INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G": NEW DELHI

BEFORE

SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 4115/Del/07
Assessment Year: 2004-05

Picric Limited (Now known as Veetee Fine Foods Ltd.) Netaji Subhash Place, Pitampura, New Delhi- 110 034.	Vs.	Income Tax Officer Ward 14(4) New Delhi.
(Appellant)		**(Respondent)**

Assessee by:	Shri Neeraj Jain,Advocate Ms. Shaily Gupta, Advocate Shri Paritosh Garg, Advocate
Department by :	Shri H.K. Chaudhary, CIT(DR) Shri Sumit Kumar Verma, Sr. DR
Date of Hearing	06.04.2022 06.01.2023
Date of pronouncement	06.04.2023

O R D E R

PER ASTHA CHANDRA

The appeal by the assessee arises out of the order dated 30.08.2007 of the Ld. Commissioner of Income Tax (Appeals)- XVIII, New Delhi **("CIT(A)")** pertaining to the assessment year **("AY")** 2004-05.

2. The assessee has taken the following grounds of appeal :-

"1. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in excluding 'interest income' of Rs. 19,24,528/- from the profits for computing deduction under section 10B of the Act.

1.1 That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in excluding other income [being (i) subsidy received of Rs.81,000/- and (ii) insurance claims of Rs.19,50,000/-] from the profits for computing deduction under section 10B of the Act, holding the same to have not been derived from the industrial undertaking of the appellant.

1.2 That the CIT(A) erred on facts and in law in not appreciating that the aforesaid income' was derived from the industrial undertaking of the appellant and was inextricably linked with the business of the appellant.

1.3 Without prejudice that the CIT(A) while holding interest income of Rs. 19,24,528/- as income from other sources, did not allow deduction for interest expenditure amounting to Rs. 19,89,545/- incurred in respect of borrowed funds utilized for making the deposit on which such interest income was earned.

1.4 That the CIT(A) erred on facts and in law in holding that the appellant did not place on record any material in order to establish that the interest income earned by the appellant had a nexus with such expenditure on account of interest.

2. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in excluding benefit under Duty Entitlement Pass Book ("DEPB") Scheme, while computing deduction under section 80HHC of the Act.

2.1 Without prejudice, the CIT(A) erred on facts and in law in not appreciating that only profit on transfer of DEPB entitlement ought to be excluded from the profit of the business while computing deduction under section 80HHC of the Act."

3. The assessee is a company engaged in the business of manufacture and sale of rice. It is an exporter of basmati rice as also non-basmati rice. For AY 2004-05 it filed its return on 30.10.2004 declaring income of Rs. 55,93,622/- which was processed on 25.05.2005 under section 143(1) of the Income Tax Act, 1961 (the "Act"). Later on, the case was picked up for scrutiny and assessment was completed under section 143(3) of the Act on

27.12.2006 on total income of Rs. 1,11,57,590/- including therein, inter alia, disallowance of Rs. 19,24,528/- being interest income, disallowance of subsidy receipt of Rs. 81,000/- and disallowance of insurance claims of Rs. 19,50,000/- in computing deduction under section 10B of the Act as also denial of benefit claimed by the assessee under Duty Entitlement Pass Book **(DEPB)** scheme amounting to Rs. 21,67,878/- in computing deduction under section 80HHC and both the grounds of appeal before the Tribunal relate thereto.

4. The facts relating to Ground No. 1 are that the Ld. Assessing Officer **("AO")** found from the bifurcated Trading, Profit & Loss account filed before him by the assessee that the profit of basmati exports included interest income of Rs. 19,24,528/-. On query, the assessee contended that interest income directly related to the core business of the company and constitutes profit directly derived from the business of manufacturing and export of rice and are eligible for deduction under section 10B of the Act. It was further submitted that the Tribunal has decided this issue in AY 1997-98 in favour of the assessee and furnished a copy thereof.

4.1 The Ld. AO did not accept the contentions of the assessee. Placing reliance on the judgments of the Hon'ble Supreme Court in Cambay Electric Supply Industrial Co. Ltd. vs. CIT (1978) 113 ITR 84 (SC) ; CIT vs. Sterling Foods (1999) 247 ITR 579 (SC) and CIT vs. Pandian Chemicals Ltd. (2003) 262 ITR 278 (SC) wherein the law laid down is that the profit and gain can be said to have been "derived" from an activity only if the activity is the immediate and effective source of the profit and gain or has direct nexus with the profit and gain, the Ld. AO held that the impugned interest income is at best "attributable to" the export activity of the assessee and has only incidental nexus with the export activity and constitute a 'step removed' from the export activity. Citing the decision of the Hon'ble Madras High Court in CIT vs. Madras Motors 257 ITR 60 (Mad) wherein it is held that interest earned on fixed deposits is not eligible for deduction under section 10B, and stating that the Tribunal in its order (supra) has fortified the stand of the Revenue that interest income could not be said to be derived from the

export of article or thing and the matter was restored to the file of the AO for limited purpose on the issue of netting of interest which issue is covered against the assessee by the decision of Hon'ble Supreme Court in CIT vs. V.P. Gopinath 248 ITR 449 (SC), the Ld. AO proceeded to compute the eligible amount of deduction under section 10B at Rs. 1,82,59,833/- resulting in the disallowance of interest income of Rs. 19,24,528/- as also other income of Rs. 21,08,000/-.

4.2 The facts relating to the Ground No. 2 are that the Ld. AO found that the assessee claimed deduction of Rs. 21,67,878/- under section 80HHC of the Act from profits derived from export of non-basmati rice. The export turnover thereof was of Rs. 50,53,83,311/-. During the year, the assessee earned export incentives in the form of DEPB credits. The Ld. AO noticed from the computation of the deduction under section 80HHC submitted before him that the export profit computed under section 80HHC(3)(c) has further been increased by an amount equivalent to 90% of the DEPB Licence Credits.

4.3 Vide Order Sheet entry dated 15.09.2006, the Ld. AO asked the assessee to prove with evidence that – (a) the assessee had an option to choose either the duty draw back or DEPB scheme, being the Duty Remission scheme; and (b) the date of draw back credit attributable to the customs duty was higher than the rate of credit allowable under DEPB scheme, being Duty Remission scheme; in order to avail the benefit of the newly inserted 3rd proviso to section 80HHC(3). Since compliance was not made, the Ld. AO rejected the claim of the assessee.

4.3.1 The Ld. AO further noticed that the profits of non-basmati rice included Rs. 18,03,761/- earned as 'interest income' after netting of interest. Following the decision in CIT vs. V.P. Gopinath 248 ITR 449 (SC), he rejected the assessee's claim of netting of interest. Finally in para 5.7, the Ld. AO recorded following finding holding that deduction allowable under section 80HHC is nil.

"5.7 The assessee company has declared a profit of Rs.21.19 lacs on the trading of non basmati exports. Therefore, after adjusting the profits of the non-basmati division by the 90% of DEPB credits of Rs.77,51,700/- and 90% of interest income amounting to Rs.16,23,384/- and 90% of Other Misc. Income earned, there are negative profits. Further, to set off this negative profits, benefit of. 90% of DEPB credits is not available in view of the above discussion. In view of the amended provisions of the 80HHC and also in view of the decision rendered by the Apex Court in the case of Ipca Laboratories, deduction under section 80HHC is Nil as on negative profits deduction u/s 80HHC is not permissible."

5. Aggrieved, the assessee appealed before the Ld. CIT(A). He discussed the issue relating to computation of deduction under section 10B of the Act in para 4 of his appellate order. In para 4.1.1 the Ld. CIT(A) gave the break-up of interest of Rs. 19,24,528/- earned by the assessee in its 'Basmati' division as under :-

Division	*Value of FDRs placed with banks*	*Interest on FDRs*	*FDRs kept as margin money with banks for issuing BG in favour of various Govt. authorities*	*Amount of FDRs kept with the banks by taking loan from the same bank*	*Interest earned on FDRs kept as margin money with the banks for issuing BGs in favour of Govt. authorities*	*Interest earned on FDRs of Rs. 213.51 lacs lodged with the bank by taking loan from same bank*
	Rs. (Lac)	*Rs.*	*Rs.(Lac)*	*Rs.(Lac)*	*Rs.*	*Rs.*
Basmati *Interest income assessable under section 10B*	*281.11*	*19,24,528*	*67.60*	*213.51*	*4,62,801*	*14,61,727*

5.1 The Ld. CIT(A) noted that the Ld. AO negatived the assessee's claim of deduction of the impugned interest under section 10B for the reason that it is not derived from the undertaking of the assessee and held the same to be 'income from other sources'. The Ld. AO also did not allow net off of such income against interest expenditure incurred, thereby allowing lower deduction under section 10B of the Act to that extent.

5.2 The contention of the assessee before the Ld. CIT(A) was that merely because the income derived is by way of interest from margin money does not ipso-facto make such income to be non-business income assessable under the head 'income from other sources'. The assessee also submitted that interest on loan provided to employees is also inextricably linked to the business of the assessee and constitutes business income.

5.2.1 Referring to section 56(2)(id) it was contended by the assessee that if the interest income earned by the assessee is in the nature of business income, then the same cannot be assessed as 'income from other sources'. Explanation (baa) of section 80HHC also suggests that interest income may constitute business income. Several decisions were relied upon.

5.3 An alternate plea was also taken that if interest income is held to be 'income from other sources', then interest expenses on money's borrowed for earning such income be allowed as deduction under section 57(iii) of the Act. Order dated 22.04.2004 of Delhi Bench of the Tribunal in assessee's own case in ITA No. 2478/D/00 (90 ITD 301) for AY 1997-98 was cited.

5.4 As to the exclusion of 'other income', namely subsidy of Rs. 81,000/- received from Agricultural Processed Food Products Export Development Authority **(APEDA)** and Insurance claimed of Rs. 1,95,000/- on account of damage caused to the produce of the assessee during the course of transportation in computing deduction under section 10B, it was submitted that the aforesaid amounts can be said to have been derived from industrial undertaking of the assessee.

6. The contentions of the assessee were not acceptable to the Ld. CIT(A) who was of the view that the reasoning and finding given by the Ld. AO for denying exemption under section 10B in respect of interest income and other misc. incomes suffer from no infirmity and upheld the action of the Ld. AO after recording reasons in para 4.3, 4.3.1, 4.3.2, 4.3.3, 4.3.4, 4.3.5 and 4.3.6 of his appellate order. In addition to the decisions relied upon by the Ld. AO, the Ld. CIT(A) placed heavy reliance upon the decision of Hon'ble Delhi High Court in CIT vs. Sri Ram Honda Power Equipment (2007) 158 taxman 474 (Delhi) and came to the conclusion that whether interest income is earned on surplus funds or the same is earned on fixed deposits for the purposes of availing credit facilities from the bank, it will not have an immediate nexus with the export business and in both the situations the same will be treated as 'income from other sources' and not business income (para 4.3.5). He accordingly held that interest income and other misc. incomes are assessable under the head 'income from other sources'. He went on to observe further that since even in the case of interest earned on fixed deposits for the purpose of availing credit facilities is to be held as having no immediate nexus with the export business, the question of netting off the interest income against the interest expenditure becomes irrelevant. According to him, the entire misc. receipts, namely subsidy, insurance claim, interest on IT refund, rent, profit on sale of assets cannot be said to be derived from the industrial undertaking of the assessee. Hence, do not qualify for deduction under section 10B of the Act.

7. As regards denial of increasing the 'profits of the business' by the amount of benefit from DEPB scheme while computing deduction under section 80HHC, before the Ld. CIT(A) the assessee made very lengthy submission which is summarised by the Ld. CIT(A) in para 5.2 as under :-

"5.2 The Ld. AR has submitted that Section 28 has been amended to insert, inter alia clause (iiid) therein to cover, profit on transfer of DEPB credit. Simultaneous amendments have been made in section 80-HHC by inserting three more provisos after first proviso to sub-section (3) of section 80-HHC of the Act. By virtue of the aforesaid amendment in section 28(iiid), the 'profit

arising on transfer of DEPB scheme' has been specifically made part of profits of the business. The amount so qualified as part of profits of the business under section 28(iiid) has been qualified for deduction under section 80HHC of the Act in respect of the exporters whose export turnover does not exceed Rs.10 crore. However, for exporters having export turnover exceeding Rs.10 crore, profits arising from transfer of DEPB credit will be eligible for deduction under section 80HHC of the Act, if the following two conditions are satisfied by the exporter:

(i) assessee had an option to choose either the Duty Drawback or DEPB Scheme; and

(ii) rate of drawback credit was higher than the rate of credit allowable under Duty Entitlement Pass Book Scheme,

5.2.1 It is submitted that DEPB credits are granted under the Foreign Trade (Development & Regulation) Act, 1992. DEPB credits are granted under the Import & Export Policy issued in terms of powers conferred under section 5 of the said Foreign Trade (Development & Regulation) Act, 1992. Chapter 7 of the Export Import Policy lays down various Duty Exemption and Duty Remission Schemes. DEPB Scheme is one of the Duty Remission Scheme given under the said Chapter 7 of the Export Import Policy. The salient features of the DEPB Scheme and the license granted under the DEPB scheme are analyzed hereunder. In order to promote exports from India, the Government has framed special schemes under which imports are permitted free of duty or at concessional rate of customs duty. Chapter 7 of the Policy lays down various Duty Exemption/Remission Schemes. Duty Exemption Scheme enables import of inputs required for export production. The Duty Remission Scheme enables post export replenishment/remission of duty on inputs used in export product. Issue of an Advance Licence is one of the Duty Exemption Scheme(s), which allow import of inputs duty free that are physically incorporated in the export product. DEPB scheme is one of the Duty Remission Schemes that allows-drawback of import charges paid on inputs used in the export product. DEPB scheme is an optional facility for exporters not desirous of going through the licensing route. The objective of DEPB Scheme is to

neutralise the incidence of customs duty on the import content of the export product in order to enable the exporters competitive in the foreign market. The neutralisation is provided by way of grant of duty credit against the export product. Under the Scheme, an exporter applies for credit, at a specified percentage of FOB value of exports, made in freely convertible currency. The credit is available against such export products and at the rates specified for import of raw materials, intermediates, components, parts, packaging material etc. Para 7.17 clearly stipulates that the exports made under the DEPB Scheme is not entitled for duty drawback. This is understandably provided to avoid double benefit, one by way of DEPB credit and other by way of duty drawback. The credit is obtained on DEPB rates in relation to the FOB value of exports and is valid for a period of 12 months from the date of issue. The DEPB credit and the items imported there-against are freely transferable.

5.2.2 Reverting to allowability of deduction under section 80HHC, it is submitted that even where the export turnover exceeds Rs. 10 crore during the previous year, the requirement of meeting the conditions stipulated under the third proviso to sub-section (3) of that section for claiming deduction arises only in a situation where the receipt itself fails within the ambit of section 28(iiid) of the Act. Clause (iiid) of Section 28 of the Act introduced vide Taxation Laws (Second Amendment) Act, 2005, includes the following income under the head of 'profits and gains of business of profession' chargeable to income-tax:

> *"(iiid) any profit on the transfer of the Duty Entitlement Pass Book Scheme being Duty Remission Scheme, under the export and import policy formulation and announced under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992;"*

5.2.3 A plain reading of section 28(iiid) of the Act indicates that the eligible income that is brought within the ambit of this provision is the profit made by an assessee transferor, <u>on transfer</u> of the DEPB credit. What is covered in section 28(iiid) of the Act is only <u>profit on transfer</u> of DEPB credit. It does not, however, envelope the entire consideration/ sales proceeds received by the transferor on transfer of DEPB credit. Secondly, there has to be transfer of

DEPB credit in order to fall within the scope and ambit of clause (iiid) of section 28 of the Act. The use of the word 'transfer' in the aforesaid provision clearly indicates that intent is to cover the profits arising only against the option of transfer of DEPB credit and not against the option of self utilization of DEPB credit against future imports as there is no transfer involyedr-in.the second option.

5.2.4 It is vehemently submitted that had it been the intention of the Legislature to treat the gross receipts/consideration received on transfer or sale of DEPB credit as income falling under section 28(iiid) of the Act, the provision would have accordingly been worded differently in consonance with such interpretation; The Legislature has clearly not used the words "sale proceeds on transfer of DEPB scheme" and in the absence of use of such language the word "profit" must be and has to be construed strictly.

5.2.5 It may be appreciated that the Legislature has included only the 'profit on transfer' of DEPB credit for the purposes of clause (iiid) of section 28 of the Act. it is submitted that DEPB credit is an export incentive that is given to an exporter to offset the import duty element in value of exports made by him. It is, therefore, nothing but a reimbursement of the import duty paid by him in making exportable goods. In contradistinction to Advance- License scheme, extension of this benefit does not precede the export of products. Further, unlike the Duty Drawback scheme, the value of the benefit is not straightaway reimbursed by the Government to the exporter in form of money after export of goods but is rather given as a credit in his books, like a bank passbook, which may be utilized by him at any time as a set-off against import duty payable on future imports. It would, therefore, inherently erroneous to treat entire such credit or entire realization of such credit as partaking the character of 'profit' for the assessee. It is, therefore submitted that only the amount, if any, in excess of the DEPB credit which is transferred is covered within the scope of section 28(iiid) of the Act.

5.2.6 Whether or not the assessee is able to sell his DEPB credit at a profit, and if so, when and how much, depends largely on the demand and supply

conditions prevailing in the market at that time. If the demand is more than the supply, then the assessee may be able to receive high profits', and vice - versa. It would, it will be kindly appreciated, be absurd to say that if DEPB credit, of say Rs.100, has been transferred at Rs.80, there is in fact a 'profit' of Rs.80. In this example, the transferor has essentially suffered a loss since whereas he was entitled to duty remission of Rs.100 the realization on account of such benefit has been short by Rs.20. It is respectfully reiterated and will kindly be appreciated that DEPB credit is not a gratuitous grant/ incentive given by the Government but is merely recoupment/ reimbursement of the import duty component embedded initially paid by the exporter in respect of raw material in goods/ inputs used for exports.

5.2.7 There is another facet to the aforesaid! The exporter has an option to either avail or utilise DEPB credit for further imports or to sell it in the open market. Where DEPB credit received by the assessee is not transferred to another person but is utilized by the assessee himself, there is no transfer of DEPB credit. Section 28(iiid) of the Act clearly does not cover self utilization of DEPB credit. In this case, it will be kindly noticed, the value of the export incentive is clearly eligible for deduction under section 80HHC of the Act without facing the rigors of third proviso to sub-section (3) of that section.

5.2.8 Considered in the light of the aforesaid it will be kindly appreciated that the DEPB credit is received as a reimbursement of the import duty paid by the exporter on import of goods required to manufacture exportable goods. If an exporter were already availing another export incentive scheme like the Duty Drawback scheme or the Advance License scheme, the benefit of the DEPB credit would not be extended in respect of such export. The import duty paid out of the assessee exporter's own pocket is, therefore, relatable to the cost of obtaining the DEPB credit and therefore, profit arises to an exporter on transfer of DEPB credit only if there is realization in excess of the basic value of credit allowed to the exporter, were the exporter to utilize the credit itself.

5.2.9 Further, language of section 28(iiid) of the Act being clear and unambiguous, the said section, it is respectfully submitted, covers only the

amount realized, if any, in excess of the DEPB credit which is transferred. Reference may be made to the following important decisions of the apex Court which lay down the proposition that the plain meaning of the statute must be given full effect:

- *Steel Authority of India v. CCE: AIR 1996 SC 120*
- *Innamuri Gopalan v. State of AP: 1964 SCR (2) 888*
- *AV Fernandez v. State of Kerala: AIR 1957 SC 657 "*

7.1 The submissions of the assessee did not find favour of the Ld. CIT(A). In para 5.3.1 of his order he observed that the main contention of the assessee that only 'profit on transfer' of DEPB has to be excluded in clause (baa) may appear to be correct literally according to the language, but the interpretation of the said language as canvassed by the assessee is not correct by recording the following reasons :-

"5.3.1 DEPB is an incentive which is allowed to the exporters as per the scheme framed by the Department of foreign trade. Various kinds of incentives have been allowed under different schemes applicable at different points of time mainly to promote the export trade and compensate the exporter from the loss that they suffered because of competition in the international market. At times there were two or three schemes running simultaneously and an exporter had option to choose any of these. But, primarily all the schemes were made to give benefits/incentives to the exporters in the face of adverse competition which may result in losses due to export. In these circumstances, whatever incentive or benefit is given under any scheme is itself profit which has been made chargeable under specific provisions of section 28 (iiia) to (iiie). Otherwise also, it is to be noted that there is no cost incurred by- an exporter to get the benefits/incentives under these schemes. Therefore, even if one talks of profit on transfer of DEPB, the whole of it is profit since cost for getting the same is nil. It is also to be noted that prior to DEPB when advance licenses were issued to exporters, the language used in clause 28(iiia) was similar, i.e. profit on sale of license. But at that time also, the whole value of license was excluded to the extent of 90%. Without prejudice to this view, it is note-worthy that the appellant itself has excluded 90% of DEPB incentives

from profits as per clause (baa) of Explanation to section 80HHC. I find from the appellant's own computation of Total Income and deduction U/s 80HHC that it has itself treated the entire amount as export incentive and 90% of the same was excluded for arriving at the 'profits of the business'; the said amount so excluded has then been claimed as deduction as per the 3rd Proviso to Section 80HHC(3) so as to increase the profits derived from export as computed as per clause (a)/(b)/(c) thereof. Therefore, the contention made by the Ld. AR is rather contradictory and contrary to the claims made in the return as also in appellate proceedings. I am, therefore, unable to convince myself of this line of argument on behalf of the appellant, which is accordingly rejected."

7.2 Thereafter, the Ld. CIT(A) observed that the assessee failed to adduce necessary and sufficient evidence to prove that the condition as per the 3rd proviso to section 80HHC, namely the rate of Drawback credit attributable to the customs duty was higher than the rate of credit allowable under the DEPB scheme either before the Ld. AO or before him. Therefore, the claim of the assessee for deduction in respect of 90% of DEPB receipts failed.

8. Being dissatisfied by the above findings and order of the Ld. CIT(A) confirming the action of the Ld. AO in excluding "interest income" of Rs. 19,24,528/-; other income being (i) subsidy of Rs. 81,000/- and (ii) insurance claims of Rs. 19,50,000/- from the profits for computing deduction under section 10B of the Act as also in confirming Ld. AO's action in excluding benefit under DEPB scheme in computing deduction under section 80HHC of the Act, the assessee is in appeal before the Tribunal.

9. On the issue of interest income on fixed deposits with the bank earned by the assessee in respect of 'Basmati' division for obtaining increased overdraft facility from the bank or as margin money for issue of bank guarantee etc., the Ld. AR submitted at the very outset that the said interest income is earned by the assessee from its 100% export oriented unit at Sonipat and the entire FDRs of the value of Rs. 281.11 lac placed with the banks were necessitated by business consideration and partakes the

character of income from the business of the undertaking. Drawing our attention to the provisions of section 10B of the Act, the Ld. AR pointed out that it provides for deduction in respect of profits and gains derived by an 100% export oriented unit from the export of articles or things etc. computed in accordance with sub-section (4) thereof.

9.1 In the written submission filed before us by the Ld. AR it is contended that the scope of the expression "profits and gains derived by an undertaking from the export" in section 10B(1) is statutory defined in sub section (4) thereof to mean the profits of the business of the undertaking apportioned in the ratio of export turnover to total turnover of the undertaking. The statutory mandate of section 10B(4) is that the profits of the eligible Export Oriented Unit (EOU) as assessed under the head "profits and gains of business or profession" are required to be apportioned in the ratio of export turnover to total turnover of that unit to arrive at the amount admissible under section 10B of the Act.

9.2 According to the assessee section 10B envisages deduction not only with respect to profits and gains of the business of the undertaking but also deduction in respect of income having a close and direct nexus with the profits and gains of the business of the eligible undertaking. All incomes that arise essentially during the course of running of the eligible business would be eligible for deduction under section 10B of the Act.

9.3 The Ld. AR referred to the Full Bench decision of Hon'ble Karnataka High Court in CIT vs Hewlett Packerd Global Soft Ltd. (2018) 403 ITR 453 (Kar) (FB) wherein the court held that all profits and gains of 100% EOU including incidental income by way of interest on bank deposits or staff loans would be entitled to 100% exemption or deduction under section 10A or 10B of the Act. In this decision, the Full Bench of the Hon'ble High Court affirmed and agreed with the view expressed by the first Division Bench of Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd. (2014) 46 taxmann.com 167.

9.4 The Ld. AR also relied on the decision of the Mumbai Bench of the Tribunal in JP Morgan Services India (P) Ltd. vs. DCIT (2009) 33 SOT 327 (Mumbai) and drew our attention to para 11 thereof. In that case also the assessee was 100% exporter and the Tribunal held that interest from fixed deposits and interest on staff loan were income falling under the head 'business' and were eligible for deduction under section 10A. [The provisions of section 10A and 10B are identical]. This decision (supra) was approved by Hon'ble Bombay High Court in IT Appeal No. 662 of 2017 dated June 7, 2019. The SLP filed by the Revenue has been dismissed by the Hon'ble Supreme Court vide SLP (C) No. 003726/2020 order dated 07.02.2020.

9.5 Our attention was drawn by the Ld. AR to the judgment of the Hon'ble Delhi High Court in Pr. CIT-21 vs. Universal Precision Screws in ITA No. 392/2015 dated 06.10.2015. In that case also the assessee was a 100% EOU and had included, inter alia, interest received on fixed deposit as part of its income which was claimed as exempt under section 10B of the Act. The Ld. AO / CIT(A) had negatived the claim of the assessee but the Tribunal decided in favour of the assessee. When the matter reached before the Hon'ble Delhi High Court, it relied on the decision of Hon'ble Karnataka High Court in Motorola India Electronics Pvt. Ltd. (supra) and observed that the interest on FDRs was received on "margin kept in the bank for utilisation of letter of credit and bank guarantee limits" and in those circumstances, the decision of the Tribunal that such interest bears the requisite characteristics of business income and has nexus to the business activities of the assessee cannot be faulted.

9.6 As regards the exclusion of subsidy received of Rs. 81,000/- and insurance claim of Rs. 19,50,000/- from the profits for computing deduction under section 10B of the Act, the Ld. AR relied on the decision of Hon'ble Delhi High Court in Riviera Home Furnishing vs. ACIT 237 taxman 520 (Delhi) wherein the court held that freight subsidy received by the assessee in respect of business carried on was part of profit of business of undertaking and thus, eligible for deduction under section 10B of the Act.

9.7 As regards the insurance claim of Rs. 19,50,000/- received on account of damage caused to the rice produce of the assessee during the course of transportation, the Ld. AR placed reliance on the decision of Delhi Bench of the Tribunal in Moser Baer India Ltd. vs. DCIT 170 ITD 522 wherein it was held that where insurance claims have direct nexus with industrial undertaking, they are eligible for deduction under section 10B of the Act.

9.8 In so far as the alternate claim of the assessee (Ground No.1.3 and 1.4) the Ld. AR submitted that the issue is covered by the decision of the Tribunal in assessee's own case for AY 1997-98 wherein interest expenses on the borrowed funds utilised for making the investment in the fixed deposit was directed to be set off against interest income.

9.9 The Ld. DR on the other hand supported the orders of the Ld. AO/CIT(A). Apart from relying on the decisions quoted in the assessment order, the Ld. DR placed reliance upon the following judgements:-

(i) Conventional Fastners vs. CIT (2018) – TIOL-SC-IT

(ii) CIT vs. Jyoti Apparels (2018) 166 taxman 343 (Delhi)

(iii) CIT vs. Mereena Creations (2010) 189 taxman 71 (Delhi)

9.10 Coming to the issue of denial of benefit under DEPB Scheme while computing deduction under section 80HHC of the Act, the Ld. AR invited our attention to the judgment of the Hon'ble Supreme Court in Topman Exports vs. CIT 342 ITR 49 (SC) wherein the Hon'ble Supreme Court reversed Bombay High Court decision in the case of Kalpatru Colours and Chemicals 328 ITR 451 (Bom) by holding that where the export turnover of an assessee exceeds Rs. 10 crores, he does not get the benefit of addition of 90% of export incentive under clause (iiid) of section 28 to his export profit of the business, which ultimately results in computation of a bigger export profit.

9.10.1 The Ld. AR submitted that in the case of the assessee realisation on transfer on DEPB is to the extent of Rs. 86.13 lacs. The said amount

represents gross realisation on transfer of DEPB credit. As per the law laid down by the Hon'ble Supreme Court in Topman Exports (supra), only the profit earned from the sale of aforesaid DEPB credits not including the face value of the DEPB is required to be excluded in terms of clause (baa) of the Explanation for the purposes of computing deduction under section 80HHC of the Act.

9.11 The Ld. DR had nothing to say in the matter.

10. We have given our careful thought to the issues involved in this appeal after hearing both the parties and perusal of the material available in the records. Section 10B as substituted by the Finance Act 2000 w.e.f. 1.4.2001 under the heading "special provisions in respect of newly established 100% export oriented undertaking" reads as under :-

"*10B.(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred percent export oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee: "*

10.1 Sub-section (1) of section 10B is a general provision and identifies the income which is exempt. Sub-section (4) of section 10B lays down the formula for computing what is eligible for deduction under sub-section (1). As per the formula stipulated in sub-section (4), the profits of the business of the undertaking have to be apportioned in the ratio of export turnover to the total turnover to arrive at the quantum of admissible deduction. In Maral Overseas Ltd. vs. Addl. CIT 146 TTJ 129 (Indore) the Special Bench of the Tribunal held that once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking and be eligible for deduction under section 10B of the Act.

11. The Ld. AO rightly noted in the first sentence in para 4.4 of the assessment order that the relevant words in sub-section (1) are "profits and

gains derived by a hundred percent export oriented undertaking from the export of articles or things or computer software." Thereafter, the Ld. AO misdirected himself and proceeded to apply the law relating to profits and gains derived from an undertaking employed in section 80HH, 80HHA etc. No doubt, profits and gains can be said to have been derived from an activity only if the activity is the immediate and effective source of the profit and gain or the activity has direct nexus with the profits and gains. But the activity giving rise to profits and gains derived by an undertaking need not have such direct nexus. Mere incidental nexus with the export activity will bring the profits and gains arising from such an activity within the ambit of "derived by" an undertaking. In this view of the matter, the case laws relied upon by the Ld. AO/CIT(A) are misplaced and do not support the case of the Revenue. On the contrary we find force in the submission of the Ld. AR that all income that arise essentially during the course of running of the eligible business would qualify for deduction under section 10B of the Act.

12. Before the Ld. CIT(A) assessee explained the nature of interest income earned by it on FDRs placed with banks for obtaining increased overdraft facility from the banks which amounted to Rs. 19,24,528/-. The issue whether interest payable on FDRs was part of the profits of the business of the undertaking, and therefore includible in the income eligible for deduction under section 10B of the Act came up for consideration before various judicial forum.

13. In CIT vs. Koshika Telecom Ltd. 287 ITR 479 (Delhi) the Hon'ble Delhi High Court held that if the deposits were indeed inextricably linked to the business of the assessee, the question whether the income accruing on the said deposits would constitute business income stands answered by the decisions of the Hon'ble Supreme Court in Bokaro Steel Ltd. (1999) 236 ITR 315 and Karnal Co-operation Sugar Mills Ltd. (2000) 243 ITR 2. Both these decisions are in our view sufficient authority for the proposition that where the income in the nature of interest flows from deposits made by the assessee which deposits are in turn inextricably linked to the business of

the assessee, the income derived on such deposits cannot be treated as income from other sources.

14. In CIT vs. Hritnik Exports Pvt. Ltd. (ITA Nos. 219/2014 and 239/2014 decided on November 13, 2014) the Hon'ble Delhi High Court held that sub-section (4) does not require an assessee to establish a direct nexus with the business of the undertaking and once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking. Thus, once an income forms part of the business of the eligible undertaking, there is no further mandate in the provisions of section 10B to exclude the same from the eligible profits.

15. The Hon'ble Delhi High Court in Hritnik Exports Pvt. Ltd. (supra) went on to observe further that the mode of determining the eligible deduction under section 10B is similar to the provisions of section 80HHC in as much as both the sections mandate determination of eligible profits as per the formula contained therein. The only difference is that section 80HHC contains a further mandate in terms of Explanation (baa) for exclusion of certain income from the profits of the business which is, however, conspicuous by its absence in section 10B. On the basis of the aforesaid distinction, sub-section (4) of section 10B of the Act is a complete code providing the mechanism for computing the profits of the business eligible for deduction under section 10B of the Act. Once an income forms part of the business of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction under section 10B of the Act.

16. In yet another decision in Pr. CIT-21 vs. Universal Precision Screws (ITA No. 392/2015 decided on 06.10.2015), the Hon'ble Delhi High Court, taking note of its decision in Hritnik Exports Pvt. Ltd. (supra) and Karnataka High Court decision in CIT vs. Motorola India Electronics Pvt. Ltd. (supra) held that interest earned on FDRs would form part of the "profits of the business of the undertaking" for the purposes of computation of the profits derived from exports by applying formula under section 10B(4) of the Act.

17. Full Bench decision of Hon'ble Karnataka High Court in Hewlett Packard Global Soft Ltd. (supra) may also be relied on for the proposition that all profits and gains of hundred percent EOU including incidental income by way of interest on bank deposits or staff loans would be entitled to hundred percent exemption or deduction under section 10B of the Act.

18. In recent decision in CIT vs. Sankhya Technologies (P) Ltd. (2020) 427 ITR 318 (Mad), The Hon'ble Madras High Court held that interest on bank deposits was eligible to be included in profits of hundred percent export oriented unit for purpose of claiming deduction under section 10B of the Act.

19. Following the decisions (supra) we decide Ground No. 1 in favour of the assessee by holding that interest income of Rs. 19,24,528/- would be entitled to claim exemption under section 10B of the Act. The Ld. AO is directed to modify the assessment accordingly.

20. The exclusion of other incomes, namely, receipt of subsidy of Rs. 81,000/- and insurance claim of Rs. 19,50,000/- from the profits for computing deduction under section 10B is also not sustainable in view of the decision of Hon'ble Delhi High Court in Riviera Home Furnishing (supra) and the decision of Delhi Bench of the Tribunal in Moser Baer India Ltd. (supra) wherein it is held that the above receipts form part of the profit of business of the undertaking and thus eligible for deduction under section 10B of the Act. Respectfully following the decisions (supra) we set aside the orders of the Ld. CIT(A)/AO and direct the Ld. AO to amend the assessment order suitably. Ground No. 1.1 and Ground No. 1.2 are decided in favour of the assessee.

21. The alternate claim made by the assessee in Ground No. 1.3 and 1.4 becomes infructuous in view of our finding that interest income of Rs. 19,24,528/- is not income from other sources but forms part of the business profit of the undertaking eligible for deduction under section 10B of the Act.

22. Before us, it is the contention of the assessee that the amount of Rs. 86.13 lacs realized on transfer of DEPB represents gross realization and the issue of deduction of the said benefit under DEPB needs to be decided in the light of the judgment of the Hon'ble Supreme Court in Topman Exports (supra). We agree with the above contention of the assessee and restore the matter back to the file of the Ld. AO to decide the issue afresh keeping in view the judgment of the Hon'ble Supreme Court in Topman Exports (supra) after allowing opportunity of hearing to the assessee. Ground No. 2 and Ground No. 2.1 are decided accordingly.

23. In the result, the appeal of the assessee is allowed with directions contained in para 22 above.

Order pronounced in the open court on 6th April, 2023.

sd/-	**sd/-**
(G. S. PANNU)	**(ASTHA CHANDRA)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: 6th April, 2023

Veena

Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.	

PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	