

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**IT (SS)A 17/KOL/2021  
Assessment Year: 2005-06**

**IT (SS)A 18/KOL/2021  
Assessment Year: 2006-07**

**IT (SS)A 19/KOL/2021  
Assessment Year: 2007-08**

**IT (SS)A 20/KOL/2021  
Assessment Year: 2008-09**

**IT (SS)A 21/KOL/2021  
Assessment Year: 2009-10**

**IT (SS)A 22/KOL/2021  
Assessment Year: 2010-11**

**&**

**IT (SS)A 23/KOL/2021  
Assessment Year: 2011-12**

Naini Plywood Private Limited, Rudrapur Kichha Road Lalpur, Rudrapur, Lalpur, Udham Singh Nagar, Uttarakhand - 263153 (PAN: AAACN6070A)	Vs	Commissioner of Income Tax (Appeals), Kolkata -20
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : None

Respondent by : Shri Subhendu Datta, CIT-DR

Date of Hearing : 04.07.2024

Date of Pronouncement : 29.08.2024

**ORDER****PER BENCH**

This is a batch of 7 appeals pertaining to Assessment Years 2005-06 to 2011-12 preferred by the Assessee against the common order, dated 08.02.2021, passed by the Ld. Commissioner of Income Tax (Appeals) 20, Kolkata [hereinafter referred to as 'the CIT(A)'] All the appeals involve identical issues and the same were heard together and are therefore, being disposed by way of a common order for the sake of convenience and brevity.

**IT(SS)A 17/Kol/2021 (Assessment Year: 2005-06)**

2. The grounds of appeal raised by the assessee are reproduced as under:

- “1. That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 9,39,532/- pertaining to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.
2. That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of Loss of sale of shares amounting to INR 2,38,332/-
3. That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.
4. That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.
5. That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal.”

**IT(SS)A 18/Kol/2021 (Assessment Year: 2006-07)**

2.1. The grounds of appeal raised by the assessee are reproduced as under:

- “1. That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 10,29,676/- pertaining to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.
2. That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.
3. That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.
4. That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal.”

**IT(SS)A 19/Kol/2021 (Assessment Year: 2007-08)**

2.2 The grounds of appeal raised by the assessee are reproduced as under:

- “1. That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 1,37,652/- pertaining to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.
2. That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.
3. That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.

4. *That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal.”*

**IT(SS)A 20/Kol/2021 (Assessment Year: 2008-09)**

2.3. The grounds of appeal raised by the assessee are reproduced as under:

- “1. *That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 8,28,289/- pertains to Income earned from Future & Options Trading.*
2. *That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Future & Options trading that same is not Speculative Income and consider the same as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.*
3. *That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.*
4. *That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal.”*

**IT(SS)A 21/Kol/2021 (Assessment Year: 2009-10)**

2.4. The grounds of appeal raised by the assessee are reproduced as under:

- “1. *That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 25,68,897/- pertains to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.*
2. *That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.*
3. *That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying*

*the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.*

4. *That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal."*

### **IT(SS)A 22/Kol/2021 (Assessment Year: 2010-11)**

2.5. The grounds of appeal raised by the assessee are reproduced as under:

- “1. *That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 2,42,431/- pertains to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.*
2. *That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.*
3. *That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.*
4. *That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal."*

### **IT(SS)A 23/Kol/2021 (Assessment Year: 2011-12)**

2.6 The grounds of appeal raised by the assessee are reproduced as under:

- “1. *That the Ld. AO/CIT(A) erred in law and on facts in disallowance of claim of deduction u/s 80IC of the Act, 1961 for a sum of INR 3,17,620/- pertains to Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage.*
2. *That the Ld. AO/CIT(A) erred in considering the evidences furnished by the assessee company during the course of assessment/ appeal proceeding in support of claim of Interest on FDRs, Interest on Income Tax Refund, Dividend Income, Commission/ Brokerage Income and Loss on Sale of*

*Shares as a part of profit derived from the business only and hence denial of exemption u/s 80IC of the Act, 1961 is bad in law.*

3. *That the Ld. AO/CIT(A) erred in considering the reliance placed on by the assessee in the matter of PCIT vs. Bharat Sanchar Nigam Ltd., where Hon'ble Delhi High Court held that the Revenue was not justified in denying the claim of deduction u/s 80IC of the Act, 1961 on such income(s) which was also supported by the decision of Hon'ble Bench of the Tribunal in the matter of M/s. NHPC Ltd.*
4. *That the assessee craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of hearing of this appeal."*

### **IT(SS)A 17/Kol/2021 (Assessment Year: 2005-06)**

We would first take up appeal for the Assessment Year 2005-06 which has been preferred by the Assessee challenging the common order, dated 08.02.2021, passed by the Ld. CIT(A) whereby, inter alia, the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28.03.2013, passed under Section 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The statements of facts enclosed with the appeal memo of Form No. 36 is as under:-

*"The Assessee is a Private Limited Company registered under the provisions of Companies Act, 1956 having its office at Rudrapur Kichha Road, Village & PO Lalpur, Rudrapur (Uttarakhand). The assessee company is engaged in the business of Manufacturing and Selling of Vineer and Plywood. The unit of the assessee is located in Rudrapur (Uttaranchal), which is a notified area eligible for exemption under section 80IC of the Income Tax Act, 1961.*

*As the assessee company established its new unit in the State of Uttarakhand, hence, the assessee was eligible to claim exemption u/s 80IC of the Act, 1961.*

*The assessee is a regular Tax Payer and filing its Return of Income Tax since inception. A search & seizure operation u/s 132 of the Act was conducted by the Investigation team of the Department on 28.09.2010 at the premises at 52B, Shakespear Sarani, 2nd Floor, Flat No. 2E, Kolkata -17. Consequent to the search, the case of the assessee was centralized with DCIT, Central Circle-VII, Kolkata and notice u/s 153A of the Act was issued on 04.12.2012 for a block period from A/Y 2005-06 to 2010-11 for compliance.*

*In compliance to the notice, the assessee company filed its Returns of Income for the A/Y 2005- 06 declaring Total Income of INR Nil after claiming deduction u/s 80 IC of the Act, 1961 in respect of the profit derived from its business activities. Profit(s) earned by the assessee company during the year includes majorly, Interest on Fixed Deposits pledged with Banks against Bank Guarantees & Letter*

*of Credit facilities availed for the purpose of business activities and Commission / Brokerage which was again incidental to the main object of the company.*

*After filing its Return of Income u/s 153A of the Act, the assessee received a notice u/s 143(2) dated 12/12/2012 which was responded by the assessee from time to time along with all the desired documents and evidences.*

*During the course of assessment proceedings and appeal proceedings, the assessee company furnished all necessary evidences substantiating the claim u/s 80IC of the Act, 1961. However, while framing the order, Ld. AO disallowed the claim of deduction u/s 80 IC of the Act for INR 9,39,532/- in respect of Income received by way of Interest on FDRs, Interest on Income Tax Refund, Dividend Income and Commission/ Brokerage. The Ld. AO also disallowed a claim of Loss on Sale of Shares for INR 2,38,332/- Ld. CIT (A) also confirmed the disallowances made by the Ld. AO.”*

4. The appeals of the assessee are reportedly barred by limitation of time by 24 days. Along with the appeal memo, the assessee filed application for condonation of delay in the submission of appeal as under:

*“This is to bring to you kind attention that the order of Hon'ble CIT (Appeals) was received by the assessee on 08.02 2021.*

*However, due to the ongoing pandemic of COVID-19, the offices were closed and therefore there was a delay in filling the appeal against the order issued by the Hon'ble CIT(A), Kolkata.*

*That the delay was neither intentional nor deliberate but due to the massive spread of novel corona virus, which is beyond the control of the appellant.*

*Hence, you are requested to kindly accept the appeal delay in filling the present appeal may be condoned in the interest of natural justice.*

*We hope the same you will find upto your satisfaction.*

*Kindly acknowledge the same and oblige.”*

5. In view of the facts mentioned, the delay in filing the appeal is hereby condoned and the appeal is admitted for adjudication.

6. Brief facts of the case are that the assessee is a company engaged in manufacturing of plywood and trading of timber logs used in veneer and plywood industry. The factory for manufacturing plywood is situated in Kichcha Road, Lalpur, Dist- Rudrapur in the state of Uttaranchal. A search and seizure operations u/s.132 of the Act was conducted on 28-09-2010 at the official premises of the assessee at 52B, Shakespeare

Sarani, 2 Floor. Flat No. 28, Kolkata-17 Consequent to the search, the case of the assessed was centralized with DCIT, Central Circle-VII. Kolkata. Hence, notice u/s 153A of the Act was issued on 04-12-2012 for making compliance within 30 days.

7. In compliance to the notice issued, the return of income for A.Y 2005-06 was filed on 11.12 2012 showing total income of Rs. Nil. On perusal of the return of income, it was found that the assessee had claimed deductions u/s 80-IC of Rs 9,39,532/- Further, notice u/s 143(2) of the Act was issued on 12/12/2012 for compliance on 18/12/2012. In response to the notice Sri P. C. Soni FCA & AR of the assessee appeared in this case and furnished the details called for from time to time and the case was discussed with him.

8. The income was assessed after making disallowance of loss of sale of shares and adding income from interest on commission mentioned as under:

**“3.1 Disallowance of u/s 80IC deduction of Rs.9,39,532/- claimed by the assessee**

*On perusal of the Profit & Loss A/c for the A.Y. 2005-06 seen that the assessee has shown profit from its business of manufacturing of plywood and trading of timber log of Rs 11,85,475. Further, it is also seen that this profit of assessee includes the interest income on FDRs of Rs. 1,86,719/, interest on IT Refund of Rs 8,549/-, Dividend income Rs.34,600/- and Income from commission or brokerage of Rs. 10,02,920/- If these incomes will be reduced from the business income of the assessee of Rs.11,83,475/- then the net result from its manufacturing and trading activity will be a net loss of Rs. 49,313/-. This clearly shows the assessee has wrongly claimed the deduction of Rs. 9,39,532/- u/s 80-IC of the Act as it does not have any eligible profit from its manufacturing activity. In view of the above, the assessee was asked to explain as to why the deduction claimed of Rs.9,39,532/- u/s 80-IC of the Act shall not be allowed.*

*In compliance to the query, the assessee did not furnish any satisfactory reply. Hence, deduction claimed of Rs.9,39,532/ is disallowed and added to the total income of the assessee for the A.Y.2005 06.*

**3.2 Disallowance on loss of sale of shares of Rs. 2,33,332/ wrongly claimed in the Profit & Loss A/c of the business**

*As discussed above in Para 3.1, it seen that when the income from other sources of commission, interest & dividend are excluded from the Profit & Loss A/c, the actual business income of the assessee comes to the loss of Rs. 49,313/-.*

*However, on perusal of the Profit & Loss A/c, it is seen that the assessee has claimed loss of Rs. 2,38,332/ or sale of shares as deduction in the Profit & Loss A/c. It is important to mention that loss on the sale of shares can either be capital loss or speculative loss which cannot be set off against the normal business Income. Further, the assessee did not furnish any details of share loss such contract notes of purchase and sale of shares etc. Hence, the claim of Rs. 2,38,332/ is disallowed. If this disallowance can be given effect against the loss of Rs. 49,313/-. The net income from the business will come to Rs. 1,89,019/- which is added to the total income of the assessee for the A. Y 2005-06.*

9. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A). There was neither any proper representation nor any written submission was filed. Even in the statement of facts, the assessee had not mentioned anything about the addition made. The Ld. CIT(A) has relied upon the decision in the case of Conventional Fasteners Vs. CIT-Dehradun, [2017] 88 taxman.com 163 (Uttarakhand), wherein it has been held that the interest earned from FDs kept as security and business pre-requisite had nothing to do with carrying on of the assessee's business of manufacturing and sale of electronic meters, hence, the same would not be entitled to the benefit of deduction u/s 80-IC of the Act. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Pandian Chemical Ltd. Vs. CIT [2003] 262 ITR 278 (SC) and Conventional Fasteners Vs. CIT, Dehradun [2018] 94 taxmann.com 80(SC) and the deduction u/s 80-IC of the Act was disallowed on FDR, interest on income tax refund, dividend income and income from commission of brokerage. The AO had mentioned that loss on sale of shares can either be a capital loss or speculative loss which cannot be set off against the normal business income and as the assessee did not furnish the details of loss in shares along with supporting evidences, the AO had disallowed the loss in share trading and added back the amount of Rs. 2,38,332/- to the total income. The appeal was accordingly dismissed. Aggrieved with the order of the Ld. CIT(A), the assessee has filed this appeal before the Tribunal along with the appeals for other AYs.

10. At the time of hearing, none appeared on behalf of the assessee. It is observed that the request of transfer of the appeal was rejected by the Hon'ble President, ITAT, vide order dated 27.12.2023.

11. At the outset, it may be mentioned that a search and seizure operation u/s 132 of the Act was conducted on 28.09.2010 at the official premises of the assessee at Kolkata, Both the disallowances u/s 80IC of the Act as well as on loss of sale of shares are routine disallowances and no reference to any incriminating material found and seized during the course of the search has been made in any of the cases. Accordingly, the Ld. Sr. DR was requested to inform whether any proceeding stood abated. However, instead of informing, a copy of the letter F. No. CIT DR IT3/Kolkata dated 02.07.2024 addressed to the DCIT -2, Kolkata has been filed but till date, it has not been informed whether any incriminating material was the basis for the addition nor has it been informed whether any pending proceeding stood abated. In the case of **Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)** where the core issue involved in the appeal filed by revenue was the scope of assessment under section 153A, according to the revenue, the Assessing Officer was competent to consider all the material that was available on record including that found during the search, and make an assessment of 'total income', however, according to the assessee if no assessment proceeding was pending on the date of initiation of the search, the Assessing Officer might consider only the incriminating material found during the search and was precluded from considering any other material derived from any other source. It has been held as under:

- *“The question which is posed for consideration in the instant set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of Assessing Officer to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, i.e., whether any addition can be made by the Assessing Officer in absence of any incriminating material found during*

*the course of search under section 132 or requisition under section 132A or not. [Para 5]*

- *At the outset, it is required to be noted that as such various High Courts have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. [Para 7]*
- *No addition can be made in respect of completed assessment in absence of any incriminating material. [Para 8]*
- *While considering the issue involved, one has to consider the object and purpose of insertion of section 153A and when there shall be a block assessment under section 153A. [Para 9]*
- *That prior to insertion of section 153A in the statute, the relevant provision for block assessment was under section 158BA. The erstwhile scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60 per cent under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of section 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under section 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search. [Para 9.1]*
- *On a plain reading of section 153A, it is evident that once search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153 to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. [Para 10]*
- *As per the provisions of section 153A, in case of a search under section 132 or requisition under section 132A, the Assessing Officer gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per*

*the second proviso to section 153A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate. As per sub-section (2) of section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the Assessing Officer would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to reopen the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of section 153A, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the Assessing Officer would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the revenue would be to initiate the reassessment proceedings under section 147/48, subject to fulfilment of the conditions mentioned in section 147/148, as in such a situation, the revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the revenue to have the reassessment under section 147/148 has to be saved, otherwise the revenue would be left without remedy. [Para 11]*

- *If the submission on behalf of the revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the Assessing Officer can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A is linked with the search and requisition under sections 132 and 132A. The object of section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the Assessing Officer would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to section 153A, only pending assessment/reassessment shall stand abated and the Assessing Officer would assume the jurisdiction with respect to such abated assessments. It*

*does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law. [Para 12]*

- *For the reasons stated hereinabove, no addition can be made in respect of the completed assessments in absence of any incriminating material. [Para 13]*

- *In view of the above and for the reasons stated above, it is concluded as under:*

*(i) in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A;*

*(ii) all pending assessments/reassessments shall stand abated;*

*(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns; and*

*(iv) in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the Assessing Officer in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A. However, the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 and those powers are saved.*

*The question involved in the instant set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the revenue are hereby dismissed. [Para 14].”*

12. In the instant appeal for the impugned assessment year since there is no reference to any incriminating documents/evidence found in the course of search nor any of the assessee's assessments were abated nor has it been informed till date whether assessment proceedings had abated, therefore, in view of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (supra), the additions which are in the nature of routine disallowance/addition to be made in regular assessment and not to be made in the assessment u/s 153A of

the Act consequent to search in the absence of any incriminating document, are hereby deleted and the assessment order is hereby quashed and the appeal of the assessee for AY 2005-06 is allowed.

**IT(SS)A 18/Kol/2021 (Assessment Year: 2006-07)**

**IT(SS)A 19/Kol/2021 (Assessment Year: 2007-08)**

**IT(SS)A 20/Kol/2021 (Assessment Year: 2008-09)**

**IT(SS)A 21/Kol/2021 (Assessment Year: 2009-10)**

**IT(SS)A 22/Kol/2021 (Assessment Year: 2010-11)**

13. Since, the issues in AYs 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 are similar to AY 2005-06, the assessment orders made u/s 153A/143(3) of the Act for these years are hereby quashed as they have not been made on the basis of any incriminating document/evidence found in the course of the search.

**IT(SS)A 23/Kol/2021 (Assessment Year: 2011-12)**

14. As regards, the appeal for AY 2011-12, facts are different since the assessment was to be made in the normal course. The AO made disallowance as under:

***“3.1 Disallowance of u/s 80IC deduction of Rs. 3,17,620/- claimed by the assessee***

*On perusal of computation of the total income for the A.Y. 2011-12, it is seen that the assessee has shown profit from its business of manufacturing of plywood & trading of Rs.31,07,839/- Further, it is also seen that the profit of the assessee from manufacturing includes the interest income of Rs.9,58,162/ Dividend income Rs.2,27,365/-, profit on sale of machinery of Rs 4,00,000/- and other income of Rs. 52,387/-. If these incomes will be reduced from the business income of the assessee of Rs.31,07,839/- then the net income from its business activity will be of Rs.14,69,925/-. This clearly shows the assessee has wrongly claimed the deduction of Rs. 7,58,597/- u/s. 80IC as it has an actual income of Rs. 14,69,925/- from its activity. Therefore, the actual deduction will be 30% of the net profit from manufacturing as this is 7<sup>th</sup> year of claim u/s 80IC. The assessee was asked to explain as why the 30% of Rs.14,69,925/- only shall not be allowed as deduction u/s 80IC because the actual profit from the business is of Rs 14,69,925/- only. But no satisfactory explanation was given. Hence, Rs. 4,40,978 is allowed as deduction u/s 80IC and the balance amount of Rs.3,17,620/ is disallowed and added to the total income for the year.*

*Penalty proceedings u/s 271(1)(c) of the Act is initiated against the assessee for the concealment of Rs. 3,17,320/-.”*

15. The Ld. CIT(A) held as under:

*“Grounds of appeal no. 1: Assessee is a manufacturer and seller of Viner and Plywood. Its factory is located in Rudrapur District of Uttaranchal. Assessee has claimed deduction of Rs. 7,58,597/- u/s, 80IC of the I.T. Act, 1961 in respect of the profit derived from its business of manufacturing of plywood and trading. However, AO noticed that profit of assessee includes Interest Income on FDR, Dividend Income, Profit on sale of machinery and other Income. AO has held that deduction u/s. 80IC is not admissible in respect of items of income, as mentioned above. Hence, he has reworked the deduction u/s. 80IC after excluding the above mentioned items from the profits of the business. If these items are removed, then there is profit of Rs. 14,69,925/- only in business. As a consequence deduction u/s. 80IC @ 30% would be Rs.4.40,978/- only. Hence, he has not been allowed deduction to the extent of Rs. 3,17,620/-.*

*As mentioned above, assessee has not filed any written submissions despite so many opportunities given to the assessee. Even in the Statement of Facts, the assessee has not mentioned anything about the addition made. I have gone through some of the Case Laws which show that Courts have upheld deduction u/s. 80IC in respect of only those incomes which are derived from the manufacturing and sale activities of specified item in specified areas. In the case of Conventional Fasteners vs. CIT Dehradun, [(2017), 88 taxman.com 163 (Uttarakhand)], Hon'ble High Court has held that interest earned from fixed deposits kept as security and business pre-requisites had nothing to do with carrying on assessee's business of manufacturing and sale of electronic meters. Hence, same would not be entitled to the benefits of deduction u/s. 80IC. Hon'ble High Court gave its ruling in respect of proceedings u/s. 263 of the I.T. Act initiated by CIT, Dehradun when AO had allowed deduction u/s. 80IC even in respect of Interest Income on FDR, kept as security and as a business pre-requisite on assessee's business of manufacturing and sale of meters. While delivering this judgment, Hon'ble Court highlighted the distinction between the words 'derived from' vis-a-vis 'attributable to'. Hon'ble court has held that in Section 80IC the words 'derived' have been used which is narrower in meaning than the words 'attributable to'. Hence, following the decision of the Hon'ble Supreme Court in the case of Pandian Chemical Ltd vs CIT [(2003) 262 ITR 278(SC)], Hon'ble court has held that interest earned on FDRs had nothing to do with carrying on business of manufacturing and sale of electronic meters. Hence, assessee would not be entitled to the benefits of deduction u/s. 80IC in respect of interest earned. Assessee had filed SLP in the Supreme Court against the judgment of the High Court. However, Hon'ble Supreme Court has dismissed the SLP of the assessee which is reported in Conventional Fasteners vs CIT, Dehradun (2018), 94 taxmann.com 80(SC). In view of this judgment, when the issue involved in present appeal is analyzed, it is apparent that Interest on FDR, Dividend Income, Profit on Sale of machinery and other Income are not derived from the business of manufacturing and sale of Viner and Plywood. Hence, AO's action in disallowing claim u/s. 80IC of Rs. 3,17,620/- is upheld and this ground is dismissed.”*

16. Since, the deduction u/s 80-IC of the Act is allowable on the income derived from the specified industrial undertaking, therefore, relying upon

the decision of the Hon'ble Supreme Court (supra), the order of the Ld. CIT(A) is upheld and the appeal for AY 2011-12 is dismissed.

17. In the result, all the appeals of the assessee are allowed except for that of AY 2011-12 which is dismissed.

Order pronounced in the open court on 29<sup>th</sup> August, 2024.

**-Sd-**  
**(Sanjay Garg)**  
**Judicial Member**

**-Sd-**  
**(Rakesh Mishra)**  
**Accountant Member**

***Dated: 29<sup>th</sup> August, 2024***

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata