judgment of the Co-ordinate Bench of Kolkata in the case of REI Agro Ltd (supra). Therefore, we direct the AO to compute the disallowance under rule 8D(2)(iii) r.w. section 14A, of the Act, taking into account dividend bearing securities. Therefore, we allow these grounds raised by Revenue for statistical purposes.

54. Ground No. 2 raised by the Revenue in ITA No.29/kol/18, for A.Y. 2014-15 relates to deletion of addition of Rs.11,49,095/-..

55. We note that CIT(A) during A.Y 2012-13 & A.Y 2013-14 allowed provision for interest, part of which was reversed in A.Y 2014-15. AO had gone for appeal to ITAT for A.Y 2012-13 & A.Y 2013-14.Reversal of the said provision in A.Y 2014-15 was disallowed in assessment by AO, which was not contested by NRL, as provision was already allowed in earlier assessment year by CIT(A). That being so, we decline to interfere in the order passed by CIT(A).

56. In the result, appeals of the assessee in I.T.A. Nos. 5 to 8/Gau/2014, I.T.A. Nos. 89 & 90/Gau/2016 and I.T.A. No. 27/Gau/2017 for A.Ys. 2007-08 to 2013-14 are allowed whereas the Revenue's appeal in I.T.A. Nos. 97 & 98/Gau/2016, I.T.A. No. 28/Gau/2017 are dismissed and Revenue's appeal in I.T.A. No. 29/Gau/2018 and I.T.A. No. 278/Gau/2018 for A.Ys. 2011-12 to 2015-16 are partly allowed for statistical purposes.

Order pronounced in the open court on 13-09-2019.

Sd/-	Sd/-
(एस.एस. गोदारा/S.S. GODARA)	(एवंडॉए.एल.सैनी/ DR. A.L. SAINI)
(न्यायिकसदस्य/ JUDICIAL MEMBER)	(लेखासदस्य / ACCOUNTANT MEMBER)

गुवाहाटी, दिनांक/ Guwahati, Dated: 13-09-2019

सुदीपसरकार, व.निजीसचिव/ *Sudip Sarkar, Sr.PS*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, गुवाहाटी / DR, ITAT, Guwahati
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

Sr. Private Secretary/ D.D.O / H.O.O.
आयकरअपीलीयअधिकरण, गुवाहाटी/ ITAT, Guwahati

Sr.No.	Details	Date	Initials	Designation
1	Draft dictate on			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			
11	Draft dictation sheets is enclosed			