

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/TAX APPEAL NO. 347 of 2024**

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COMMISSIONER OF INCOME TAX (INTERNATIONAL  
TAXATION AND TRANSFER PRICING)

Versus

JOSHI TECHNOLOGIES INTERNATIONAL INC.

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Appearance:

MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1  
for the Opponent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**  
and  
**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

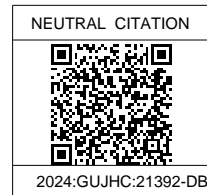
**Date : 15/04/2024**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. By this Tax Appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act'), the appellant revenue has proposed the following substantial question of law arising out of the order dated 17<sup>th</sup> August, 2022 passed by the Income Tax Appellate Tribunal in ITA no.2389/Ahd/2015 for A.Y. 2006-07.

*“Whether in the facts and circumstances of the case, the learned ITAT has erred in law and on facts in allowing the additional depreciation u/s.32(1)(ia) of the Act on oil well treating the same as ‘Plant & Machinery?’”*



2. At the outset, Mr. Varun K. Patel, learned Senior Standing Counsel submitted that the issue arising in this appeal is with regard to the additional depreciation as provided u/s.32(1)(ia) of the Act as the assessee is engaged in extraction of mineral oil. It was submitted that in assessee's own case in Tax Appeal no.514 of 2022 similar issue is considered by this Court and the appeal of the department for A.Y. 2006-07 was dismissed on merits.

3. This Court while dismissing the Tax Appeal no.514 of 2022 has observed as under :-

*“5. The issue as to what constitutes and what is included in "Plant" for the purposes of Section 32 of the Act is no longer res integra. In **Niko Resources Vs. Assistant Commissioner of Income Tax [(2017) 395 ITR 301(Guj)]**, the Division Bench of this Court laid down that under Section 32 of the Income Tax Act, the depreciation allowances is subject to the provisions of Section 34 and that the same is permissible only in respect of certain assets specified therein, namely, buildings, machinery, plant and furniture owned by the assessee and used for the purpose of business.*

*5.1 It was held that section 43(3) defines "Plant", which is wide in its import. The Court held that in order to qualify as Plant, the article must have some degree of durability. The test was laid down that, does the article fulfil the function of plant in the assessee's*



*trading activity and whether it could be said to be a tool of his trade with which the assessee carries on his business, becomes part and parcel of plant.*

5.2 *Therefore, all such things and tools which become plant, if they are part and parcel of the plant, functioning would aid an assessee's business activity.*

5.3 *In **Niko Resources (supra)**, it was accordingly held reversing the decision of the Tribunal that the Tribunal was not right in law in treating mineral oil wells as Buildings for the purpose of applying rate of depreciation under Section 32 of the Act. It was held that mineral oil wells constitute "Plant" for the purpose of Section 32 of the Act.*

4. Adopting the above reasoning, in our opinion, no question of law much less substantial question of law, as proposed by the revenue arise. Therefore, this appeal is accordingly **dismissed**.

**(BHARGAV D. KARIA, J.)**

**(NIRAL R. MEHTA, J.)**

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