

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA**  
[Before Shri Sanjay Garg, Judicial Member & Shri Girish Agrawal, Accountant Member]**I.T.A. No. 153/Kol/2021**  
Assessment Year: 2015-16

M/s. La Opala Rg. Ltd. (PAN: AAACL5569J)	Vs.	Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.
Appellant		Respondent

Date of Hearing	29.03.2022
Date of Pronouncement	18.05.2022
For the Appellant	Shri Punit Agrawal & Sm. Khushaboo Rai, ARs.
For the Respondent	Shri Amol Kamot, CIT, DR

**ORDER****Per Girish Agrawal, Accountant Member :**

This is an appeal preferred by the assessee against the order of Ld. Pr.CIT, Kolkata-2 dated 30.03.2021 for AY 2015-16 vide order No. ITBA/REV/F/REV5/2020-21/1031942258(1) against the assessment order passed by DCIT, Circle-12(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 30.05.2018.

2. The sole issue involved in the appeal relates to assumption of jurisdiction by the Ld. Pr. CIT u/s. 263 of the Act for revision of the order of the AO by holding that deduction claimed by the assessee u/s. 80IC of the Act has been wrongly allowed.

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of Opal & Crystal Glassware and sale of electricity generated from wind farm. The AO notes that for AY 2015-16 the assessee filed its return of income u/s. 139 of the Act on 28.11.2015 declaring total income of Rs.43,63,19,250/-. The case was selected for scrutiny and notice u/s. 143(2) was issued on 21.09.2016. During the

course of hearing the assessee was asked to furnish the details on the issues and the assessee submitted the same from time to time. Considering the facts and circumstances of the case, the total income of the assessee company and tax thereupon for the relevant assessment year was computed by the AO as under:

<u>“Calculation of total income as per normal provisions</u>	
<i>Income as per return filed by the assessee company</i>	<i>Rs.43,63,19,250/-</i>
<i>Total income as per order u/s. 143(3)</i>	<i>Rs. 43,63,19,250/-</i>
<i>Tax on normal provisions</i>	<i>Rs.14,83,04,914/- (A)</i>
<u>Calculation of total Income under MAT provisions</u>	
<i>Book Profit under MAT provisions u/s. 115JB</i>	<i>Rs.51,73,70,741/-</i>
<i>Book Profit as per order u/s. 143(3) of the I. T. Act</i>	<i>Rs.41,73,70,741/-</i>
<i>Total on MAT provisions</i>	<i>Rs. 8,74,82,994/- (B).</i>

*Tax as per normal provisions on total income (A) is higher than the Tax on Book Profit under MAT provisions u/s. 115JB(B), hence the tax will be charged as per normal provisions of the Income Tax Act.”*

Thereafter, the AO assessed the total income at Rs.43,63,19,250/- u/s. 143(3) of the Act and issued demand notice.

4. The Ld. Pr. CIT observed in para 2(ii) of his order for invoking the impugned revisionary jurisdiction as under:

*“2(ii) In the instant case, the assessee had an income of Rs. 50,80,13,667/- from Sitargunj exempted unit in which the assessee had claimed deduction u/s 80IC of the Act of Rs. 15,24,04,100 (30% of Rs. 50,80,13,667/-). It was observed from the Profit & Loss Account for the year ended 31.03.2015 that the assessee had credited an amount of Rs. 2,21,04,514/- from Export Incentive and also other income totalling to Rs. 33,19,274/- which was mainly obtained from Interest, Dividend, recovery against provision for doubtful debts, gain on redemption of current Investment etc. Further, while calculating deduction u/s 80IC of the Act, the assessee had taken into consideration .the above-mentioned income of Rs. 2,54,23,788/- (Rs. 2,21,04,514/- + Rs. 33,19,274/-) and the Assessing Officer allowed the same while completing assessment u/s 143(3) on 30.05.2018. As per provision of 80IC of the Act, the deduction will be restricted to only from profit or gains of the assessee derived from business as specified in sub section (2). However, the amount of Rs. 76,27,136 i.e. 30% of Rs. 2,54,23,788/- which was not derived from eligible business of the assessee was allowed to the assessee at the time of assessment which resulted in excess disallowance of deduction u/s 80IC of the Act.*

*As such, it is evident that the assessment u/s. 143(3) is erroneous in so far as it is prejudicial to the interest of revenue and the provisions of section 263 of the Act are clearly attracted in this case.”*

5. The assessee submitted its reply on the above observation on 22.03.2021 explaining the case that the issue relating to deduction u/s. 80IC of the Act as already been decided in favour of the assessee by the coordinate bench of ITAT, Kolkata in its own case for AY 2013-14 vide ITA No.559/Kol/2018 order dated 31.10.2019. However, the Id. Pr. CIT proceeded to conclude the revisional proceedings u/s. 263 of the Act by giving his direction to the AO in para 10 and 11 of his order to prepare the assessment afresh. The same is reproduced as under:

*“10. Having regard to the facts and circumstances of the case and in the light of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court, and in accordance with the amendment made in Section-263 of the Act with effect from 01.06.2015, I hold that the impugned assessment order dated 30.05.2018 passed by the A.O. is erroneous insofar as it is prejudicial to the interests of the revenue. I further hold, after giving the assessee an opportunity of being heard, that the impugned assessment order dated 30.05.2018 is liable to be set-aside. Therefore, I set-aside the said assessment order directing the A.O. to frame the assessment afresh after considering the aforesaid observations, Hon'ble Supreme Court and Hon'ble High Court decisions and as per law.*

*11. In the result, the assessment order u/s 143(3) dated 30.05.2018 for A.Y.2015-16 is set aside to the file of the Assessing officer with a direction to pass a fresh assessment order after considering the issues discussed in Para 2(i) and Para 2(ii) above, the aforesaid observations, as per law and after giving an opportunity of being heard to the assessee.”*

6. Thus, the Id. Pr. CIT in exercise of his powers u/s. 263 of the Act was of the view that order of the AO dated 30.05.2018 passed u/s. 143(3) of the Act was erroneous and prejudicial to the interest of the revenue and he was pleased to set aside the assessment order.

7. Aggrieved by the order of Ld. Pr. CIT the assessee has preferred the present appeal before the Tribunal.

8. We have heard the rival submissions and gone through the record carefully. We note that the Ld. Pr. CIT issued a show cause notice vide letter dated 04.12.2017 which reads as under:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL  
COMMISSIONER OF INCOME TAX  
PCIT, Kolkata-2

To, LA OPALA RG LTD CHITRAKOOT BUILDING,230A, A J C BOSE ROAD MINTO PARK KOLKATA 700020,West Bengal India	
--	--

PAN: AAACL5569J	Assessment Year: 2015-16	Dated: 17/03/2021	DIN & Letter No : ITBA/COM/F/17/2020-21/1031569764(1)
--------------------	-----------------------------	----------------------	--

Sir/ Madam/ M/s,

**Subject: Communication with - Government departments and authorities**

**विषय / Sub:** Show Cause Notice u/s 263(1) of the I T Act, 1961 in respect of assessment order for AY 2015-16 - Matter regarding.

Whereas the undersigned had called for and examined the record of your case and it is considered that the impugned assessment order passed u/s 143(3) of the I T Act, 1961 by the DCIT, Circle – 12(1), Kolkata on 30/05/2018 for AY 2015-16 is prima facie, erroneous in so far as it is prejudicial to the interests of revenue for the following reasons:

2. As per Section 80IC(2) of Income Tax Act, 1961, (1) where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from, any business referred to in sub-section (2), there shall, in accordance with the subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).

As per sub Section 2(a)(ii) of Section 80IC for the state of Himachal Pradesh or the state of Uttaranchal if any assessee begins to manufacture or produce any article or things but other than those given in the Thirteen Schedule on the 7<sup>th</sup> day of January, 2003 and ending before 1<sup>st</sup> day of April, 2012, the deduction for the assessee will be available at 100% for the first 5 years from the initial assessment year and 30% for the

next 5 assessment years.

In the instant case, the assessee had an income of Rs. 50,80,13,667/- from Sitargunj exempted unit in which the assessee had claimed deduction u/s 80IC of the Act of Rs. 15,24,04,100 (30% of Rs. 50,80,13,667/-). It was observed from the Profit & Loss Account for the year ended 31.03.2015 that the assessee had credited an amount of Rs. 2,21,04,514/- from Export Incentive and also other income totalling to Rs. 33,19,274/- which was mainly obtained from Interest, Dividend, recovery against provision for doubtful debts, gain on redemption of current Investment etc. Further, while calculating deduction u/s 80IC of the Act, the assessee had taken into consideration the above-mentioned income of Rs. 2,54,23,788/- (Rs. 2,21,04,514/- + Rs. 33,19,274/-) and the Assessing Officer allowed the same while completing assessment u/s 143(3) on 30.05.2018.

As per provision of 80IC of the Act, the deduction will be restricted to only from profit or gains of the assessee derived from business as specified in sub section (2). however, the amount of Rs. 76,27,136 i.e. 30% of Rs. 2,54,23,788/- which was not derived from eligible business of the assessee was allowed to the assessee at the time of assessment which resulted in excess allowance of deduction u/s 80IC of the Act with consequent under charge of tax of Rs. 25,92,464/- (33.99%) excluding interest.

Therefore, the assessment completed appears to be erroneous in so far as it is prejudicial to the interest of revenue.

3. Having regard to the facts and circumstances of the case and in law and in accordance with the provisions of Section 263(1) of the I. T. Act, 1961 you are hereby given an opportunity of being heard to show cause as to why the impugned assessment order passed u/s 143(3) by the DCIT, Circle – 12(1), Kolkata on 30/05/2018 for AY 2015-16 should not be held as erroneous in so far as it is prejudicial to the interests of the revenue. You may accordingly furnish your written submissions u/s 263(1) of I. T. Act, 1961 by 22/03/2021, in this regard elaborating and/or evidencing your contentions/submissions. Considering the pandemic situations arising due to COVID-19, physical attendance is not considered necessary and you are requested to make written submissions with necessary details through E-mail ID: [kolkata.pcit2@incometax.gov.in](mailto:kolkata.pcit2@incometax.gov.in) and it will be treated as compliance to this notice u/s 263(1).

9. We find that the issue involved in this case is with regard to exercise of powers of jurisdiction u/s. 263 of the Act by the Ld. Pr. CIT. First and foremost, we noticed that the Ld. Pr. CIT has not rebutted the facts as stated by the assessee in its submissions 22.03.2021 in reply to show cause notice u/s. 263 of the Act. In the aforesaid reply the assessee has clearly explained the nature of enquiries made by the AO before concluding the assessment on all the aspects that are set out in the show cause notice u/s. 263 of the Act. Suffice it to say the AO had made due enquiries and applied his mind on all the aspects that are set out in the above show cause notice. .

We also find that the issue is covered in favour of the assessee by its own case for the AY 2013-14 in ITA No. 559/Kol/2018 dated 31.10.2019 wherein on identical fact pattern, the coordinate bench of ITAT, Kolkata has held as under:

” Now we proceed to answer the question as to whether the decision of the AO, after perusal of the reply of the assessee in respect of deduction u/s. 80IC of the Act, can be held to be unsustainable in law or whether can it be said to be a plausible view. We note that in the notice issued u/s. 263, the Ld. CIT has alleged that the assessee has claimed excess deduction u/s. 80IC of the Act on certain items of ‘other income’ which were not derived from the eligible business of the assessee and hence were required to be disallowed for working out the sum eligible for deduction u/s 80IC of the Act. We note the details of other income and export incentive are as under:

Particulars	Amount (Rs.)
Interest	Rs. 4,64,496/-
Exchange Differences (Net)	Rs.24,66,086/-
Provision for doubtful Receivables/Advances Recovered/Written back	Rs. 6,25,198/-
Unclaimed balance adjusted	Rs. 2,18,752/-
Insurance & other claims	Rs. 1,18,406/-
Export Incentives	Rs.96,51,611/-

6. The provisions as contained in sec 80-IC(1) is reproduced hereunder;

*“80-IC(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).”*

The provisions as contained in sec 80-IC(1) does not define the words 'profits and gains derived by any undertaking'. We note that the Hon'ble Supreme Court in the case of Liberty India Vs CIT (317 ITR 218) has held that items of income which have first degree nexus with the business of the industrial undertaking can be held to be profits & gains derived from the undertaking in order to avail the profit-linked deduction u/s 80IA of the Act. In this background, it is now pertinent to examine the nature of each item credited under the head 'other income', which is the matter in dispute here. The same is discussed individually hereunder;

(a) Interest: It is noted that interest income solely comprised of interest received from security deposits kept with electricity department. The Ld. AR of the assessee has contended that these are operational receipts of assessee as the company is required to compulsorily deploy funds by way of security deposits with the electricity boards in order to obtain supply of power for its unit. He thus pointed out that it is not a case where the assessee has kept deposit with the dominant intention to earn interest income but in this case the assessee was under compulsion to maintain deposit with the electricity board to ensure supply of power to the unit. He thus contended that such interest income had first degree nexus with the eligible undertaking of the assessee and accordingly the same would equally qualify for the deduction u/s 80IC of the Act. We note that this claim of the assessee is supported by the following decisions:

(i) CIT Vs. Nagreeka Foils Ltd. in ITA No.99 of 2007 Hon'ble High Court of Calcutta dt.21.07.2014;

*"Both, in the case of CIT Vs. Sterling Foods (supra) and in the case of liberty India Vs. CIT (supra), Their Lordships have laid emphasis to find out whether there is a direct nexus between the money earned and the activity pursued by the assessee. In the case of Pandian Chemicals (supra), interest was earned by the assessee from out of deposits made with the electricity board. It could, therefore, be said that the income arising out of interest did not have any direct nexus with the industrial undertaking of the assessee. In the case of CIT vs. Sterling Foods (supra), the assessee was engaged in the business of sea foods. The income in question was derived from out of sale of the import entitlements. It was, therefore, possible to say that the income was not or did not have any direct nexus with the activity of the assessee. Similarly, in the case of Liberty India (supra) the income in question was the amount of drawback incentives received by the assessee which did not have any direct nexus with the export made by the assessee. But, in the present case it is difficult to say that the interest earned by the assessee from the buyers of the goods on account of delayed payment of the sale proceeds does not have any direct nexus with the business of the assessee. Similarly, the interest received by the assessee on account of fixed deposits made for the purpose of providing margin money to the lending bank also has a direct nexus because the finding of the CIT (A) is, which is not disputed before us, that for the purpose of making such deposit the assessee had also borrowed money from the bank. The resultant effect is that if a deposit of Rs.10/- is to be made by way of margin money for borrowing Rs.100/-, the assessee has to borrow 6 Rs.110/- out of which Rs.100/- can be used for his business and Rs.10/- can be invested by way of margin money. When he is paying interest for Rs.110/- and receiving interest on the amount of Rs.10/-, it can only be said that he is really paying interest for Rs.100/- which he originally needed for the business. The income arising out of the deposit made by him is, therefore, his business income."*

In the case referred above, that assessee was in compulsion to maintain deposit with bank in order to provide margin money requirements for its eligible unit. Likewise, in the present case also the assessee is required to maintain security deposit with the electricity department for supply of power to its eligible unit. We further note that on similar facts this Tribunal on 08.07.2016 has upheld the same view in favour of the assessee in ITA 2073/Kol/2014. We therefore hold that the eligibility of the interest income earned on deposit u/s 80IC, was clearly a plausible view in law.

We also find merit in the alternate contention of the Ld. AR that even if such interest is held to be not eligible for deduction u/s 80IC of the Act, then it is the net interest which should be considered for the purposes of computing deduction u/s 80IC of the Act. Going by the figures as set out in the standalone accounts of the eligible unit, the following position emerges:

Particulars	Amount (Rs.)
Interest paid	Rs. 3,12,66,009/-
Interest Received	Rs. 4,64,496/-
Net Interest Paid	Rs.3,08,01,513/-

This alternative plea of the assessee is found to be supported by the following judicial pronouncements, which are as under;

(i) ACG Associated Capsules (P) Ltd. Vs. CIT, Hon'ble Supreme Court in (2012) 343 ITR 89(SC)

*"Whether therefore, ninety per cent of not gross rent or gross interest but only net interest or net rent, which has been included in profits of business of assessee as computed under head 'Profits and Gains of Business or Profession' is to be deducted under clause (1) of Explanation (baa) to section 80HHC for determining profits of business - Held, yes [In favour of assessee]"*

(ii) CIT Vs. Bulher India Ltd. in (2012) 206 Taxmann 62 Hon'ble High Court of Karnataka;

*"Section 80-IA of the Income-tax Act 1961 - Deductions - Profit and gains from infrastructure undertakings - Assessment year 1997-98 - Whether for purpose of computation of deduction under section 80-IA interest income earned by assessee after deducting interest payments on borrowed tunas should be taken into account - Held, yes [In favour of assessee]"*

(iii) CIT Vs. Shri Ram Honda Power Eguip. In (2007) 289 ITR 475 Hon'ble High Court of Delhi .

*" Whether where, as a result of computation of profits and gains of business and profession, Assessing Officer treats interest receipt as a business income, deduction under section 80HHC would be permissible in terms of Explanation (baa) to section 80HHC, of net interest, i.e. gross interest less expenditure incurred for purposes of earning such interest - Held, yes "*

(b) Exchange Difference (Net): From the facts on record it is noted that the assessee has export sales as well as import purchase of raw materials, in its eligible unit u/s 80-IC of the Act. Accordingly, Exchange differences arose, firstly being due to rate fluctuation in export/Import transactions of sales of finished goods and purchase of raw materials and secondly when the outstanding dues/receivables were translated into Indian currency in terms of AS-11 issued by ICAI. According to the Ld. AR of the assessee, the forex fluctuation is directly linked to the business activity of the assessee of sales of finished goods and purchase of raw materials and thus forms part of profits & gains of the eligible undertaking. We find sufficient force in the argument of the Ld. AR. The gain on fluctuation in foreign exchange represents the gain relating to the business activity of the assessee. The manufactured goods are exported and the sale consideration is received in foreign exchange. Exchange rate difference arises out of, and is directly related to the sale transaction involving export of goods of the specified eligible unit of the assessee and the same logic equally applies for purchase of imported raw materials. In our considered view therefore the exchange rate fluctuation gain/loss is part & parcel of the profits and gains of the eligible unit and is therefore entitled for deduction under section 80-IC of the Act. In this regard, we rely on the following decisions;

(i) CIT Vs. RachnaUdyog in (2010) 35 DTR 65 Hon'ble Bombay High Court;

*"Deduction under sec. 80IB -Profits and gains derived from industrial undertaking- Exchange rate difference Exchange rate difference arises out of and is directly related to sale transaction involving export of goods of the industrial undertaking-Difference arises purely as a result of fluctuation in the rate of exchange between the date of export and the date of receipt of proceeds - Therefore, the difference on account of exchange rate fluctuation is entitled to deduction under sec. 80-ID."*

(ii) JCBL India Pvt. Ltd. Vs. ACIT in ITA 368/Chd/2012 Hon'ble ITAT Chandigarh;

*"12. From the above, it is clear that the Hon'ble High Court has categorically held that the exchange rate fluctuation arises out of and is directly related to the sale transaction involving the export of goods of the industrial under taking and, therefore, difference on account of exchange rate fluctuation is entitled to deduction under section 80-IB of the Act. No contrary decision was brought to my notice."*

*Respectfully following the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. RachnaUdyog (supra) , I hold that the difference on account of exchange rate fluctuation is entitled to deduction under section 80IC of the Act. This ground of appeal is allowed. "*

(iii) M/sAnsystco Vs. ACIT in ITA 895/Chd/2012 Hon'ble ITAT Chandigarh;

*"However in respect of Foreign Exchange Fluctuation Gain of Rs. 35,432/-, hold that the same is directly linked to the business activity and consequently, the assessee is entitled to the claim of deduction under section 80IC of the Act. The ground of appeal raised by the assessee is, thus partly allowed."*

(iv) M/s Hycron Electronics Vs. ITO in ITA 798/Chd/2012 Hon'ble ITAT Chandigarh;

*"61. As far as the amount received on foreign exchange fluctuation is concerned, though in case of Ansystco (supra) it was held that gain from Foreign Exchange Fluctuations was directly related to the business activity therefore assessee was entitled to deduction. However the details are not incorporated in the assessment order or in the impugned order, therefore, we set aside the order of Ld. CIT(A) and remit the matter back to the file of Assessing Officer with a direction that if the same relates to the business transaction on Revenue account, then deduction may be allowed on this amount, otherwise the issue may be decided in accordance with law."*

(c) Provision for Doubtful Receivable/Advances recovered/Written back: The assessee in earlier years had provided for Provision for doubtful Receivables/Advances. Since the provision for diminution in value of asset is not allowable as deduction, such provisions were disallowed in earlier years i.e. the years in which they were created. During the year the assessee was able to realize the dues from those parties, against whom such provision was accounted for. Hence, the provisions made in the earlier years were reversed in the year under consideration. Since the provision was not claimed as deduction from the business profit, as a corollary the write back out of such provision was also excluded from the computation of eligible profits. We note that the provisions written back were indeed deducted from the computation of the eligible profits u/s 80IC of the Act. This fact is verified from the computation of income of the assessee. In the circumstances since the assessee has already disallowed and excluded such item of income in the computation of eligible profit u/s 80-IC, the question of its deductibility u/s 80IC does not arise under the facts and circumstances of the case.

(d) Unclaimed balances adjusted: This head includes amount of sundry balance written back in respect of sundry creditors. The assessee had account for cessation / remission of trading liabilities which constituted income u/s 41(1) of the Act. The liabilities were accounted as expenses of the eligible undertaking in the earlier years and therefore in arriving at profits eligible for deduction u/s 80IE of the earlier years, deduction for such trading liabilities were allowed. In the year under consideration, the unpaid balances/liabilities which were found to be not payable were written back in the Profit & Loss Account. We therefore find that the unpaid balances written back related only to the business for which deduction was allowed while computing the eligible profits u/s 80IC in earlier years. Such write back of liabilities is therefore held to be eligible for deduction u/s.80IC of the Act. Some of the relevant decisions in this regard is discussed hereunder:-

(i) CIT Vs. Metalman Auto (P) Ltd. in (2011) 336 ITR 434 Punjab & Haryana High Court;

*"Appeal (High Court) -Substantial question of law-Deduction under s. 80IB -Tribunal is justified in law in allowing deduction under s. 80-IB on labour job receipts-Miscellaneous receipts from rebate, discount and balances written off are incidental to the profits and gains derived from eligible business under s. 80IB -No substantial question of law arises-CIT vs. Impel Forge & Allied Industries Ltd. (IT Appeal No. 543 of 2008, dt 5th Dec., 2008) followed."*

- (ii) M/s. Ansycos Vs. ACIT in ITA 895/Chd/2012 Hon'ble ITAT Chandigarh;

*"However, the claim of the assessee was allowed on the amount received on scrap sales, credit balances written off the parties and insurance claim received towards material damage. We have already in the paras herein above, while deciding appeal of the revenue upheld the order of Commissioner of Income Tax (Appeals) in allowing deduction under sec 80IC of the Act on Miscellaneous Income, Insurance Claim, and income from sale of scrap ..... "*

(e) Insurance & other claims: From the details on record, it is noted that the Insurance claim received pertained to breakage losses in transit of finished goods (transit between factory to party place). The assessee deals in crockery items which are of fragile nature and require utmost care. Accordingly there are possibility that there is some breakage or damage during the transport of goods, for which the assessee has taken insurance cover. The cost of production of goods which was lost upon damage and breakage as well the insurance premium paid on such goods are debited to the stand-alone accounts of the eligible Unit. The proceeds received from insurance company therefore effectively reduce cost of production of the goods/stock which was manufactured at the Unit but got damaged or destroyed. In the circumstances we find force in the Ld. AR's argument that the insurance receipt has a first degree nexus with the business of the eligible Undertaking. Some of judicial references are discussed hereunder:-

- (i) ACIT Vs. M/s. Ansycos in ITA 910/Chd/2012 Hon'ble ITAT Chandigarh;

*"We have already in the paras herein above, while deciding appeal of the revenue upheld the order of Commissioner of Income Tax (Appeals) in allowing deduction under sec 80IC of the Act on Miscellaneous Income, Insurance Claim, and income from sale of scrap ..... "*

- i) DCIT Vs. M/s. VMT Spinning Co. Ltd. in ITA 12/Chd/2014 Hon'ble ITAT Chandigarh;

*"26( i) The revenue also challenged order of Id. CIT(Appeals) in increasing eligible profit under section 80IC of the Act on insurance claim received for Rs.2,50,125/- regarding income from insurance claim. Regarding the income from insurance claim, Assessing Officer referred to the decision of the Hon'ble Supreme Court in the case of Sterling Foods 237 ITR 597 and disallowed claim of assessee. The Id. CIT(Appeals) considering the issue directed the Assessing Officer to examine whether the assessee had received any real income on this account and to restrict disallowance accordingly..... .*

*... 27 After considering rival submissions, we do not find any infirmity in the order of Id. CIT(Appeals) . The Id. CIT(Appeal,) correctly considering the decisions of the Hon'ble Punjab & Haryana High Court and the Delhi High Court (supra) rightly directed Assessing Officer to examine whether assessee had received any real income on this account and to restrict the disallowance accordingly. No infirmity has been pointed out in the order of the Id. CIT(Appeals), therefore, we do not find any justification to interfere with the order of Id. CIT(Appeals). This ground is accordingly, dismissed.*

*28. In the result, departmental appeal is dismissed."*

(f) Export Incentive: It is noted that the assessee had received export incentives from the Government in the form of Duty drawback, Focus product license and Status holder license etc. in respect of the export sales made by the eligible unit. The nature of each of the export incentive as explained by the Ld. AR of the assessee is discussed as under:

- (i) DEPB License is received for the export of the goods and the same is used for subsidising the cost of Raw Material as payment of the custom duty. There is sale of DEPB License and the same is used only for the payment of custom duty on Import of Raw Material. Thus, on the cost of DEPB License, custom duty gets rebated on import of Raw Materials. As such, there is no profit element is involved in DEPB License received by the assessee and the same is nothing but subsidising the cost of the products exported, so that it can be competitive in the export market.
- (ii) Focus Product License incentive is received from the Government for incentivise export of such products which have high export intensity/employment potential, so as to offset infrastructure inefficiencies and other associated costs involved in marketing of these products. The same was received as 2% of the FOB Value upto 31st May and thereafter @ 5% of the FOB Value from 1st June as per the government policies notified from time to time. Focus Product License is used for the payment of custom duty on Import of Raw Materials. Therefore, it is basically subsidising the cost of the assessee. There is no sale of Focus Product license made by the assessee and there is no profit element involved since the same is reimbursed at the actual cost only. It is like DEPB license which is to subsidise the cost of export sales so that it can be competitive in the market.
- (iii) Status Holder License is given with the objective to promote investment in up-gradation of technology of some specified sectors at 1% of the FOB value of the exports in the form of Duty Credit. The same is received over & above the duty credit claimed under other provisions. Status holder License is based on actual user condition and shall only be used for the Import of capital Goods for payment of custom duty. Again, there is no sale of Status Holder License made by the assessee and there is no profit element involved since the same is reimbursed at the actual cost only. It is also like DEPB license which is to subsidise the cost of export sales so that it can be competitive in the market.

From the above discussion it is clear that these export incentives, by whatever name called, given by the Government is with a view to incentivize and reduce the effective cost of production of the assessee. There is essentially no element of profit derived from export incentives, but it is meant to reduce the cost of production. The Ld. AR invited our attention to the decision of the Hon'ble Supreme Court in the case of CIT Vs Meghalaya Steels Ltd (384 ITR 217) wherein one of the questions before the Apex Court was whether insurance subsidy received from the Government could be said to be derived from the industrial undertaking and hence considered for the purposes of computing deduction u/s 80IC of the Act. The Supreme Court observed that the insurance subsidy was given to subsidize the cost of insurance premium incurred by the assessee in relation to the premises as well the stock manufactured at the eligible Unit. Accordingly the Court observed that such subsidy being relatable to the cost of production of the Unit had direct & first degree nexus with the business of the eligible undertaking and therefore was held to be eligible for computation of deduction u/s 80IC of the Act. We find that similar view was also expressed by the Hon'ble Supreme court in the case of Topman Exports Vs. CIT(2012) 18 Taxmann.com 120 in the context of duty drawbacks received on exports. The relevant extracts of Topman Exports (Supra) are reproduced hereunder;

*"Section 28(iib), read with section 28(iid) of the Income-tax Act 1961 - Business income - Cash assistance - Assessment year 2002-03 - Whether DEPB is a 'cash assistance' receivable by assessee and is covered under clause (iib) of section 28, whereas profit on transfer of DEPB takes place on a subsequent date when DEPB is sold by assessee and is covered under clause (iid) of section 28 - Held, yes"*

12. In view of the discussion made in the preceding paras, we are of the considered opinion that while passing the assessment order allowing the deduction u/s 80IC in respect of items of other income and export incentives, the AO did not follow a view which can be said to be 'unsustainable in law'. In the circumstances therefore, the jurisdictional facts for usurping the jurisdiction, being absent, we hold that the action of Ld. Pr. CIT was without jurisdiction and all subsequent actions are 'null' in

the eyes of law. We therefore quash the order impugned before us.”

10. In the appeal before us and in the decision of the coordinate bench of ITAT, Kolkata in assessee’s own case (supra), the issue of revisionary proceedings u/s. 263 of the Act is challenged on account of excess deduction claimed u/s. 80IC of the Act in relation to items of other income and export incentives. Each item of other income and export incentives has been elaborately dealt in the decision of the coordinate bench in assessee’s own case (supra).

11. We note that this issue is covered in favour of the assessee by the decision cited supra and the Ld. DR could not point out any change in facts or law which would have warranted any interference on our part to take a view divergent from that taken by the coordinate bench of ITAT, Kolkata in the case of assessee itself. Accordingly, we set aside/quash the order of the ld. Pr. CIT restoring the assessment order passed u/s. 143(3) of the Act.

12. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 18th May, 2022.

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

Dated: 18.05.2022

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant– M/s. M/s. La Opala Rg. Ltd., 10<sup>th</sup> floor, Flat No. 105, Chitrakoot, 230A, AJC Bose Road, Kolkata-700020. .
2. Respondent – DCIT, Circle-11(1), Kolkata
3. Pr.CIT-2, Kolkata.
4. DR, ITAT, Kolkata, (sent through e-mail).

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata