

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'SMC'  
JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 104/JPR/2021  
निर्धारण वर्ष/Assessment Year :2011-12

Saraf Exports Industrial Area Plot No. 01, Sardarshahar, Churu	बनाम Vs.	ACIT, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATFS9394N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Written submission)  
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 14/02/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (Here in after referred as to "NFAC" or CIT(A)) for the assessment year 2011-12 dated 12.07.2021, which in turn arises from the order passed by the ACIT, Circle, Jhunjhunu passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 28.01.2014.

2. Assessee has marched this appeal on the following grounds: -

- “1. Ground That the order passed by the Income-tax Officer sustain by the CIT (A) is illegal and against the law.
2. Ground That the addition made by the Income-tax Officer and sustain by the CIT(A) amounting to Rs. 174509.00 under section 40 (a) (ia) is illegal and against the law. The fact mention by the CIT(A) is not correct.
3. Ground That no amount was payable at the end of the accounting period, therefore, the addition sustain by the is illegal and against the law.
4. Ground That the amount of TDS was paid later on as such should have allowed in the year in which the amount was paid, evidence thereof was before the CIT(A) and lower deduction certificate was admitted by the AO in the order.
5. Ground That the disallowances made by the Assessing Officer and sustain by CIT(A) u/s 801B is illegal and against the law.
6. Ground Without prejudice the matter of allowability of section 801B of the Income Tax Act is pending before The Honorable Supreme Court/High Court therefore the decision as pronounce may kindly be applied in the year under consideration.
7. Ground That the AO and CIT(A) should not have restricted the claim to Rs. 473840.00, because the claim was in accordance with the law.
8. Ground That the CIT (A) should have allowed the deduction u/s 80LB of the IT Act as claimed in the return of income.
9. Ground That the charging of the interest is illegal and against the law.”

3. None appeared on behalf of the assessee however, the Bench decided to proceed the matter on merit based on the materials available on record, concerning the issue in question. The brief fact of the case is that the assessee had filed its return of income for A.Y. 2011-12 on 30.09.2011 declaring total income at INR 28,25,680/- The same was finally assessed u/s 143(3) of the

Act on 28.01.2014 and certain additions were made to the total income which was determined at INR 34,98,760/-.

3.1 The AO had noted that the assessee has claimed Exhibition Expense of INR 1,74,509/- on which TDS @0.01% should have been done. However, the assessee failed to do so and therefore the exhibition expenses were not allowed as a deduction by the AO in view of the provisions of section 40(a)(ia) of the Act.

3.2 The AO also noted that the assessee has claimed refreshment expenses amounting to INR 17,436/- but it has failed to produce the complete evidences of these expenses and therefore, the AO disallowed 20% of the same which comes to INR 3487/-.

3.3 The AO also noted that the assessee has claimed Petrol & Diesel expenses of INR 1,04,982/-. The AO disallowed 20% of these expenses amounting to INR 20,996/- in view of absence of complete details.

3.4 The AO also noted that the assessee has claimed telephone expenses at INR 55183/-. The AO held that the personal use of the telephone cannot be ruled out as no call register was maintained and therefore, 20% of these expenses which come to INR 11,036/- were disallowed and added back to the income of the assessee.

3.5 The AO also noted that the assessee has claimed a deduction under section 80IB of the Act in respect of Duty Drawback of INR 18,52,184/- also. The AO held that in the light of the decision of the Hon'ble Supreme Court in the case of Liberty India vs. CIT 317 ITR 218 (SC), the Duty Drawback/DEPB do not form part of the net profit of eligible industrial undertaking for the purpose of deduction under section 80IB and hence the AO reduced the claim of deduction u/s 80IB appropriately.

4. Aggrieved by the above disallowances / additions / adjustments, the assessee preferred an appeal before the Id. CIT(A).

5. The relevant finding of the Id. CIT(A) is reproduced as under:-

“4.Decision: The facts of the case, the grounds of appeal and the written submission are considered. The assessee has not responded separately to the notices issued under the faceless appeal system. The last notice was issued on 21.05.21. No further opportunity is deemed necessary. The grounds of appeal are decided hereinafter.

4.1 Grounds of appeal no. 1: this is a general ground of appeal and is not required to be adjudicated separately.

4.2 Ground of Appeal No. 2 & 3: These grounds of appeal assail the disallowance made by the AO u/s 40(a)(ia) of the Act (wrongly mentioned by the assessee as section 48(a)(ia) of the Act). The assessee had claimed deduction for exhibition expenses of INR 1,74,509/-. These expenses were paid to M/s Export Promotion Council for Handicraft. As per the relevant TDS certificate, the assessee was required to deduct TDS @0.01% on these payments. The AO noted that the assessee has not deducted TDS and therefore, the expense was not allowable as a deduction u/s 40(a)(ia) of the Act.

4.2.1 In the appellate proceedings, the assessee has not disputed the above facts but has claimed that M/s Export Promotion Council for Handicraft 'must have paid tax' on this amount. This argument of the assessee is self-serving and is not backed by any evidence. Hence this argument of the assessee is rejected. It is also seen that the submissions of the assessee do not mention any Form 26A obtained by the assessee in terms of Rule 31ACB of Income Tax Rules, 1962. This indicates that the assessee is not entitled to any relief. Lastly the claim of the assessee that there was no amount payable to M/s Export Promotion Council for Handicraft at the end of the previous year and therefore section 40(a)(ia) is not applicable is not relevant. Various High Court decisions are there which have taken the view that the word 'payable' in section 40(a)(ia) also includes 'paid'. A few such case laws in favour of Revenue are: CIT vs. Crescent Export Syndicate (2013) 216 Taxman 258 (Cal); CIT vs. Sikandarkhan N Tunvar (2013) 357 ITR 312 (Guj) etc.  
STAX DEPARTMENT

4.2.2 In view of the above facts, it is held that the AO has correctly denied the deduction u/s 40(a) (ia) of the Act. All the grounds of appeal of the assessee in this context are dismissed. It is also mentioned that though the assessee has argued that it has deducted TDS in a subsequent financial year on 09.07.2016 relevant to AY 2017-18 and that it is enclosing evidence for the same, no evidence to this effect is seen in the documents available in this office and in any case the TDS has not been verified by any authority. Therefore, no comments are given on the allowability of the deduction in the year of deduction of tax at source by the assessee.

Ground No. 4 to 8

4.3.4 It is also noted that the various decisions cited by the assessee are also relevant to decide the present appeal. The AO has given no finding that any part of the expenses were not incurred wholly or substantially for the purposes of business of the assessee. In view of the above discussion and case laws, it is held that the action of the AO to disallow a uniform 20% of the impugned expenses without pin-pointing specific defects or omissions cannot be sustained. The grounds of appeal of the assessee are allowed and the disallowances of INR 3,487/-, 20,996/- and 11,036/- out of refreshment expenses, Petrol & Diesel expenses and Telephone expenses respectively are deleted.

5. Grounds of Appeal No. 9, 10, 11 & 12: These grounds of appeal related to the claim of deduction u/s 80IB of the Act in respect of Duty Drawback of INR 18,52,184/-. The AO held that in the light of the decision of the Hon'ble Supreme Court in the case of Liberty India vs. CIT 317 ITR 218 (SC), the Duty Drawback and/or DEPB do not form part of the net profit of eligible industrial undertaking for the purpose of deduction under section 80IB and hence the AO reduced the claim of deduction u/s 80IB to INR 4,73,840/- only. In the written submissions the assessee has simply stated that the matter is sub judice in its case in earlier years.

5.1 The above facts have been carefully considered. It is noted that the Hon'ble Supreme Court is directly on the issue in the case of Liberty India vs. CIT 317 ITR 218 (SC) wherein it was held that, "Analyzing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression "profits derived from industrial undertaking" in section 80-IB. In para 24 of the Supreme Court's Order, it was concluded that, "In the circumstances, we hold that duty drawback receipt/DEPB benefits do not form part of the net profits of eligible industrial undertaking for the purposes of section 80-1/80- IA/80-IB of the 1961 Act."

5.2 It is also noted that subsequent decisions of various High Court including those from the jurisdictional High Court of Rajasthan have taken the same view as above. In the case of CIT vs. Garment Crafts [2016] 68 taxmann.com 222 (Rajasthan) the High Court has reiterated that the duty drawback and DEPB are not eligible for deduction u/s 80IB of the Act. The High Court has referred to the Liberty India decision (supra) and held that the decision is directly and squarely on the issue and that the issue is no more res integra, The Rajasthan High Court has also observed that its own previous judgments in the case of Saraf Seasoning Udyog [2009] 317 ITR 202 and Chokshi Contacts (P) Ltd. [2001] 251 ITR 587) were given prior to the judgment of the Hon'ble Apex Court in the case of Liberty India (supra) and thus are per incurium. The Rajasthan High Court also held that the judgments in the case of Topman Exports [2012] 342 ITR 49 (SC) and Vikas Kalra v. CIT

[2012] 345 ITR 557 (SC) cited before it, are in context of sec. 80HHC read with Explanation (baa) of the Income Tax Act, and accordingly are distinguishable. INCOME TAX DEPARTMENT

5.3 Therefore, following the decision of the Supreme Court in the case of Liberty India (supra) and the decision of the High Court of Rajasthan in the case of Garment Crafts (supra) it is held that the duty drawback amount of INR 18,52,184/- was not eligible to form part of the net profit of eligible undertaking of the assessee for the purpose of directions u/s 801B of the Act. Therefore, the decision of the AO to exclude this amount was correct and the same is confirmed. These grounds of appeal are dismissed.

6. Ground of Appeal No. 13: This ground of appeal relates to the charging of interest on the tax due from the assessee. The charging of interest is mandatory. though it is consequential to the finally assessed income. The ground of appeal is dismissed.”

6. As the assessee did not find favour fully from the Id. CIT(A), assessee moved this appeal aggrieved from the order of the Id. CIT(A) on the grounds as raised in para 2 above. To support the grounds taken by the assessee. The assessee has submitted their written submission on 27.09.2022 and the same is reiterated here in below:-

“ Today, during the course of hearing on the 26th of September, I have argue the appeal. I am sending this written argument as directed by the honorable member. The argument in this regard was done in virtual hearing on September 26, according to the order of the bench, I am sending this written argument with attachment.

During the year three issues are there:

1. Disallowances charges u/s. 40(a) (ia),
2. Disallowance of deduction 801B
3. Charging of Interest

Disallowances charges u/s. 40(a) (ia),

The first issue is in respect of disallowance of expenses amounting to Rs. 174509.00 u/s. 40(a) (ia), on account of Exhibition charges on account of the reason that tax has not been deducted. Regarding Exhibition charges u/s, 40(a) (ia), I am producing Balance Sheet of the assessee for the year under consideration for your kind perusal. From the perusal of the same, you will observe that there is no payable TDS or amount of expenses at the end of the financial year. Therefore, the

provision of Section 40(a) (ia) of I.T. Act is not applicable. Therefore the addition is illegal and against the law.

Furthermore further without prejudice to above, it is submitted that the assessee paid the amount of exhibition charges to M/s. Export Promotion Council for Handicraft. The recipient is assessed to Income Tax under PAN AAACE1747M. The assessment of the M/s. Export Promotion Council for Handicraft i.e. the recipient of expenses must has been completed by now and the amount of Exhibition charges must has been shown in his income at the time of assessment. Therefore, you will observe that if the tax has been paid by the recipient on income which is subject matter. In these circumstances the expenses cannot be under the said section. It is therefore, requested that the amount disallowed may kindly be deleted.

Further without prejudice to above it is further submitted that recipient of the expenses is also existing assessee assessed to tax. The tax was not too deducted on the prescribe rate therefore, being income tax assessee applied for lower tax deduction before the competent authority. For the purpose of lower deduction of tax U/s 197 of Income Tax Act, the recipient M/s. Export Promotion Council of Handicraft applied for Deduction certificate and same was granted to him by his assessing officer. A copy thereof was submitted before the Assessing Officer and copy of order of AO being attached. From perusal of the same, you will observe that tax @0.01% is to be deducted and it is admitted that necessary evidence was submitted before the AO. The assessee deducted tax as per the order of assessing authority and for your ready reference; the challan of tax deducted @ 0.01% is attached before the submission of CIT (A) and now before you also. I want to submit that as provided in the Act that tax was not deducted in the year in which has to be deducted but deducted subsequently in the year 2016, the expenses shall be allowed in that year of deduction of TDS. It is, therefore, requested that the amount which was disallowed during year under consideration i.e. in the assessment year may kindly be allowed by issuing direction in the year 2016. As per the law, the expenses disallowed during the assessment year 2011-12 under consideration are allowable in the assessment year 2017-18 in which tax has been deducted and deposited.

THE COMMISSIONER OF INCOME TAX EVEN NOT TOOK PAIN TO VERIFY THE PAYMENT OF TAX AND THE CERTIFICATE OF LOWER DEDUCTION. REJECTED SUMMARILY.

In view of the above facts and consideration, you will observe that the assessee is entitled for claiming expenses in the year in which tax was deducted at source and paid on 09.07. 2016. The date of payment of TDS is 09.07.2016 which pertains to assessment year 2017-18. The evidence is being attached you are therefore requested that necessary direction may kindly be issued to allow the deduction in the year of deduction of tax. The Income Tax Officer himself accepted that the certificate of LOWER DEDUCTION CERTIFICATE WAS ALLOWED.

THIS FACT WAS ADMITTED BY THE AO. I AM ATTACHING A COPY OF CHALLAN, A COPY OF THE PROFIT AND LOSS ACCOUNT, A COPY OF CHALLAN, AND PROOF OF E-PAYMENT IN RESPECT OF PAYMENT OF 0.01 AMOUNTS TO RUPEES 20 DEPOSITED ON 09.07.2016. THIS WAS ALSO ATTACHED WITH THE WRITTEN SUBMISSION SUBMITTED BEFORE THE CIT (A)-III, JAIPUR DATED 04.03.2020.

You are requested to direct to allow the expenses in the year of payment of TDS.

Disallowance of deduction 80IB

As far as the exemption of 80IB is concerned, it is submitted that the matter is pending before the Supreme Court which was decided by the ITAT against the assessee and has not been decided yet. Therefore, you are requested to order in this our's case that the order passed by the Supreme Court should be implemented this year itself also.

In the earlier years, the orders of the Income Tax Appellate Tribunal are against the taxpayer and the taxpayer is in appealed in the High Court against everyone. I hope you will consider and accept my prayer.

As regards charging of interest same is consequential.

It is therefore submitted that necessary order may kindly be passed.”

7. Per contra, the Id. Sr. DR has relied upon the orders of the Id. CIT(A) and submitted their counter written submission on 13.02.2023 along with the supporting case laws which reads as under:-

“The assessee had filed its return of income for A.Y 2011-12 on 30.09.2011 at total income of Rs 28,25,680/-. The same was finally assessed u/s 143(3) On 28.01.2014 at Rs. 34,98,760/-.

The AO had made additions u/s 40(a)(ia) for non-deduction of TDS on Exhibition expenses of Rs. 174509/-. The AO also noted that the assessee has claimed a deduction u/s 801B in respect of Duty Drawback of Rs. 1852184/- which was restricted to Rs. 473840/-.

The assessee approached the CIT(A) who confirmed the additions made by the AO. Aggrieved by the above decisions the assessee approached the ITAT.

Ground No. 1

Regarding disallowance u/s 40(a)(ia)

The assessee has claimed deduction for exhibition expenses of Rs.174509/- which were paid to M/s Export Promotion Council for Handicraft. However as per the relevant TDS certificate the assessee had to deduct TDS @0.01% on these payments which had not been deducted. Moreover, it is seen that the submissions of the assessee no where mention Form 26A in terms of Rule 31ACB of Income Tax Rules, 1962 which shows that the assessee is not entitled to any relief.

The ground taken by the assessee that no amount was payable to M/s Export Promotion Council for Handicraft at the end of the previous year and hence 40(a)(ia) is not applicable is not relevant. Various High Courts have held that word payable u/s 40(a)(ia) also includes 'paid'. Case Law CIT Vs Crescent Export Syndicate(2013) 216 Taxman 258(CAL); CIT Vs Sikandarkhan N Tunvar(2013) 357 ITR 312(Guj)

The assessee has also argued that the TDS has been deducted in a subsequent F.Y on 09.07.2016 relevant to A.Y 2017-18 but no evidence for the same has been given at any stage of the proceedings.

Ground No. 2

Regarding Disallowance of Duty Drawback

Hon'ble Supreme Court in the case of Liberty India vs CIT 317 ITR 218(SC), Duty Drawback do not form part of the net profit of eligible industrial undertaking for the purpose of Deduction u/s 801B and hence the same was restricted to Rs 473840/- by the AO and confirmed by the CIT (A). In addition, the jurisdictional High Court of Rajasthan has also taken the same view. In the case of CIT vs Garment Crafts (2016) 68 Taxmann.com 222(Raj) the HC has reiterated that Duty Drawback and DEPB are not eligible for deduction u/s 801B of the Act.

Considering the above discussion, it is humbly requested that both the grounds of appeal may be dismissed and the order of the CIT(A) maybe upheld”

The Id. DR has also submitted following decision for support the contentions so raised:-

- Liberty India vs. CIT \*(2009) 183 taxman 349 (SC).
- CIT vs. Sikandarkhan N. Tunvar (2013) 33 Taxmann.com 133 ( Gujarat H.C.).
- CIT vs. Crescent Export Syndicate (2013) 33 taxmann.com 250 ( Culcutta H.C.)
- CIT vs. Garments Crafts (2016) 68 taxmann.com 222 ( Raj. H.C.)

8. We have persuaded the written submission filed by both the parties and have gone through the rival contentions. We have also persuaded the decisions relied upon and also the orders of the lower authorities. This is an appeal filed by the assessee. The bench has noted that in the written submission filed and signed by the Id.AR of the assessee which is dated 26.09.2022 where in he has contended that the he has appeared before the bench and has argued the case. This fact mentioned by the Id. AR of the assessee are not correct. As the assessee sought an adjournment of the hearing fixed on 26.09.2022 stating that the Id. AR of the assessee he is going to argue the bench of ITAT at Jodhpur and therefore, not been able to appear before us. The relevant letter is placed on record here in below:-

“Sir,

With reference to the above, I want to submit that our above case is listed on the 26<sup>th</sup> of this month.

In this connection it is stated that our advocate Shri Suresh Ojha Shall be at Jodhpur before the camp of the Honorable Income Tax Appellate Tribunal.

It is requested that the appeal fixed for hearing may kindly be adjourned to another day on Monday for a virtual hearing.

Hope you will consider the request.

Inconvenience course to your regretted.

Thanking you,

Date:- 23.09.2022

Yours Faithfully

For Saraf Exports”

8.1 Thereafter vide letter dated 29.09.2022 letter addressed to CBDT chairmen stating the fact that the Id. CIT(A) has not disposed of three grounds and therefore, they seek the adjournment. The copy of the letter written by the assessee reads as under:

“To,

The Chairman,  
The Central Board & Direct Taxes,  
Room No. 245A,  
North Block,  
New Delhi-110011.

Reg: M/s Saraf Esport Palace,  
Sardarshahar.

PAN: ABMFS0322G

Period: A.V. 2013-14

APPEAL NO 416/JPR/2016-17.

Sub: Direction for disposal of rectification application

Sir,

I want to draw your kind attention that I have preferred an appeal since long back before the Commissioner of Income Tax (Appeals-3rd) Jaipur vide application dated 02.11.2020. The appeal is question was decided vide ordered 21.08.2018. The Commissioner of Income Tax (Appeal) while deciding the appeal not decided 3 grounds for which I am regularly requesting the Commissioner by one reason or the other same have not so far been decided. We have submitted more than one dosen application to CIT (A) the Chief Commissioner Faceless, New Delhi was also requested vided letter dated 20.05.2022 with a copy to ITAT Jaipur Bench Jaipur. The Hon'ble Tribunal before whom appeal is now pending is also not liberal in granting the adjournment on the ground. In case the ITAT decide the

appeal the assessee shall be deprived from his right. YOU ARE REQUESTED TO DIRECT THE CIT (A) TO DECIDE THE RECTIFICATION APPLICATION IN APPEAL NO 416/JPR/2016-17.

Now the last date given by the Tribunal is 03.11.2022 and such you are requested to kindly directly Commissioner of Income Tax Appeals Faceless to decide the rectification application which is pending since long back.'

Hope you will consider the request

Thanking you,

Date: 29.9.2022

Your faithfully  
For Saras Export Palace

Encl: As above

Partner

Copy to: The Income Tax Appellate Tribunal, Jaipur Bench in compliance of their order during the course of hearing that we are approaching The Honorable CBDT again. This being only humble intimation that we have submitted the application to chairman Central Board of Direct Taxes, New Delhi."

8.2 On 18.01.2023 the assessee claimed that the appeal of the assessee was fixed on 15.11.2022 and stated that why the same is not decided. On 15.11.2022 bench adjourned the case on 18.1.2023, on that date the Id. DR given copy of the submission and email received stating that the appeal be decided based on the written submission filed. The same were informed to Id. DR, and the matter was adjourned to 08.02.2023. On 08.02.2023 Id. DR seek time to file written submission matter adjourned to 14.02.2023. On 14.02.20233 the Id. DR also filed the written submission and since the Id. AR of the assessee already informed that the matter be decided based on the written

submission already filed. Taking into consideration all these facts this appeal of the assessee decided based on the written submission filed by both the party.

8.3 We have persuaded the written submission, orders of the lower authorities and legal decision relied upon by both the parties to drive home their contentions. The bench noted that the assessee time and again contended that the matter was argued by him on 26.09.2022 but the same as it evident the assessee seek time on that date. Therefore, the contentions raised are far from truth and against the records. The assessee was given time to follow up for rectification application which is not upcoming and based on that fact the matter is decided based on the contentions filed in the written submission. The bench noted that the ground no. 1 is general in nature and ground no. 9 is consequential in nature and therefore, it did not require any specific adjudication. Ground no. 2, 3 & 4 relates to disallowance made u/s. 40(a)(ia) of the Act. Before us on this ground the Id. AR of the assessee contended that

“For the purpose of lower deduction of tax u/s. 197 of the income tax act, the recipient M/s Export Promotion counsel of Handicraft applied

for deduction certificate and same was granted to him by his assessing officer. A copy thereof was submitted before the assessing officer and copy of order of AO being attached. From perusal of the same, you will observe that tax @ 0.01% is to be deducted and it is admitted that necessary evidence was submitted before the AO.

8.4 On this issue we have gone through the provision of section 40(ia). The law provide that if the assessee pays this tax then the same is allowable in the year when it is paid. Even the assessee on written submission page 3 sought relief that the AO be directed to allow the expenses in the year of payment of TDS. Looking to this provision and the specific relief sought by the assessee the Id. Assessing officer is directed to give the consequential relief in the year in which the tax has been paid by the assessee. In terms of these observation the ground no. 2, 3 & 4 are allowed for statistical purpose.

8.5 The ground no. 5, 6, 7 & 8 are related to the exemption of 80IB, the Id. **AR of the assessee fairly admitted that the issue is pending before the supreme court which was decided by the ITAT against the assessee and has not been decided yet. Therefore, the assessee prayed that when the supreme court pass the order the consequential relief be implemented in the**

**years also.** The bench fairly admitted the plea of the assessee and the assessing officer is directed to give necessary appeal effect arising out of the order of the supreme court in the case of the assessee. In terms of this observation and looking to the past decision of the co ordinate bench decision in the case of the assessee in ITA NO. 777 & 778/JP/2017 the bench has observed as under :

6.1 We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. There is no dispute on the point that if the assessee was found to be eligible for deduction u/s 80IB in the initial year of claim then the Assessing Officer cannot deny the benefit of claim in the subsequent years without disturbing the order of earlier year. However, in the case in hand, the assessee was not denied the eligibility of deduction u/s 80IB but only a particular receipts/income has been held as not eligible for deduction u/s 80IB on the ground that it is not an income derived by the industrial undertaking. Therefore, a particular receipt which is found to be not income/profit derived from the business of the eligible undertaking has to be excluded for the purpose of computing the deduction u/s 80IB. Hence, we find that the case of the assessee does not fall in the category where the Assessing Officer has accepted the business of the assessee undertaking as eligible for deduction u/s 80IB in the initial year but has taken a difference stands in the subsequent years. Further, a year before us is not the first year in which the claim of the assessee u/s 80IB in respect of Vishesh Krishi Upaj Yojana and Drawback Duty has been denied but this was denied in the earlier 16 ITA No. 777 & 778/JP/ 2017. M/s Saraf Export, RIICO Industrial Area. years and for the Assessment Year 2008-09, the matter has been carried to the Hon'ble Jurisdictional High Court but the assessee could not succeed. Hence, we do not find any substance in the ground no. 4 of the assessee's appeal same is dismissed.

Respectfully, following the order of the co ordinate bench in the case of the assessee ground no 5, 6, 7 & 8 stands dismissed.

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

Order pronounced in the open court on 20/02/2023

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2023

\*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Saraf Exports, Churu.
2. प्रत्यर्थी / The Respondent- ACIT, Jhunchunu.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA Nos. 104/JPR/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar