

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.370 to 374/Ind/2023(AYs: 2012-13, 2013-14,  
2017-18, 2020-21 & 2018-19 )**

ACIT 4(1), Indore  (PAN: AAFCP0210P) (Revenue/Appellant)	<b><u>बनाम/</u></b> Vs.	Prataap Snacks Limited, Khasra No.378/2, Nemawar Road, Near Markand House, Indore  (Assessee/Respondent)
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**Cross-Objection No. 6 & 7/Ind/2024 (AYs:2012-13 &  
2013-14)**

Prataap Snacks Limited, Khasra No.378/2, Nemawar Road, Near Markand House, Indore  (Assessee/Cross- Objector)	<b><u>बनाम/</u></b> Vs.	ACIT 4(1), Indore  (PAN: AAFCP0210P) (Revenue/Respondent)
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Assessee by	S/Shri Satnam Singh Sheetal & Prabhpreet Singh Sheetal, ARs
Revenue by	Shri Ram Kumar, CIT-DR

Date of Hearing	24.09.2024
Date of Pronouncement	.10.2024

**आदेश / O R D E R**

**Per Bench:**

These 5 appeals by the Revenue for Assessment Years 2012-13, 2013-14, 2017-18, 2018-19 & 2020-21 and two Cross Objections by assessee for the Assessment Years 2012-13 & 2013-14 are directed against the consolidated order dated 31.07.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi arising from the assessment order passed u/s 147 r.w.s. 144 as well as u/s 143(3) of the Income Tax Act.

2. These appeals/cross-objections emanate from common order(s) of lower-authorities; therefore they were heard together and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. The assessee is a company engaged in manufacturing and sales of different types of potato based snacks and namkeen. The assessee has filed its return of income for the respective years and claimed deduction u/s 80IB(11A) for each of the year under appeal. The A.O while passing the assessment orders u/s 143(3) of the Act for the Assessment Years 2017-18 to 2019-20 and reassessment orders interalia for the Assessment Years 2012-13 and 2013-14 has disallowed the claim of deduction u/s

80IB(11A) which was challenged by the assessee before CIT(A). The CIT(A) has allowed the claim of the assessee u/s 80IB (11A) on merits however, the grounds raised by the assessee against the validity of reopening of the assessment have been dismissed by the CIT(A). Therefore, aggrieved by the impugned order of the CIT(A) both the department as well as the assessee has filed these appeals and Cross Objections.

4. The revenue has raised common grounds in these appeals as under:

*“Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in allowing the deduction u/s 80IB(11A) when there are judicial findings holding that the activities of the assessee would constitute the manufacturing and not processing eligible for deduction.”*

5. The assessee has raised following common grounds of Cross-Objection:-

*Ground No. 1. On the facts and in the circumstances of the case, and, in law, the Ld. CIT (APPEALS) NFAC erred in confirming the action of the AO of issuing notice u/s 148 and reopening the case of the assessee.*

*Ground No.2. On the facts and in the circumstances of the case, and in law, the Ld. CIT (APPEALS) NFAC erred in not accepting the contention of the assessee that the order passed under sec 147 r.w.s 143(3) of the Income Tax Act 1961 is void, illegal, unlawful, time barred and thus bad-in-law.*

*Ground No. 3. On the facts and in the circumstances of the case, and, in law, the Ld. CIT (APPEALS) NFAC erred in confirming the action of the AO of reopening the case of the assessee being based on change of opinion as the issue in question had already been considered in original assessment proceedings and the time limit of 4 years had already*

*expired since proviso to section 147 puts certain further restrictions/ conditions for exercise of powers u/s 147 in the cases in which assessments have been completed u/s 143(3)".*

**Assessment Years 2012-13 & 2013-14:**

6. Ld. AR for assessee submitted that the assessee company raised objections during the assessment proceedings before the AO against reopening the case u/s 147 for the AY 2012-13 & 2013-14. He has reiterated the same as under :

a) The assessment u/s 143(3) for the AY 2012-13 in the case of the appellant company has already been completed by the Ld. ACIT 4(1), Indore on 30/09/2015.

b) It appears that the proceedings have been initiated on the basis of audit objection raised regarding 'irregular deduction under section 80IB (11A)' It is on the basis of this information that the AO appears to have formed his belief that income to the extent of Rs.6,47,46,882/- has escaped assessment in the AY 2012-13 within the meaning of section 147 read with section 148 to 153 of the Income Tax Act 1961 and has arrived at the satisfaction that it is a fit case for reopening the assessment. Copy of the reasons supplied to the assessee do not mention the fact that the notice u/s 148 has been issued after getting approval from the Principal Chief Commissioner/Chief Commissioner/ Principal Commissioner/ Commissioner. It is thus clear that the AO has not obtained the approval of Principal CIT and has issued notice u/s 148 on 31/03/2019.

c) The assessee had filed its return of income on 30/09/2012 by electronic mode disclosing Gross Total Income and Total Income of Rs.12,48,93,400/- and Rs.6,01,46,520/- respectively and deduction under chapter - VIA : Rs.6,47,46,882/-). The assessee's case was selected for scrutiny by issuing notice u/s 143(2). After selecting the case for scrutiny, the AO conducted a detailed and exhaustive scrutiny by issuing questionnaires dated 19/08/2013, 29/07/2014, 01/10/2014 and requiring information during the assessment proceedings, and requiring the assessee to furnish various details regarding the affairs, income, expenses and deduction of the assessee. The assessee submits that in response to various queries, the assessee has furnished all the desired information and requisite details which were required by AO. Simultaneously the assessee also produced the books of accounts for verification before the assessing authority and thus there is a presumption that the AO who completed the assessment of the assessee had applied his mind to the details and books of accounts furnished by the assessee during the course of assessment proceedings. Finally an order of assessment dated 30/09/2015 was passed by the AO, assessing the total income of the assessee at Rs. 6,11,27,620/-, ie, after making disallowances of Rs.9,81,100/- on account of labour charges, advertisement & sales promotion and travelling & conveyance expenses. The AO in the body of his assessment order has clearly mentioned that :-

*"The Authorized representative of assessee produced books of accounts which have been examined on test check basis".*

d) The assessee submitted audit report in Form No. 10CCB which reveals that it is its 3rd year of manufacturing as the company has started manufacturing since AY 2009-10. The audit report is placed on record.

e) Further the order sheet also explicitly states that the assessee/AR continuously filed all the details regarding deduction claimed u/s 80IB(11A) to which the Ld. AO was satisfied and the books of accounts were produced before him. Further order sheet dated 06/12/2014 specifically states that AR of the assessee attended the office and submitted written submission in claim of deduction u/s 80IB which is checked and placed on record. Further, the case has been discussed with him.

f) It would thus be clear that a proper assessment after calling for all requisite details and information has already been completed by predecessor AO after conducting detailed scrutiny on all aspects including the amount of deduction claimed u/s 80IB(11A). In the context of the completion of the assessee company's assessment in the manner stated above , one has to see whether the present initiation of proceedings u/s 147 satisfies the conditions laid down u/s 147.

g) The Ld. AR of assessee further submits that the proviso to the said section puts certain further restrictions/ conditions for

exercise of powers u/s 147 in the cases in which assessments have been completed u/s 143(3). Since in the instant case, assessee's original assessment has been completed u/s 143(3), the proviso is relevant for purpose of present case. A perusal of the said proviso would go to show that where an assessment has been completed for the relevant year u/s 143(3), no action u/s 147 for reopening the assessment can be taken after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to make return u/s 139 or in response to notice u/s 142(1) or section 148 or to disclose fully and truly or material facts necessary for assessment for that assessment year. It would thus be clear that the proviso imposes further conditions and fetters on the powers of the AO in case where the assessment is completed u/s 143(3) and a period of four years from the end of relevant assessment year has expired. A combined reading of the main part of section 147 along with the proviso thus shows that in cases covered by proviso, the AO should not only have reason to believe that any income chargeable to tax has escaped assessment but it is also necessary that such escapement must be due to the circumstances mentioned in the proviso i.e non furnishing of return u/s 139 or 142 or 148 or due to failure of the assessee to disclose fully and truly or material facts necessary for assessment. The assessee submits that in the instant case there is neither any escapement within the meaning of section 147 nor it is a case where there is any failure on the

part of assessee to disclose fully and truly all material facts necessary for purpose of assessment.

h) The Ld. AR for assessee submits that since the present matter relates to assessment year 2012-13 for which the original assessment has been completed by AO u/s 143(3) and since the proceedings u/s 147 have been initiated after the expiry of four years from the end of relevant assessment year, for valid reopening of assessment the provisions of proviso to section 147 are clearly attracted, as such, no action u/s 147 can be taken without satisfaction of the conditions of main provisions of section 147 coupled with proviso thereof i.e the AO will have to show that he has reason to believe that the income chargeable to tax has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment year in question.

i) The Ld. AR of assessee submits that if the reasons recorded by the AO for initiating proceedings u/s 147 are examined in the context of above provisions, it is apparent on the face of it that the said reasons fail to satisfy conditions of main part of section 147 as also the conditions of the proviso referred to above.

j) The Ld. AR of assessee submits that if the reasons recorded by the AO are examined in the light of judicial pronouncement interpreting the expression 'has reason to believe', it would be clear that the reasons recorded by AO do not constitute reasons

so as to justify the belief that the assessee company is not deriving its profits from an 'eligible business' as defined in section 80IB(11A) . The information contained in the reasons that the assessee company is merely a manufacturer and seller of potato based snacks and namkeen and was not engaged in 'eligible business' is completely vague. The case of the assessee for the AY 2012-13 was thoroughly scrutinized by the Ld. ACIT, Circle 4(1), Indore and order dated 30/09/2015 u/s 143(3) was passed after conducting the detailed inquiries. All the details asked and desired by the Ld. AO were duly furnished by the assessee. In light of the above, no failure to disclose fully and truly or material facts necessary for assessment can be attributed to assessee in view of the detailed scrutiny conducted by AO at the time of original assessment. Furnishing of Books of accounts satisfies the requirement of the duty of the assessee about the full and true disclosure necessary for purpose of assessment. In fact if the reasons recorded by AO are seen in the context of conditions of proviso to section 147, the reasons fail to even state that the requirements of the proviso are satisfied in the instant case and the alleged escapement (if at all) is on account of failure on the part of assessee to disclose fully and truly all material facts necessary for purpose of assessment.

k) In support of this contention he has relied upon the decision of Supreme Court in the case of *Gangasaran & Sons Pvt. Ltd. Vs ITO reported in 130 ITR as well as ITO vs. Lakhmani Mewaldas reported in 103 ITR 437* and submitted that the

Hon'ble Supreme Court has held that there should be sufficient and adequate material to justify the formation of belief that income assessable to tax is escaped assessment. He has also referred to the following decisions:-

*(i) Gujarat High Court in the case of Dishman Pharmaceutical and Chemicals Ltd Vs DCIT reported in 346 ITR 328(Guj).*

*(ii) MP High Court in the cases of Smt. Prabha Rajyalaxmi Vs WTO reported in (1983) 144 STC 180 and Lokendra Sing Rathore v/s WTO (1985) 153 ITR 466.*

7. The next contention of the Ld. AR is that the assessment has been reopened by the A.O on the basis of change of opinion as the A.O during the scrutiny assessment u/s 143(3) of the Act has formed the opinion that the claim of the assessee is allowable therefore the subsequent reassessment to disallow the claim is nothing but the change of opinion which is not permissible under the law. In support of his contention he has relied upon the decision of *Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. reported in 320 ITR 561*. He has also relied upon the following decisions:-

*(i) M.J. Pharmaceuticals Ltd vs. CIT (2008) 297 ITR 119 (Bom) (Assessment Year 2003- 2004)*

*(ii) D. T. & T. D. C. Ltd. vs. CIT (2010) 324 ITR 234 (Del.)*

*(iii) ICICI Prudential Life Insurance Co.Ltd. (2010) 325 ITR 471 (Bom)*

8. The Ld. AR of the assessee on principle of consistency submitted that the assessee has admittedly claimed this

deduction in the preceding year AY 2011-12 and in the subsequent years AY 2013-14 to AY 2016-17, which has been always allowed by the Assessing Officer. Assessment proceedings u/s 143(3) for the AY 2012-13, AY 2013-14 and AY 2014-15 has been conducted by the Ld. AO and the deduction u/s 80IB on the same facts has always been allowed. The well-settled principle of consistency has been consistently followed by all the courts of the country to hold that the view adopted by the Assessing Officer in a particular year should not be deviated from in the subsequent years unless there is some change in the legal or factual scenario justifying departure therefrom. In the case of *CIT v. A.R.J Security Printers* when the department wanted to negative the assessee's claim, which was accepted in the past, the Hon'ble High Court held that; 'having accepted in three assessment years that the assessee's business activity of printing lottery tickets fall within the ambit of Sec. 80I, the revenue cannot be allowed to turn around and contend that the deduction under the said section is not allowable in respect of the assessment years in question". The S.L.P. filed by the Revenue against this judgment stands dismissed in [2004] 266 ITR 4 [St.].

The principle of consistency has been followed by the other High Courts in several cases including the following :

1. *Arihant Builders v. ITAT*
2. *ACIT v. Gendalal Hazarilal & Co.*
3. *CIT v. Neo Poly Pack Pvt. Ltd*
4. *Dhansiram Agarwalla V. CIT*

9. On the other hand Ld. Departmental Representative has submitted that the A.O has specifically recorded in the reasons that the income assessable to tax has escaped assessment due to failure on the part of the assessee to disclose fully and truly all materials facts necessary for assessment. The assessment has been reopened by the Assessing Officer on the basis of the scrutiny assessment for the subsequent years i.e. 2017-18 to 2020-21 therefore, the order of the Assessing Officer for the subsequent year is sufficient material to form the belief that the income assessable to tax for not disallowing the claim of deduction u/s 80IB(11A) for the earlier assessment years i.e. 2012-13 and 2013-14 amounts to escapement of income assessable to tax. Therefore, there is direct nexus between the assessment orders passed in the subsequent years and the reason to believe that the income assessable to tax as escaped assessment for the Assessment Years 2012-13 and 2013-14. He has relied upon the order of the CIT(A) on this issue and submitted that the CIT(A) has relied upon various judgments of Hon'ble Supreme Court as well as Hon'ble High Courts on this

point. Thus the Ld. DR has submitted that the reopening of the assessment is valid.

10. We have considered rival submissions and perused the relevant materials record. Since the assessee has raised a legal issue in the Cross Objections for the Assessment Years 2012-13 and 2013-14 challenging the validity of reopening of the assessment after 4 years from the end of the assessment year and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and this issue goes to the root of the matter and hence, we first take up the legal issue raised by the assessee in the cross objection for the assessment year 2012-13 and 2013-14. For the Assessment Year 2012-13 the AO has recorded the reasons for reopening of assessment placed at page No.162 and 163 as under:

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
DCIT/ACIT 4(1),IND

To, PRATAAP SNACKS LIMITED KHASRA NO.378/2 ,NEMAWAR ROAD NEAR MARKAND HOUSE INDORE 452020,Madhya Pradesh India	
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PAN: AAFCP0210P	Assessment Year: 2012-13	Dated: 22/08/2019	Letter No : ITBA/AST/F/17/2019-20/1017504283(1)
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Sir/ Madam/ M/s,

Subject: Reasons of reopening of case u/s 147

Reasons for reopening the case of M/s Prataap Snacks Pvt. Ltd. u/s 147 of the IT Act, 1961 for  
A.Y 2012-13

As per information available with this office and upon perusal of case records, it is noticed that the assessee company claimed deduction under Section 80IB(11A) of the IT Act, 1961 amounting to Rs. 6,47,46,882/- for A.Y. 2012-13. The exempt business was certified as being in the business of "processing, manufacturing and sales of different types of potatoes based snacks, extruded snacks and namkeen". The company was thus engaged in the business of manufacturing and sales of different types of potato based snacks and namkeen and not in the business of "processing, preservation and packaging of fruits or vegetables".

It is pertinent to quote Section 80IB(11A) of the IT Act, 1961 in respect of what an 'eligible business' is:

*"The amount of deduction in a case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or meat and ... (cont'd)..."*

As per provisions of Section 80IB(11A), an assessee is entitled to claim deduction under the said provisions if it fulfills all the conditions specified therein. Hence, there is some specific intention of the legislature in bringing such type of provisions. However, in the instant case the assessee company

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AAF0210P- PRATAAP SNACKS LIMITED  
A.Y. 2012-13  
ITBA/AST/F/17/2019-20/1017504293(1)

was merely a manufacturer and seller of potato based snacks and namkeen and was not engaged in 'eligible business' i.e. 'processing, preservation and packaging of fruits or vegetables' as stipulated under section 80IB(11A).

Since, the assessee company is not deriving its profits from an 'eligible business' as defined above, it is not entitled to claim exemption in line with provisions of section 80IB(11A) for claiming deduction of Rs. 6,47,46,882/- for the A.Y. 2012-13.

In view of the facts and circumstances of the case discussed above, I am satisfied that the assessee has failed to offer income to the above extent. I, therefore, have reason to believe that income of Rs. 6,47,46,882/- chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. This income chargeable to tax has escaped assessment by reason of the failure on part of the assessee to disclose fully and truly all material facts necessary for her assessment, as understood within the meaning of Proviso to Section 147 of the IT Act, 1961. Thus, notice u/s 148 of the IT Act is being issued, and the case for the AY 2012-13 is being reopened to assess the above mentioned income and any other income chargeable to tax which has escaped assessment and which comes to my notice subsequently in the course of proceedings under this section.



PRACHI AILAWADHI  
ICIT/ACIT 4(1),IND

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

10.1 There is no dispute that earlier the assessments for the Assessment Years 2012-13 and 2013-14 were completed u/s 143(3) of the Act vide order dated 30.09.2015 and 26.12.2016 respectively. The AO in the scrutiny assessment allowed the claim of the assessee for deduction u/s 80IB(11A) in para 3 of the assessment order passed u/s 143(3) of the Act for the Assessment Year 2012-13 as under:

*"3. Total turnover for the period under consideration is its 172.05 crore as against Rs 46.03 crore for the preceding year. If ratio has been increased from 18.91% to 20.6%. No fresh loan has been claimed.*

*During the year the assessee claimed deduction u/s 801B of the LT. Act at Its 6.47 crore out of Gross total income of Ra 12.48 crore. The assessee company engaged in manufacturing of Potato chips which comes into purview of food processing industry and hence, it claimed deduction us 80IB(11A) amounting to Rs. 6.47 Crore. The assessee submitted audit report in Form no. 10CCB which reveals that it is its 3 year of manufacturing as the company has started manufacturing since A.Y. 2000-10. The audit report is placed on record."*

10.2 Similarly the A.O has not disturbed the claim of the assessee for the Assessment Year 2013-14 for deduction u/s 80IB(11A). It is not disputed that the notice u/s 148 of the Act was issued by the A.O on 31.03.2019 for the Assessment Year 2012-13 and on 19.03.2020 for the Assessment Year 2013-14. Therefore, the notices u/s 148 of the Act were issued beyond 4 years from the end of the respective Assessment Years. It is manifested from the reasons recorded by the A.O that the A.O has not alleged or recorded any subsequent information or material came to the knowledge of the A.O which was not disclosed by the assessee at the time of original assessment proceedings u/s 143(3) of the Act but the A.O has opined that the business of the assessee is of processing and manufacturing and sales of different types of potato based snacks and namkins and therefore, the assessee is not in the business of processing, preservation and packaging of fruits or vegetable. These reason recorded by the A.O do not reveal any new fact or material on the basis the A.O has taken this view that the assessee is not in the business of processing of vegetable but the information on the basis of which this opinion has been formed by the A.O was already available with the A.O and therefore, this is a case of

change of opinion on the part of the A.O based on the same facts and record already available with the A.O at the time of passing the scrutiny assessment u/s 143(3) of the Act. Though the A.O has recorded that the income chargeable to tax escaped assessment by reason of failure on the part of the assessee to disclosed fully and truly all material facts necessary for its assessment however, the A.O has not indicated what information or facts were not disclosed by the assessee at the time of original scrutiny assessment. Therefore, the reopening of the assessment for the Assessment Years 2012-13 and 2013-14 is hit by the proviso to Section 147 as existed at the relevant point of time reads as under:

***Section 147. Income escaping assessment.***

*If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]*

10.3 Once the A.O has not alleged what information or material fact necessary for the assessment was not disclosed by the assessee then the reopening of the assessment for these

assessment years falls in the category of change of opinion. Even otherwise this issue is a debatable issue whether the processing activity of the assessee would be in the ambit of eligible business as contemplated in the provisions of Section 80IB(11A) or not. Therefore, the question of failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment does not arise. In case of CIT V/s Kelvinator of India Ltd 320 ITR 561 (supra), the Hon'ble Supreme Court has upheld the judgment of Hon'ble Delhi High Court and observed in para 4 & 5 as under:

*“4. On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1-4-1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post 1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549, dated 31-10-1989, which reads as follows :*

*"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section 147. —A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same." [Emphasis supplied]*

*5. For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."*

10.4 Thus, even if the case is not falling in the mischief of proviso to Section 147 the reopening of the assessment is otherwise is not sustainable when it is based on change of opinion. The Hon'ble Supreme Court has held that the A.O has power to open assessment provided there is "tangible material" to come to the conclusion that there was escapement of income from assessment. The reason must have link with the formation of brief. *The Hon'ble Bombay High Court in case of Multi Screen Media P. Ltd V/s Union of India and Another 324 ITR 48 as well as 324 ITR 54* has analysed two situations where the assessments were reopened after expiry of 4 years and the original assessment completed u/s 143(3) of the Act and secondly when the assessment was reopened within 4 years from the end of the assessment year. The Hon'ble High Court has held that even in case of reopening of the assessment based on the assessment of subsequent year the reopening after 4 years is not valid as it is hit by the proviso when there was no failure on the part of the

assessee to disclose fully and truly all material facts necessary for assessment and consequently the conditions as provided in the proviso to section 147 is not satisfied. Whereas the reopening within 4 years from the end of assessment year was held to be valid when assessment was reopened on the basis of the assessment year of the subsequent year. The Hon'ble High Court has held in para 10 to 14 as under (324 ITR 48):

*"10 In dealing with the merits of the rival contentions, it must at the be noted that during the course of the proceedings under section 143(3), the Assessing Officer was duly apprised of the circumstance that the petitioner was acting as an agent for the collection of subscriptions and procuring advertisements for the benefit of its foreign principal. The order of assessment makes a reference to the nature of business of the petitioner in the following terms:*

*"The assessee is a private limited company incorporated on September 18, 1995. The company is engaged in the business of Production, acquisition and sale of television programmes/files, distribution of satellite channels and acting as advertising agent of SET Satellite (Singapore) Pte. Ltd. for canvassing for sale of advertisement time slots to Indian advertisers."*

11. *During the course of the assessment proceedings the petitioner was called upon to furnish details specifically with reference to the expenditure incurred by it on advertisements, sales promotion and market research by a communication dated December 3, 2004 of the Assessing officer. In response to the communication, the petitioner by a letter dated December, 28, 2004 furnished details of the selling and distribution expenses, including those incurred on marketing research and studies. A copy of those communications together with the details submitted by the petitioner have been annexed to the proceedings before the court. Hence during the course of the assessment proceedings, the Assessing Officer was apprised of the circumstance that the business of the petitioner consisted in the collection subscriptions from subscribers of television channels and for procuring advertisements. The fact that the petitioner was acting as an agent for a foreign principal was disclosed.*

12. *The notice issued by the Assessing Officer under section 148 does not state that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment for the assessment 2002-03. The assessment was sought to be reopened after the expiry of a period of four years from the end of the relevant assessment year. In such a case the jurisdictional condition precedent stipulated by the proviso section 147 is a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment for that assessment year consequent upon which income chargeable to tax has escaped assessment. That has not been fulfilled. The notice does not even purport to state so. The ground furnished in the notice for reassessment would at the highest indicate that according to the Assistant Commissioner of Income-tax, allocation of expenses as between the petitioner and the foreign principal to have been originally considered by the Assessing Officer when order of assessment was passed under section 143(3). That however would not give a valid reason to reopen the assessment beyond a period of four years, even assuming that the Assessing Officer had erred in not doing so, unless there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. Absent the existence of the jurisdictional condition precedent, the assessment cannot be reopened beyond a period of four years after the expiry of the relevant assessment year, as has been done in the present case. In the circumstances, the notice for reassessment is liable to be quashed and set aside solely on the ground that the Revenue has failed to establish the existence of the jurisdictional condition precedent to the exercise of the power to reopen an beyond a period of four years of the expiry of the relevant assessment year.*

13 *The petition would accordingly have to be allowed. Rules is made absolute in terms of prayer clause (a), by quashing and setting aside the notice dated March 25, 2009 and the order dated September 29, 2009.*

14 *The facts of this writ petition, it is common ground between both the learned counsel, are the same as in Writ Petition No. 8719 of 2009 which has been allowed for the reasons recorded in the judgment. In the present case also, assessment is sought to be reopened beyond a period of four years from the end of expiry of the relevant assessment year 2013-14. For the reasons already recorded while allowing the companion writ petition, the present writ petition is made absolute in terms of prayer clause(s) by quashing and setting aside the notice dated March 25, 2009 and the order dated September 29, 2009."*

10.5 Therefore, in view of the undisputed fact that the assessment for Assessment Years 2012-13 and 2013-14 were completed u/s 143(3) of the Act and notice u/s 148 of the Act were issued after the expiry of 4 years from the end of the respective assessment years then the reopening of the reassessment is hit by the proviso to Section 147 as there is nothing brought on record by the A.O to show that the income assessable to tax has escaped assessment due to the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Thus, the said mandatory condition in the case of the assessee has not been fulfilled. Accordingly the reopening of the assessment for Assessment Years 2012-13 and 2013-14 is quashed being invalid which vitiates consequential reassessment order passed u/s 147 of the Act. The Cross Objections of the assessee stand disposed off being allowed.

**Revenue's Appeal for A.Y. 2012-13, 2013-14, 2017-18, 2020-21 and 2018-19:**

11. Ld. Departmental Representative vehemently argued and submitted that section 80IB(11A) provides for deduction in the case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables and subject to fulfilment of the conditions specified therein. The business of manufacturing and sales of different types of potatoes based snacks and namkeen, as is in this case, cannot be treated

as 'eligible business' for the purpose of deduction u/s 80IB(11A). In the present case, the assessee company was only a manufacturer of snacks and not engaged in business of processing, preservation and packaging of fruits or vegetables. The inherent difference between manufacturing and processing can be applied in the assessee's case. The activities undertaken by the assessee results in the changing of the name, character, chemical composition or integral structure of the vegetable which would be classified as manufacturing as it brings into existence a new product. As per provisions of section 80IB(11A), the assessee was entitled to claim deduction under the said provisions if it fulfils all the conditions specified therein which was not justified in the assessee's company case. However, in the assessee's company case, the assessee company was engaged in the business of manufacturing and sales of different types of potato based snacks and namkeen and not in the eligible business of processing, preservation and packaging of fruits or vegetables. Since the assessee company was not deriving its profit from the eligible business as per provisions of section 80IB(11A) of the Act. He has relied upon the order of A.O as well as the decision of Mumbai Bench of Tribunal dated 05.03.1995.

11.1 On the other hand Ld. AR of the assessee submitted that the beneficent intention or scheme of the legislature while enacting the Section 80 IB (11A) of the Act which was initially brought into the statue book by the Finance Act of 2001 w.e.f 01.02.2002 by granting deduction in a case of the integrated

business of handling, storage and transportation of food grains. By virtue of the Finance Act of 2004, the undertaking deriving profits from the business of processing, preservation and packaging of fruits or vegetables was also brought under the purview of sub- Sec. 11A of 80IB of the Act w.e.f 01.04.2005.

11.2 Ld. AR has further submitted that in order to understand the intention of the legislature, the speech of Hon'ble Finance Minister's speech while introducing the Finance Bill 2004 is relevant to be considered which reads as under:

*"In order to promote agro-processing industries, I propose to amend Section 80IB of the Act to allow a deduction of 100% for 5 years and 25 % of profits for the next 5 years in the case of new agro-processing industries set up to process, preserve and package fruits and vegetables".*

11.3 He has then referred to the memorandum explaining the amendments brought in by Finance Bill (No.2 of 2004) which reads as under:

*"Under the existing provision of Sec. 80IB, deduction is available in respect of profits and gains of undertakings engaged in refining or production of mineral oil, undertakings engaged in developing and building housing projects and those engaged in the integrated business of handling, storage and transportation of food grains, etc. The agro based industry in the country is an important source of employment, especially in the rural areas. The Bill, therefore, propose to provide hundred percent deduction for five years and twenty fire percent for the next five years (thirty percent, in the case of a company) from profits derived by undertakings, engaged in the business of processing, preservation and packaging of fruits and vegetables. The deduction is available from the assessment year relevant to the previous year in which the undertaking begins such business".*

11.4 Thus, the Ld. AR has submitted that Section 80-IB (11A) of the Act allows for the deduction to an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables subject to fulfillment of other conditions as laid down in the section.

11.5 The Ld. AR has explained the definition of processing with the quote of the various decisions as under:

A) PROCESSING:

Definition:

As per Oxford dictionary "Perform a series of mechanical or chemical operations on (something) in order to change or preserve it."

Further, the Hon'ble Supreme Court and other Hon'ble Courts have also defined the processing in their judgments which are mentioned below:

a) Delhi Cold Storage Pvt. Ltd. vs. CIT (1991, 191 ITR P.656), the Supreme Court was concerned with the question whether the assessee company running a cold storage could be held to be an industrial company for the purposes of Section 2(7)(c) of the Finance Act, 1973. An industrial company has been defined to mean a company which is mainly engaged in the manufacture or processing of goods and other activities specified therein. The question was whether the cold storage of the appellant can be said to be

engaged in the processing of goods? The Supreme Court answered the question in the negative for the reason that the stored articles cannot be said to have undergone a process mainly because there was reduction of moisture content as a result of long storage. At the same time, the Supreme Court observed that processing "is a term of wide amplitude and has various aspects and meanings". It was pointed out that in common parlance 'processing' is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing.

b) *Chowgule & Co Pvt. Ltd. vs. Union of India* (1981, 47 STC pg. 124). The three-judge Bench of the Hon'ble Supreme Court held that the blending of iron-ore in the course of loading through the mechanical ore handling plant amounted to processing of ore within the meaning of Section 8(3)(b) of the Central Sales Tax Act and the mechanical ore handling plant fell within the description of machinery, plant, equipment used in the processing of ore for sale. The following pertinent observations were made while explaining the connotation of the word 'processing':

"The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some

operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in *Sri Om Prakash Gupta v. Commissioner of Commercial Taxes*. What is necessary in order to characterize an operation as "processing" is that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical compositions demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to "processing" of ore within the meaning of Section 8(3)(b) and Rule 13."

Earlier, it was observed that the blending of different qualities of ore did not amount to manufacture.

c) In the case of Commissioner of Wealth Tax vs. Mohini Rai (1999, 240 ITR pg. 636), the Gujarat High Court observed that in order to characterize an operation as processing, it is necessary that the commodity must, as a result of the operation, experience some change.

The clear principle that runs through the above decisions is that notwithstanding the extent of processing and the changes that occur to the original commodity by reason of series of operations, it could still amount to processing of that original commodity.

11.6 The Ld. AR submits that potato-chips are manufactured by processing the Potatoes. It involves various steps which are shown in below mentioned chart:

<i>(i) Potato sorting</i>	<i>(iv) Blanching</i>	<i>(vii) Frying</i>
<i>(ii) Potato input in elevator</i>	<i>(v) Slicing and washing</i>	<i>(viii) Flavour Application</i>
<i>(iii) Destoning</i>	<i>(vi) Peeling</i>	

That as a first or initial step, the potatoes are sorted as per their size and then put into elevator. After that it goes through de-stoning to remove foreign particles like stones

and clay etc. and the outer skin of the potato is removed to give it a smooth spherical shape. Then it is sliced using slicers with standardized settings so as to get consistent thickness which is important to the crispiness of the chips. The slices are then gently washed to remove the starch to avoid stickiness during cooking and to prevent starch from entering the cooker and becoming carbonized. The resultant potato slices are gelatinized and fried. The temperature and time controls of cooking are set so as to get the desired crispiness. After cooking, flavoring powder and salt are applied to the potato chips. This takes place when the product is hot in order to assist the flavor to adhere to the chips.

**B) PRESERVATION:**

It is submitted that in simple words, Preservation is an act or process of preserving something for future use. There are different ways and techniques to preserve the food. After processing the potato into Potato chips, while packing in the individual pack we use nitrogen filling to preserve the chips. In this process Nitrogen gas is filled into individual chips pack before packaging. This nitrogen displaces oxygen from the pack, which is then filled with Chips and sealed. This preserves the chips for longer period of time, maintains taste and quality and increases the shelf life.

C) PACKAGING:

It is submitted that subsequent and consequent to production of the Chips, the same is packed in individual packs with nitrogen filing. This process preserves the chips for longer period of time and also makes the product marketable.

11.7 Thus, the Ld. AR has submitted that in light of the above, it is perspicuous that the appellant company complies with all three technical requirements and conditions of Processing, preservation and packaging and is therefore, eligible for deduction u/s 80 IB (11A) of the Income Tax Act, 1961. He has relied upon the ruling of *Authority for Advance Ruling reported in Mrs. Delna Rustum Boyce reported in 318 ITR 455.*

He has also relied upon following decisions:

- (i) *Hon'ble Madras High Court in case of M/s Chamadhi Traders vs. Comm. Tax Officer W.P(MD) No.6546 of 2011 order dated 23.04.2018.*
- (ii) *Hon'ble High Court of Uttarakhand in case of M/s Shriya Enterprises vs. Commissioner, Commercial Tax order dated 20.10.2011.*
- (iii) *Hon'ble Rajasthan Tax Board in case of M/s Pepsico India Holding Pvt. Ltd vs. Commercial Tax Officer order dated 13.10.2017.*

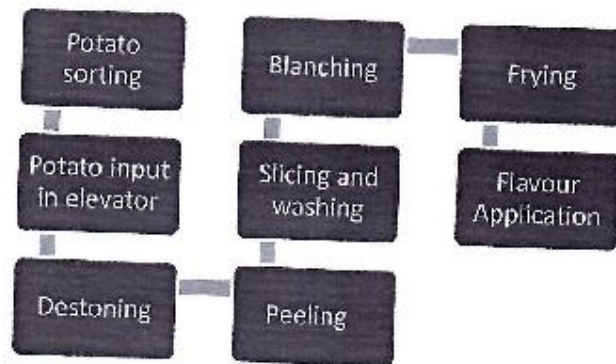
*(iv) ITAT, Ahmedabad Bench in case of M/s Janak Dehydration P. Ltd vs. ACIT, Ahmedabad ITA No.2325/2006 order dated 01.10.2010.*

11.8 Ld. AR for assessee further submitted that the assessee company has claimed deduction u/s 80IB(11A) and this claim is made on the ground that potatoes (vegetable) based snacks are exempted from taxes u/s 80-IB (11A) being profits derived from the business of processing of vegetables which are evident from the Form No. 10CCB (Audit Report), Food processing Policy 2008 of Department of Horticulture and Food Processing and copy of Tenth Plan Schemes of Ministry of Food Processing Industries, Govt. of India. are attached herewith. Kindly refer to Para 1 on page 2 with the main heading "Scheme for Technology up gradation/Establishment/Modernization of Food Processing Industries". It clearly says that the scheme will cover setting up/expansion/modernization of Food Processing industries covering all segments viz. Fruits & Vegetables, milk products, meat, poultry, fishery, cereal, pulses, oil seeds and such other agri-horticultural sectors leading to value addition and shelf life enhancement including food flavours and colours, oleoresins, spices, coconut, mushroom, hops, etc. It says that the scheme will cover the following activities i.e setting up/expansion/ modernization of food processing industries covering all segments viz. fruits & vegetables. Since the assessee company is engaged in the business of processing, packing and

sales of different types of potato based snacks, extruded snacks and namkeen, the exemption u/s 80IB(11A) has been claimed. The Ld. AR relied on the decision of *Hon'ble ITAT Ahmedabad bench in the case of M/s Janak Dehydration vs ACIT Ahmedabad in ITA No. 2325/Ahd/2006* and also the decision of *Madurai bench of Madras High Court in the case of Pepsico Holdings Ltd. Pvt. Ltd vs Commissioner of Commercial Tax*, wherein it was held that "Lays" and "uncle chips were processed vegetables.

12. We have considered rival submissions as well as relevant materials on record. The revenue has raised common grounds in these appeals. There is no dispute that the assessee company is engaged in the business of manufacturing and sales of different types of potato based chips, snacks and namkeen. Sub Section 11A of Section 80IB provides for the deduction in respect of profits made from certain industrial undertakings other than infrastructure undertakings and the amount of deduction in the undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of holding storage and transportation of the food grains. Therefore Sub Section 11A of Section 80IB of the Act provides the deduction to undertakings which deriving profits interalia from the business of processing, preservation and packaging of fruits and vegetables. The business activity of the assessee company is stated to be confined only to the processing of vegetables, preservation and packaging. Thus the activity of

processing and preservation are relating to the vegetable or fruits and in case of assessee only vegetable. The assessee claimed that after the vegetable undergoing the process of making chips, snacks and namkins it is also requires packaging. The A.O has denied the claim of deduction on the ground that the business activity of the assessee is not confined to processing of vegetables but it is in the manufacturing of chips and namkins from the potato and therefore, held that the assessee is not deriving the profit from the business of vegetable. The assessee has explained the steps in the process of making the chips, namkins and other snacks in the chart as under:



12.1 Thus, the process undertaken by the assessee involves storing of potato, destoning of potato, peeling, slicing and washing, blanching, frying and flavour application. Each step is also explained that the potato is stored as per size and put into the elevator for removing the foreign particles like stone, clay etc. Thereafter the outer skin of the potato is removed to give it a

smooth spherical shape before it is sliced into chips using slicer so as to get consistent thickness essential for giving correct size and texture to the chips. The slices are then washed to remove the starch to avoid stickiness during cooking and to prevent starch from entering the cooker and becoming carbonized. The resultant potato slices are fried. All these process is under strict control of temperature and conditions so as to get desired potato based chips and other snacks. The packaging is done in the manner to preserve this processed potato chips for a longer life and the individual packs are filled with nitrogen gas to preserve the chips. The end product is also potato based chips and snacks and therefore the potato which is a vegetable has undergone this process. The question arises whether this process of making potato based chips and snacks falls within the expression processing as provided in Sub Section 11A of Section 80IB of the Act or not. *The Authority for Advance Ruling vide its ruling dated October 28, 2009 in case of Mrs. Delna Rustom Boyce reported in 318 ITR 455 has dealt with this issue in para 6 to 10 as under:*

*"6. The question is whether the business of the proposed undertaking is one of processing, preservation and packaging of fruits. In my view, the answer should be plainly in the affirmative. The integrated activities of processing, preservation and packaging of fruits or vegetables are embraced within the scope of sub-section (11A) of section-80IB. The only aspect which needs some elaboration is whether the ingredient of processing is satisfied. Is it a business of processing (including preservation) of fruits? Whether the series of steps taken to produce fruit based drink mixes or concentrates or fruit powder amount to processing of fruits or do they cross the boundaries of processing as commonly understood? In other words, whether the finished/packaged*

product is the result of something that cannot be appropriately characterized as processing? Or, is it something more than processing.

7. The import of the expression 'processing' can be better understood by referring to the decisions of the Supreme Court interpreting the said expression occurring in the taxing enactments. In the case of *Delhi Cold Storage (P.) Ltd. v. CIT* [1991] 191 ITR 6561, the Supreme Court was concerned with the question whether the assessee-company running a cold storage could be held to be an industrial company for the purposes of section 2(7)(c) of the Finance Act, 1973. An industrial company has been defined to mean a company which is mainly engaged in the manufacture or processing of goods and other activities specified therein. The question was whether the cold storage of the appellant can be said to be engaged in the processing of goods? The Supreme Court answered the question in the negative for the reason that the stored articles cannot be said to have undergone a process mainly because there was reduction of moisture content as a result of long storage. At the same time, the Supreme Court observed that processing "is a term of wide amplitude and has various aspects and meanings". It was pointed out that in common parlance 'processing' is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. Another case which deserve reference is the case of *Chowgule & Co. (P.) Ltd. v. Union of India* [1981] 47 STC 124. The three-judge Bench of Supreme Court held that the blending of iron-ore in the course of loading through the mechanical ore handling plant amounted to processing of ore within the meaning of [section 8\(3\)\(b\)](#) of the Central Sales Tax Act and the mechanical ore handling plant fell within the description of machinery, plant, equipment used in the processing of ore for sale. The following pertinent observations were made while explaining the connotation of the word 'processing' :

". . .The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in [Sri Om Prakas Gupta v. Commissioner of Commercial Taxes](#) [1965] 16 STC 935. What is necessary in order to characterize an operation as processing is

*that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical compositions demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to 'processing' of ore within the meaning of [section 8\(3\)\(b\)](#) and rule 13...." (p. 131)*

*Earlier, it was observed that the blending of different qualities of ore did not amount to manufacture.*

8. *In case of CWT v. Mohinibai Kanaiyalal (1999) 240 ITR 636, the Gujarat High Court observed that in order to characterize an operation as processing, it is necessary that the commodity must, as a result of the operation, experience some change..*

9. *The principle that runs through the above decisions is that notwithstanding the extent of processing and the changes that occur to the original commodity by reason of series of operations, it could still amount to processing of that original commodity.*

10. *Processing and preservation are two distinct expressions used side by side. Processing may be for the limited purpose of preservation of fruits without bringing about much change in the form of the fruit. But 'processing' in the context in which it occurs ought not to be confined only to be operations that would ensure the preservation of fruits as they are or in the form of slices. In other words, the expression should not be confined to minimal processing that would not change the identity of the fruit. If processing and preservation is to be confined only to fruits as such and not to be derivatives from the fruits, the benefit intended to be given to agro-processing industries will operate in a very limited sphere, thereby defeating the very object of the provision. The extraction of juice and oil from the fruits or further converting the homogenized juice into fruit powder and adding the substances meant for preservation would legitimately fall within the sweep of the expression 'processing'. The fact that the fruit assumes a different form or that a series of operations are involved in preparing the mixed juices and concentrates which could be preserved for long does not take it out*

*of bounds of processing. Processing in its wider sense would still be aptly applicable.*

*11. I am therefore of the view that the applicant is entitled to the benefit of deduction contemplated in sub-section (11A) of Section 80-IB and the question has to be answered in the affirmative subject however to the clarification that the conditions laid down in sub-section (2) of Section 80-IB should be satisfied. I may add that the Commissioner in his comments has very rightly taken the stand that the profit of the proposed business "seems to be eligible for deduction provided the assessee satisfies the other conditions"*

12.2        Though this ruling is not binding on the Tribunal but it has strong persuasive value wherein the term processing is used in Sub Section 11A of Section 80IB has been elaborately analysed and it is observed that processing should not be confined to the operations that would entail the preservation of fruits/vegetable as they are without change of their identity. If the processing and preservation is confined only to the fruitsas such and not to be derivatives from fruits the benefit intended to be given to the Agro Processing Industry will operate in a limited sphere and thereby defeating the object of the provision. The Hon'ble Madras High Court in case of *M/s Chamadhi Trades V/s Commercial Tax Officer* in the writ petition No.6546 of 2011 vide judgment dated 23.04.2018 as held in para 3 to 6 as under:

*"3. I have considered the submissions made on either side.*

*4. The admitted fact is that the petitioner is a dealer of Bingo chips. Potato chips are, admittedly, processed vegetables. Entry No.107 in*

*Part B of the first Schedule specifically specifies that processed fruit and vegetables including fruit jam, jelly, etc., other than those specified in the fourth Schedule, are liable to be taxed at 4% and for the other goods under Entry 69, the tax payable would be at the rate of 12.5%.*

*5. In a similar circumstance, in the case of Pepsico India Holdings Pvt. Ltd. v. Commissioner of Commercial Taxes, Chennai and others reported in [2010] 29 VST 214 (Mad), the first Division Bench of this Court passed an order on 10.11.2009, wherein it was held that a Division Bench of the Guwahati High Court in Pepsico India Holdings Pvt. Ltd. v. State of Assam reported in [2009] 25 VST 41, observed that potato chips sold by the appellant under the same brand www.judis.name "Lays" and "Uncle Chips" are held to be classifiable as processed vegetables and not to come under a residuary entry. Following the said judgment, a contention was made that the clarification issued by the Commissioner of Commercial Taxes was totally erroneous. Ultimately, it was held that the potato chips will fall under the processed vegetable and when there is a specific entry, the tax applicable to that entry alone has to be applied and it is not expected to go to the residuary item.*

*6. From the perusal of the judgment of the first Division Bench of this Court, it is very clear that the chips will fall under the category 'processed vegetable' and accordingly, the same is liable to be taxable under Entry 107 in Part B of the first Schedule to the TNVAT Act. Therefore, it cannot be taxed under Entry 69 at the rate of 12.5%. I respectfully follow the judgment of the Hon'ble First Division Bench and conclude that the impugned order passed by the respondent is not sustainable. Further, the clarification issued by the Commissioner of Commercial Taxes is not accepted by the Hon'ble Division Bench. Once it is decided that the clarification is not sustainable, it cannot be followed in other cases on similar issues".*

12.3 Thus, it is clear that the Hon'ble High Court has held that the products (chips) sold by the assessee are to be classified as processed vegetable and not to come under the residuary entry for the purpose of commercial tax. Once the chips is classified as processed vegetable for the purpose of commercial

tax then it cannot be given a different classification for the purpose of Income Tax so far as the processing of vegetable is concerned. Similarly the Hon'ble Uttarakhand High Court in case of *M/s Shriya Enterprises vs. Commissioner of Commercial Tax* has held that the potato chips is nothing but a preserved vegetable and in other words the potato chips is also a vegetable product. The contention of the revenue that the product is not a processed vegetable but is a snack item and in fact the manufacturing process and end product is a new item has not been accepted by the Hon'ble High Court in para 9 to 26 as under:

*"9. From a perusal of Section 4(2)(b) of the Act, it is clear that in respect of goods specified in Schedule-II(B), the tax would be levied @ 4 per cent, otherwise, it would be placed in the residuary category and would be charged @ 12.5 per cent.*

*10. In Bharat Forge & Press Industries (P) Ltd. v. Collector of Central Excise 1990 1 SCC 532, the Supreme Court held that if there is a conflict between two entries, one leading to an opinion that it comes within the purview of tariff entry and another the residuary entry, the former should be preferred. The Supreme Court further held:-*

*"4. The question before us is whether the department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item."*

*Similar view was held by the Supreme Court in H.P.L. Chemicals Ltd. Vs. Commissioner of Central Excise, Chandigarh 2006 (5) SCC 208, wherein it was held :-*

*"31. It was submitted by the learned Senior Counsel appearing for the Revenue that the goods were classifiable under heading 38.23 (now 38.24) as 'residual products of the chemical or allied industries, not elsewhere specified or included' which was the last item covered by heading 38.23. The said heading 38.23 is only a residuary heading covering residual product of chemical or allied industries 'not elsewhere specified or included'. In the present case since the goods were covered by a specific heading, i.e., heading 25.01, the same cannot be classified under the residuary heading at all. This position is clearly laid down in rule 3(a) of the Interpretative Rules set out above. As per the said interpretative rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description. This position is also well-settled by a number of judgments of this court. Reference may be made to Bharat Forge & Press Industries (P) Ltd. Collector of Central Excise 1990 1 SCC 532."*

*Similar view was reiterated in Mauri Yeast India Pvt. Ltd. Vs. State of U.P. & another, 2008 U.P.T.C. 729*

*11. In the light of the aforesaid, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary category and if there is a conflict between entries, then, the residuary category should not be taken into consideration.*

**others.** *A Division Bench of the Gauhati High Court, by the judgment dated 29.04.2009, held that the sale of potato chips made by Pepsico India Holding Pvt. Ltd. is covered by Entry 80 of Part A of Schedule II to the Assam Value Added Tax Act, 2003 which provided for processed or preserved fruits and vegetables and that the entry would take within its compass potato chips being a processed vegetable.*

*13. Similar view was held by the Madras High Court in its judgment dated 10.11.2009 passed in Pepsico India Holdings Pvt. Ltd. Vs. Commissioner of Commercial Taxes & others, wherein the court held that the Pepsico India Holdings Pvt. Ltd. cannot be taxed under the residuary entry.*

14. A Division Bench of the Punjab & Haryana High Court in *Pepsico India Holdings Pvt. Ltd. Vs. State of Punjab 2006 (148) S.T.C. 30 (P&H)* also held that potato chips is covered by the entry processed and preserved vegetable. The court held that potato, which is admittedly a vegetable after processing, becomes a potato chip and thus a potato chip can only be treated as a processed vegetable.

15. The learned counsel for the respondent department has heavily relied upon a decision of the Himachal Pradesh High Court in the matter of *Pepsico India Holding Pvt. Ltd. Vs. Assessing Authority & others 2010 (36) V.S.T. 563* decided on 09th September, 2010 wherein the court held that potato chips cannot come under the classification of processed vegetable under the Himachal Pradesh Value Added Tax Act, 2005. The court further held that the entries under Schedule (B) of the goods exempted from tax and under Schedule (A) relates entries in the respective State Acts of Assam, Madras, and Punjab & Haryana and consequently, the judgments given by the High Court of Gauhati, Madras, Punjab & Haryana are distinguishable. The Division Bench of the Himachal Pradesh High Court however, found that potato chips was a processed form of potato and that potato was a vegetable and by processing of slicing, frying and spicing the potato chips did not cease to be a vegetable. The Division Bench however held that the legislature has conspicuously left out any form of potato processing or processed potato, under Part II Schedule 'A' to be taxed @ 4% though potato was exempted from tax under Schedule 'B'.

16. The *Grolier Encyclopedia of Knowledge* defines the word 'potato' as an edible tuber that grows at the end of an underground stem of the plant and is a vegetable. The encyclopedia further states about potato as under:-

*"They are cooked fresh and can also be frozen OT dried. They are processed into flour, starch, and alcohol and are used as fodder, especially in Europe. In the United States, annual per-capital consumption is 19 kg (42 lb) of fresh potatoes and 13 kg (30 lb) of processed potatoes, such as frozen French fries and potato chips."*

17. The *New Encyclopedia Britannica, Volume 19, 15th Edition* classifies vegetables on the basis of parts of the plant, such as. root, stem, tuber, i.e., used for food. Potato is a tuber and states about potatoes as under :-

*"Potato. Potatoes should be smooth, shallow-eyed, and clean. Varieties differ as to shape, size, colour of skin, and cooking qualities. Suitability for processing requires such qualities as high*

*dry matter content good texture and colour low homemakers used potatoes in, various processed forms, particular freezer French-fried and dehydrated, or instant, mashed types. Potato chips have long been established as a major processed product. Instant mashed potato, in both potato granules and potato flake form, sliced and diced potato, and potato flour comprise the principal dehydrated products now in commercial production. One of the principal uses for dehydrated potato dice is as an ingredient in the manufacture of canned meat products."*

18. *The Ministry of Food Processing Industry has understood processing of potato wafers or chips as a vegetable processing industry. Further, the Government of India has understood potato chips to be a vegetable product for the purpose of classification under the Central Excise Tariff Act.*

19. *In Deputy Commissioner of Commercial Taxes, Tiruchirapalli Division, Tiruchirapalli Vs. Hameed Trading Company 1973 (32) S.T.C. 228 (Madras High Court), it was held that contemporaneous exposition by the administrative authority is very useful and a relevant guide to the interpretation of the expression used in a statute.*

20. *In the light of the aforesaid, it cannot be disputed that potato is a vegetable after going through the process of slicing, frying and spicing, potato chips does not cease to be a vegetable. It is irrelevant as to whether it becomes a snack item or not. A processed vegetable can also be a snack item, but then it does not take the snack item outside the entry of processed vegetables. The characteristics of the potato remains the same and if, by processing potato, it becomes a potato chip, it still remains a processed vegetable and, consequently, will be taxed @ 4 per cent under Schedule-II(B) of the Act.*

21. *There is another-aspect of the matter. One of the essential principles of judicial interpretation is whether the definition of the entry is inclusive or exclusive, which in turn indicates the legislative intent. In Deepak Agro Solution Limited Vs. Commissioner of Customs, Maharashtra 2008 (8) SCC 358 held:-*

*"17. It is well settled what is not excluded would be held to be included. Within the category of Sulphur, Sulphur recovered as by product in the process of refinement of crude oil also finds place. 18. Chapter Note 1 of Chapter 25 starts with the words "except where their context or Note 4 to this Chapter otherwise requires". It is, therefore, difficult to hold that the headings of the Chapter would cover only the products which are in the crude state or comes within the purview of other activities contained therein.*

*Interpretation of the said Note will depend upon the context in which the entries have been worded. If an entry is clearly worded and is broad in character, the same would lead to the conclusion that the context otherwise required.*

*19. An entry is to be given its ordinary meaning. If any goods fit in within one entry, the same for any purpose would not be held to be included in the other and in particular the residuary."*

*22. In the light of the aforesaid, the court finds from a reading of entry no.6 of Schedule-II (B) of the Act to be an inclusive entry. The use of word 'all' and 'including' makes it apparently clear that it is an inclusive entry. The effect of the words 'all' and the words "including fruit jams, jellies, fruit squash, paste, fruit drinks and fruit juices and achar (whether in sealed containers or otherwise)" under entry no.6 of Schedule-II(B) of the Act and the absence of any exclusion of potato chips within the said entry gives a clear legislative intent of inclusion of potato chips under entry no.6 of Schedule-II(B). To support this view of ours, the court finds that entry 10, 32, 40, 101 & 114 specifically excludes a Schedule-II (B). For facility, the said entries are quoted hereunder:-*

*"10. Aluminum, Aluminum alloy, their products (excluding extrusions)"*

*32. Coir and coir products excluding coir mattress*

*40. Declared Goods as specified in Section 14 of the Central Sales Tax Act, 1956 except coarse gain. 101. Silk fabrics excluding handloom silk unless covered by Additional Excise Duty*

*114. Toys excluding electronic toys*

*23. A perusal of the aforesaid entries gives a clear indication that some of the products have been specifically excluded and, as held by the Supreme Court in Deepak Agro Solutions (supra), what is not excluded would be held to be included and, consequently, the court is of the opinion that potato chips would be covered under the processed vegetable and is covered by entry No.6 of Schedule-II (B) of the Act. The court further finds that when potato undergoes the process of slicing, frying and spicing, it does not lose the characteristics of a potato and a new product is not manufactured. It still remains a vegetable and, consequently, in our opinion, potato chips is a processed vegetable.*

*24. In Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool AIR 1961 SC 412, the question for consideration was as to*

*whether hardened or hydrogenated groundnut oil (commonly called Vanaspati) continues to be called "groundnut oil". The court in order to find out whether hardened or hydrogenated groundnut oil remains groundnut oil or not held that two conditions were required to be specified, namely, as to whether the oil in question was from groundnut and whether the commodity was oil or not. The court and it remains a groundnut oil. In the light of the aforesaid, the court is of the opinion that the potato does not lose its basic characteristics in the process of potato to potato chips.*

*25. In M/s Nestle India Ltd. Vs. State of Uttarakhand & others 2010 (1) U.D. 498, the controversy before the learned Single Judge of this Court was, whether tomato ketchup was liable to be taxed @ 12.5 per cent or whether it was included in entry no.6 of Schedule-II(B) of the Act. The court held that tomato sauce was covered by entry 6 of Schedule-II (B) of the Act since there was no exclusion clause, namely, that the entry does not exclude tomato sauce. We are in complete agreement with the decision of the learned Single Judge.*

*26. In the light of the aforesaid coupled with the fact that the decision of the Himachal Pradesh High Court has been stayed by the Supreme Court in Special Leave to Appeal No.32378/2010 vide order dated 18.02.2011, the court is of the opinion that potato chips, being a processed vegetable, is liable to be taxed @ 4 per cent under entry 6 of Schedule-II(B) of the Act. Consequently, the impugned order of the assessing authority, the order of the Joint Commissioner (Appeals) as well as the order of the Tribunal cannot be sustained and are quashed. The revision is allowed. The assessing authority is directed to levy tax on the revisionist with respect to the potato chips @ 4 per cent instead of @ 12.5 percent."*

12.4           The CIT(A) has decided this issue in para 7.3 to 7.8 as under:

*7.3 I have gone through the assessment order and submission made by appellant during the course of proceeding. The following points emerge from above:*

*- AO has raised the contention that appellant is not deriving income for 'eligible business for the purpose of deduction u/s 80IB(11A) as it is a mere manufacturer of different kind of potato based snacks and namkeen and hence it cannot be termed to be*

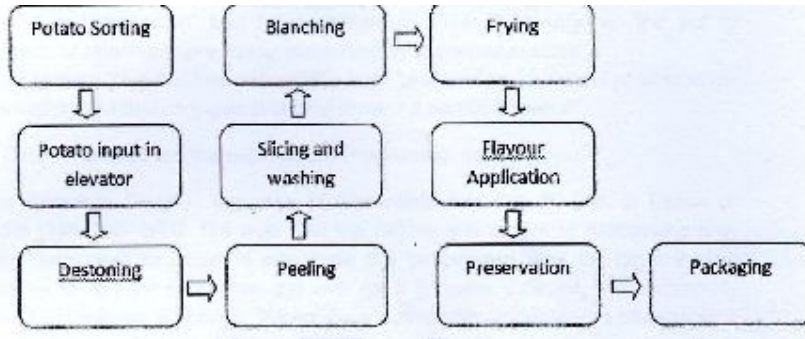
*engage in business of processing, preservation and packaging of fruits or vegetables.*

*- Section 80IB(11A) of the Act provides deduction in respect of profits derived from undertakings engaged in the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products. The provisions of section 80IB(11A) of the Act read as under:*

*"(11A) The amount of deduction in a case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of food grains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001.*

*Provided that the provisions of this section shall -not apply to an undertaking engaged in the business of processing, preservation and packaging of meat or meat products. or poultry or marine or dairy products if it begins to operate such business before the 1st day of April, 2009." (emphasis supplied)*

- A bare perusal of section 80IB(11A) of the Act indicates that three primary operations are required to be undertaken by the assessee in relation to 'vegetable', for the purpose of availing deduction under the said section viz.: (i) processing; (ii) preservation; and (iii) packaging. Further, the section uses the words 'and' which implies that all the 3 aforesaid activities are to be undertaken by the assessee cumulatively and even if one of the said activities is not undertaken, the assessee would not be eligible for deduction under the said section.*
- Before advertent to the legal position, it would be pertinent to first understand the processes undertaken by the appellant in its Unit for processing, preservation and packaging of vegetable in its case potatoes. The process of manufacturing of potato chips is given to the following effect:-*



After above mentioned production flow, appellant has submitted that it has undertaken process of preservation and packaging separately.

As stated above, three primary operations are required to be undertaken by the assessee on a cumulative basis in order to be eligible to claim deduction under section 80IB(11A) of the Act viz.: (i) processing; (ii) preservation; and (i) packaging of vegetables.

7.4 In this regard it is respectfully submitted, that the phrase 'processing, preservation and packaging' as contemplated under section 80IB(11A) of the Act has a very wide connotation and include within its ambit all activities incidental to bringing the eligible product potato (a vegetable) in the instant case, to its final consumable form namely chips and/or namkeen.

The words 'processing, preservation and packaging' have not been defined in the Act, nor explained in the CBDT circular. However, for the purpose of interpretation reference may be made to judicial pronouncements and dictionaries, where the meaning of the said term has been explained in common parlance.

#### (A) Processing

In various dictionaries, the expression 'Processing' is defined as under.

- The term 'processing' has been defined in the Oxford English Dictionary as "the treatment of raw material, food, etc. in order to change it, preserve it, etc
- Collins Dictionary defines 'processing' as 'the act or process of treating or process of treating or preparing something by a special method'.
- Cambridge Dictionary defines 'processing' as 'the act of preparing, changing, or treating food or natural substances as a part of an industrial operation'
- The term 'processing' has been defined in Free Dictionary as 'the act or process of treating or preparing something by a special method'

- *The Merriam Webster has defined the term 'process' as 'a natural phenomenon marked by gradual changes that lead toward a particular result'*

*Hon'ble Courts has defined the expression "Processing" as under:*

*The Supreme Court in the case of Chowgule and Co. P. Ltd. v. Union of India [1981] 47 STC 124 held that the nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. Accordingly, the Court held that blending of ore in the course of loading through the Mechanical Ore Handling Plant amounted to 'processing' of ore.*

*Authority for Advance Ruling in the case of Mrs. Delna Rustum Boyce In re: 318 ITR 455, wherein it was held that an undertaking set up to produce fruit- based drink mixes/concentrates derived from fruit juices through various processes involving various steps, such as peeling, extraction of fruit oil, fruit pulping, screening, emulsifying, homogenizing, spray drying, addition of preservatives, colour and sweetness, and packaging, would be eligible for tax holiday under section 80IB(11A) of the Act, holding as under:*

*"10. Processing and preservation are two distinct expressions used side by side. Processing may be for the limited purpose of preservation of fruits without bringing about much change in the form of the fruit. But, 'processing' in the context in which it occurs ought not to be confined only to the operations that would ensure the preservation of fruits as they are or in the form of slices. In other words, the expression should not be confined to minimal processing that would not change the identity of the fruit. If processing and preservation is to be confined only to fruits as such and not to the derivatives from the fruits, the benefit intended to be given to agro- processing industries will operate in a very limited sphere, thereby defeating the very object of the provision. The extraction of juice and oil from the fruits or further converting the homogenized juice into fruit powder and adding the substances meant for preservation would legitimately fall within the sweep of the expression processing"*

*The fact that the fruit assumes a different form or that a series of operations are involved in preparing the mixed juices and concentrates which could be preserved for long does not take it*

*out of bounds of processing. Processing in its wider sense would still be aptly applicable*

*11. I am therefore of the view that the applicant is entitled to the benefit of deduction contemplated in sub-section (11A) of section 80-IB and the question has to be answered in the affirmative subject however to the clarification that the conditions laid down in sub-section (2) of section 80-18 should be satisfied, I may add that the Commissioner in his comments has very rightly taken the stand that the profit of the proposed business "seems to be eligible for deduction provided the assessee satisfies the other conditions".*

*Further in the case of 3F Oil Palm Agrotech (P.) Ltd vs. ACIT: 178 ITD 319. I was held as under.*

*"18. The next question is whether the assessee satisfies all the three conditions of processing, preservation and packaging. The activity of processing itself means that original article undergoes a change. The change may not only be visible but may also change in its form. The Hon'ble Authority for Advance Ruling in the case of Mrs. DelnaRustom Boyce (supra) has considered the decisions of the Hon'ble Supreme Court in the case of Delhi Cold Storage (P) Ltd. v. CIT [1991] 59 Taxman 144/191 ITR 656 and in the case of Chowgule & Co. (P.) Ltd. v. Union of India [1981] 7 Taxman 71 (SC), to hold that in common language the word 'processing' is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the Act of processing. It was also held that the nature and extent of processing may vary from case to case; in one case, the processing may be slight and in another it may be extensive, but each process suffered, the commodity would experience a change. After considering these judgments, the AAR has held that processing of fruits does not mean that the end product also should be in the form of fruit or in the form of slices only. It was held that the expression should not be confined to minimum process that will not change the identity of the fruit. Let us therefore examine the applicability of the said decision to the case of assessee before us.*

*19. In the case of Mrs. Delna Rustum Boyce (supra), the AAR was considering the case of an assessee, a non-resident, who proposed to set up and promote a unit to produce fruit-based drink mixes/concentrates derived from fruit juices through various processes involving various steps, such as peeling, extraction of fruit oil, fruit pulping, screening, emulsifying,*

*homogenizing, spray drying, addition of preservatives, color and sweetness and packaging and the said assessee had sought direction from the AAR on the question whether the profit of her proposed undertaking would be eligible for deduction u/s 80IB(11A) of the Act. The AAR, after considering various decisions of the Hon'ble Supreme Court on the word "processing" has held as under.....*

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*22 From the above judgments, we find that though the decision of the AAR is not binding on the persons other than the applicant before it and the department when it is dealing with the case of that applicant, as held by the Hon'ble Supreme Court in the case of Columbia Sportswear Co. (supra) the principle and the ratio laid down by the AAR is persuasive in the cases with similar facts. In the case of the assessee before us also, the question involved was whether the extraction of oil from the FFBs of oil palm is processing or not, and the AAR has held similar activity in the case of mango pulp or powder, to be so and hence the principle and ratio of decision of the AAR in the case of Mrs. Delna Rustum Boyce (supra) is, definitely, applicable in other similar cases also and we have to hold that the activities carried on by the assessee for extraction of oil from FFB's of oil palm, will amount to processing u/s 80IB(11A) of the Act.....*

*26. The last objection of the Revenue is that the end product is not a fruit but it is edible oil or kernels and shells which are not consumable goods, and hence it does not satisfy the condition of section 80IB(11A). In the case of Delna Rustum Boyce Inre, the AAR has also held that the end product need not remain in the same form as the raw material. It may be in the form of juice or cut fruits or even oil or powder. As long as the end product is derived from the fruits or vegetables, the assessee is eligible for deduction u/s 80IB(11A) of the Act. In these circumstances, we are satisfied that the oil palm is a fruit and that it undergoes different processes before extraction of oil, and the palm oil is preserved under adjusted temperature and they are packed in large container or tanks and therefore, the assessee is eligible for deduction u/s 80IB(11A) of the Act. The assessee's appeals are accordingly allowed." (emphasis supplied)*

*Similarly in case of CIT Vs Muthuramalingam Modern Rice Mill reported in 105 taxmann.com 39, Hon'ble Madras High Court was seized with*

issues whether processing of paddy into rice was eligible for deduction u/s 801B or not. Hon'ble High court has decided the issue in favour of assessee and held that:

"16. These words "Manufacture or production" cover within their ambit any activity by which, a different commercial article, having a different commercial value, is brought into existence by the process of 'Manufacture or Production'. When the Paddy in the husk is converted into Rice by the process of dehusking, by manual or mechanical process it cannot be said, by any stretch of imagination that there is no transformation of article. A husked Paddy is not a de-husked Rice, and not only the form undergoes a change but also the value addition happens by such process. A different commercial article undoubtedly comes into being. The industrial activity by employing men and machine in the industrial undertaking of the Assessee is not even doubted by the Revenue. It is also not in dispute that Rice and Paddy are two different things, but the only contention which the Revenue seeks to raise before us is that the said process of dehusking is not covered by the terms "Manufacture" We cannot accept this submission for the simple reason that while the investment in the Industry is made by the Assessee and carrying of industrial activity is not disputed and the article in question viz., husked Paddy and Rice are two different articles having different value. what can be the reason to deny them the benefit under Section 80 IA and 80 IB of the Act. We see no reason, much less any justifiable reason, for denial of the said benefit to the Assessee before us.

17. We find that the definition of the word "Manufacture" though was not available in the Assessment Years before us upto 2003-2004, but the said definition embodies the concept of transformation of object or article into different commercial article as was discussed in several judicial pronouncements from time to time. If a different commercial article comes into existence as understood by the persons who deal with those things, a different approach need not be taken by the Courts of law to hold otherwise. The dehusked Paddy and Rice obviously are not sold on the same rate nor can they be consumed for same purpose in the same form. Therefore, the process of dehusking of Paddy into Rice with the aid of labour and machinery is definitely an industry activity undertaken by the Assessee."

In view of the aforesaid, it can be said that all the activities which brings forth some change or alteration in the goods or material come under the definition of 'processing'. Such change may not only be visible

*but may also change in its form. Thus, whenever a commodity undergoes a change as a result of some operation performed on it, such operation would amount to processing of the commodity. In the present case there is change in physical form, volume, contents and taste. New products came into existence namely chips, snacks and extruded namkeen, on account of processing. In commercial parlance and market places both the products potatoes (as input) and Chips/namkeen (as output) have distinct identities.*

*(B) Preservation*

*In various dictionaries, the expression 'preservation is defined as under:*

*-The term 'preservation' has been defined in the Merriam Webster as the act, process, or result of preserving something, such as*

*(a) the activity or process of keeping something valued alive, intact, or free from damage or decay,*

*(b) the preparation of food for future use (as by canning, pickling, or freezing) to prevent spoilage*

*-Cambridge Dictionary defines 'preservation' as 'the act of keeping something the same or of preventing it from being damaged'*

*-Oxford English Dictionary defines 'preservation as "the act of keeping something in its original state or in good condition"*

*-Macmillan Dictionary has defined the term 'preservation as 'the process of working to protect something valuable so that it is not damaged or destroyed*

*Hon'ble Courts has defined the expression 'Preservation' as under:*

*-Further the Hyderabad Bench of Tribunal in the case of 3F Oil Palm Agrotech(P.) Ltd vs. ACIT (supra) defined the scope of preservation and held as under:*

*"23. The next step involved is preservation and it is submitted by the assessee that since the rate of oxidation of the oil increases, with the temperature of storage, the temperature of the oil is normally maintained around 50 degree centigrade using low pressure stem heating coils to prevent solidification and*

*fractionation. According to him, this activity satisfies the condition of preservation.*

*24. The meaning and purpose of preservation is, to see that the product does not deteriorate and maintains the required quality and standard. It is not required that all the processes or the steps of preservation, should be complicated. Some items may require the least the steps while, some may require a complicated procedure As long as the assessee is maintaining the standards and is taking steps to maintain such standards, it can be said that it satisfies the condition of preservation. The Ld. DR had relied upon the contention of the assessee before the A.O that the crude palm oil requires the least preservation as it is a durable commodity. But this contention of the assessee alone cannot mean that the assessee is not taking any steps for preservation of the oil. It is common knowledge that all items, particularly food items, have an expiry date unless they are preserved in the required conditions. Therefore, we are satisfied that the assessee is also preserving the palm oil extracted from the fresh fruit bunches of oil palm fruits, after the process of 'pressing and extraction of oil.*

*26. The last objection of the Revenue is that the end product is not a fruit but it is edible oil or kemels and shells which are not consumable goods, and hence it does not satisfy the condition of section 801B(11A). In the case of DelnaRustum Boyce Inre, the AAR has also held that the end product need not remain in the same form as the raw material. It may be in the form of juice or cut fruits or even oil or powder. As long as the end product is derived from the fruits or vegetables, the assessee is eligible for deduction u/s 801B(11A) of the Act. In these circumstances, we are satisfied that the oil palm is a fruit and that it undergoes different processes before extraction of oil, and the palm oil is preserved under adjusted temperature and they are packed in large container or tanks and therefore, the assessee is eligible for deduction u/s 801B(11A) of the Act. The assessee's appeals are accordingly allowed."*

*In view of the aforesaid, any activity undertaken to keep the processed product intact in good condition and free from any damage comes under the definition of 'preservation'. The product chart submitted by the appellant mentions that it uses Nitrogen Gas as preservative to each individual pack before packaging. The Nitrogen, thus replaces the Oxygen from the pack and it is sealed then. Therefore, activities like storing the goods in the required conditions so that the quality of items particularly food items, does not deteriorate would come under the*

purview of 'preservation'. In the present case Nitrogen gas was used as preservative to give long life to Chips.

*(C) Packaging*

*The expression 'packaging' has been defined in various statutes and dictionaries as under: -*

*Section 2(x) of The Prevention of Food Adulteration Act, 1954 defines 'package as 'abox, bottle, casket, tin-barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed*

*Section 2(zh) of Food safety and Standards Act, 2006 defines "package" as 'a pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or such other things in which an article of food is packed,*

*Further, the term 'packaging' has been defined in the Merriam Webster as 'an act or instance of packaging something or someone such as:*

*(a) the enclosing of something in a container or covering... damage caused by static charge during packaging, storing, and shipping,*

*(b) the presentation of something or someone to the public in a way that is designed to be attractive or appealing*

*-Cambridge Dictionary defines packaging' as 'the materials in which objects are wrapped before being sold*

*-Oxford English Dictionary defines 'packaging' as "materials used to wrap or protect goods that are sold in shops*

*-Collins Dictionary has defined the term 'packaging' as Packaging is the container or covering that something is sold in.*

*Hon'ble Courts has defined the expression Packaging as under.*

*-Further the Hyderabad Bench of Tribunal in the case of 3F Oil Palm Agrotech (P.) Ltd vs. ACIT (supra) examined the condition of packaging in a similar case and held as under.*

*"25. The third condition to be satisfied is packaging. The assessee is preserving and maintaining the palm oil in large containers/tanks. As rightly pointed out by the*

*learned Counsel for the assessee, packaging can be varied and includes the simple boxes to large container/vessel. Since the assessee is involved in large scale operation, it has to store the extracted oil in tanks. Therefore, we are satisfied that all the three processes necessary for claiming deduction u/s 80IB(11A) are satisfied by the assessee*

*26 The last objection of the Revenue is that the end product is not a fruit but it is edible oil or kemels and shells which are not consumable goods, and hence it does not satisfy the condition of section 801B(11A) in the case of Delna Rustum Boyce Inre.the AAR has also held that the end product need not remain in the same form as the raw material. It may be in the form of juice or cut fruits or even oil or powder. As long as the end product is derived from the fruits or vegetables, the assessee is eligible for deduction u/s 801B(11A) of the Act. In these circumstances, we are satisfied that the oil palm is a fruit and that it undergoes different processes before extraction of oil, and the palm oil is preserved under adjusted temperature and they are packed in large container or tanks and therefore, the assessee is eligible for deduction u/s 801B(11A) of the Act. The assessee's appeals are accordingly allowed."*

*In view of the aforesaid, it can be seen that packaging has been defined as a activity of wrapping/packing/covering the product with some material to delive products to consumers in perfect condition. In case of food items, packaging helps maintain freshness and quality of food items and also prevent the danger adulteration.*

*7.5 From the perusal of the three steps herein above it is clear that the startir point of process is Potatoes whereas end product is individually packed unit of Chip- The process involved has not only changed the character of vegetable but also volume, taste, identity, shelf-life and price as well.*

*7.6 Appellant has also placed heavy reliance on certain cases pertaining to VA Sales Tax Act wherein Hon'ble High Courts have consistently held potato chips preserved vegetable. Hon'ble High court of Uttarakhand at Nanital in the case Shriya Enterprises vs Commissioner of Commercial Taxes, Uttarakhand, Dehradun in Commercial Tax Revision No. 55 of 2011 held as under*

*"14. A Division Bench of the Punjab & Haryana High Court in Pepsico India Holding Pvt Ltd. vs State of Punjab 2006 (148)*

*S.T.C. 30 (P&H) also held that potato chips is covered by the entry processed and preserved vegetable. The court held that potato, which is admittedly a vegetable after procession, becomes a potato chip and thus a potato chip can only be treated as processed vegetable.*

*23. A perusal of the aforesaid entries gives a clear indication that some of the products have been specifically excluded os, as held by the Supreme Court in Deepak Agro Solutions (Supra), what is not excluded would be held to be included and, consequently, the court is of the opinion that potato chips would be covered under the processed vegetable and is covered by entry No. 6 of Schedule -II (B) of the Act. The court further finds that when the characteristics of a potato and a new product is not manufactured. It still remains a vegetable and, consequently, in our opinion, potato chips is a processed vegetable."*

*7.7 Further, I may like to point out that the Ahmedabad Tribunal in the matter of Ms Delna Rustom Boyce (2009) 185 taxman 180 in paragraph 10 it was held as under:*

*10. Processing and preservation are two distinct expressions used side by side Processing may be for the limited purpose of preservation of fruits without bringing about much change in the form of the fruit. But, processing' in the context in which it occurs ought not to be confined only to the operations that would ensure the preservation of fruits as they are or in the form of slices. In other words, the expression should not be confined to minimal processing that would not change the identity of the fruit. If processing and preservation is intended to be given to agro processing industries will operate in a very limited sphere, thereby defeating the very object of the provision. The extraction of juice and oil from the substances meant for preservation would legitimately fall within the sweep of the expression 'processing The fact that the fruit assumes a different form or that a series of operations are involved in preparing the mixed juices and concentrates which could be preserved for long does not take it out of bounds of processing. Processing in its wider sense would still be aptly applicable."*

*7.8 Considering the facts and circumstances of the case and respectfully following the decision of Hon'ble Courts (supra), the AO is not justified in disallowing the deduction at Rs.6,47,46,882/- claimed u/s 80IB(11A) of the Act. Accordingly, the AC is directed to allow the deduction u/s 80IB(11A) of the Act. The addition made by th AO is deleted. This ground of appeal is allowed.'*

12.5 Thus, the CIT(A) has allowed the claim of the assessee by following various decisions including the judgment of Hon'ble Supreme Court, High Courts as well as this Tribunal. No contrary decision has been brought to our notice by the revenue except a decision of *Mumbai Bench in case of Vora-Food Specialities (P) Ltd v/s Income Tax Officer (supra)* wherein the issue of allowability of investment allowance u/s 32A of the Act was decided in favour of the assessee and nothing adverse can be drawn from the said decision. Accordingly in the facts and circumstances of the case as discussed above we do not find any error or illegality in the order of the CIT(A) on this issue. The appeal of the revenue stand dismissed.

13. In the result revenue's appeal is dismissed and assessee's cross-objection is allowed.

Order pronounced in open court on 17.10.2024.

Sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

**Indore**

दिनांक/ Dated : 17 .10.2024

Dev/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore