

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION BENCH", VISA KHAPATNAM**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI S. BALAKRISHNAN, ACCOUNTANT MEMBER**

ITA No.252 & 412/Viz/2024		
Assessment Year: 2017-18 & 2018-19		
DCIT, Circle-3(1), Visakhapatnam.	Vs.	Shri Ramakrishna Nukala, Visakhapatnam. PAN: AAQPN1119F
(Appellant)		(Respondent)

C.O. No. 05 & 02/Viz/2024 (arising out of ITA No.252/Viz/2024 and ITA No.412/Viz/2024)		
Assessment Year: 2017-18 & 2018-19		
Shri Ramakrishna Nukala, Visakhapatnam. PAN: AAQPN1119F	Vs.	DCIT, Circle-3(1), Visakhapatnam.
(Appellant)		(Respondent)
Assessee by:	Shri GVN Hari, AR	
Revenue by:	Dr. Satyasai Rath, CIT-DR	
Date of hearing:	21/01/2025	
Date of pronouncement:	04/02/2025	

ORDER

PER BENCH:

1. The captioned two appeals (ITA No.252 & 412/Viz/2024) are filed by the Revenue feeling aggrieved by the orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi ("Ld. CIT(A)"), dated 18/04/2024 and 26/07/2024 for the AY 2017-18 & 2018-19 respectively. Further, the assessee, Nukala Ramakrishna, has also filed Cross Objections.

2. Briefly stated the facts of the case pertaining to the AY 2017-18 are that Nookala Rama Krishna ("Naga Hanuman Fish Packer", Proprietor), is an individual deriving income from business of fresh water fish cultivation, trade and export of sea fish/prawn, has filed his return of income for the Assessment Year 2017 -18 on 30-10-2017 declaring an income of Rs. 3,03,36,730/- and agricultural income of Rs. 30,93,704/-. The assessee has returned the above income after claiming the deduction u/s 80IB(11A) for Visakhapatnam undertaking. The assessee's case was selected for scrutiny and notices were issued. In response, the assessee has submitted the details as called for in online portal. After considering the submissions of the assessee, the Ld. A.O. completed the assessment order u/s.143 (3) of the Act, dated 28/12/2019 by making the following additions to the returned income viz., (1) Denial of deduction u/s 80IB (11A) of Rs. 5,35,17,431/-. (2) Addition of cash deposits during the demonetization period u/s 69A of Rs. 1,68,54,000/-. (3) Part of the agricultural income is considered as income u/s 69A to the tune of Rs. 20,93,704/-. Aggrieved by the order of the Assessing Officer on the above additions and denial of deduction u/s 80IB(11A) of the Act, the assessee preferred an appeal before the Ld. CIT(A).

3. On appeal, after considering the submissions of the assessee, the Ld. CIT(A) allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is erroneous in law and to the facts of the case.*
2. *The Ld. CIT(A) is not appreciating the fact that Assessing Officer elaborately discussed the ground raised by the assessee during the assessment proceedings and concluded that the relief was provided to the assessee on incorrect data mentioned in Form 10CCB dated 31/10/2017 about the initial assessment year as AY 2017-18 though the assessee’s business was commenced on 2/3/2016.*
3. *The Ld. CIT(A) erred in not appreciating the fact that the Assessing Officer clearly mentioned in the Assessment Order that the P & L Account and balance sheet of the undertaking for which the assessee claiming deduction U/s. 80IB, is not attached with Form 10CCB.*
4. *The Ld. CIT(A) erred in not appreciating the fact that the AO rightly invoked the provisions of section 69A of the IT Act on the cash deposits (SBNs) made in bank accounts during the demonetization period as the assessee could not able to substantiate that the cash deposits made during the period of demonetization were normal business receipts.*
5. *The Appellant craves leave to add or delete or amend or substantiate any ground of appeal before and / or at the time of hearing of appeal.*
6. *For these reasons and other grounds that may be urged at the time of appeal hearing, it is prayed that all these above additions be restored.”*

ISSUE NO.1

4. Issue No.1 is denial of the deduction claimed under Section 80IB(11A) of the Income Tax Act, 1961. With respect to this issue, at the outset, the Ld. DR drawn our attention to the order passed by the Ld. AO wherein it was submitted that the assessee has claimed deduction U/s. 80IB in the return of income however, the assessee has failed to strictly apply the provisions of section 80IB(11A) of the Act read with Form-10CCB dated 6/10/2018. It was submitted that the assessee had filed the Form-10CCB at page No. 32 of the Paper Book which is to the following effect:

FORM NO. 10CCB
[See rule 13BBB]
Audit report under section 80-1(7)/80-1A(7)/80-1B/80-1C

32

1	Name of the assessee	RAMAKRISHNA NUKA LA
2	PAN	AAQPN1119F
3	Status	Individual
4	Ownership status of the undertaking/enterprise	
	(a) Fully owned by assessee	Yes
	(b) Partly owned by assessee	No
	If partly owned, please specify the percentage of ownership	
5	Address	
	Flat/ Door/ Block No.	7B-15-45
	Name of premises/ Building/ Village	MARUTHI NILAYAM
	Road/ Street /Post Office	UPPUVARI LANE
	Area/ Locality	EASTERN STREET
	Town/ City / District	ELURU
	State	ANDHRA PRADESH
	Pin Code	534001
6	Name of the enterprise or undertaking eligible for deduction under section 80-1A, 80-1B or 80-1C	NAGA HANUMAN FISH PACKERS
7	Section and sub-section of the Income-tax Act, 1961, under which deduction is being claimed	80-1B (11A)
8	Date of commencement of operation/activity by the undertaking or enterprise	02/03/2016
9	Initial assessment year from when deduction is being claimed	2017-18
10	Address (with District and State) of the enterprise/ undertaking claiming deduction	
	Flat/ Door/ Block No.	survey no 71p and 73p
	Name of premises/ Building/ Village	
	Road/ Street /Post Office	
	Area/ Locality	palavalasa village, ananda puram mandal
	Town/ City / District	visakhapatnam
	State	ANDHRA PRADESH
	Pin Code	530054
11	Excise/service tax registration number and office where registered	
	Excise/service tax registration number	AAQPN1119FSD001
	Office where registered	VISAKHAPATNAM
12	Sales-tax registration number and office where registered	
	Sales-tax registration number	37670111043
	Office where registered	VISAKHAPATNAM
13	Local/State authorities from whom approval is taken (attach copy of approval)	VISAKHAPATNAM
		VISAKHAPATNAM
Eligible Business Under Section 80-1A		
14	Development, operation, maintenance of an infrastructure facility	
	(a) With respect to the infrastructure facility, does the enterprise:	
	(b) Please specify the nature of the infrastructure facility** [e.g., road, bridge, rail system, port, etc. (Explanation to section 80-1A(4)(b))]	
	(c) Has the operation and maintenance of the infrastructure facility been received on transfer from its developer in accordance with the agreement with the Central/State Government/local authority/any other statutory body.	
	(d) If yes, please specify the first year of claim of deduction under section 80-1A by the developer (Attach copy of Form 10CCB of developer)	
15	Preceding telecommunication services	

5. By referring the above Form-10CCB, it was submitted as under:-

1. That the assessee mentioned his name as 'Ramakrishna Nukala' at Sl No.1 whereas at Sl No.6, against the column 'Name of the enterprise or undertaking eligible for deduction U/s. 80-1A, 80-1B or 80-1C' is mentioned as "Naga Hanuman Fish Packers".
2. At Sl No.8 against the Column 'Date of commencement of operation/activity by the undertaking or enterprise' it was mentioned as "02/03/2016".

3. At Sl No.9 against the Column 'Initial assessment year from when deduction is being claimed', it was mentioned as "2017-18".

6. The contention of the Ld. DR is that the name of the assessee was mentioned as 'Ramakrishna Nukala' but the name of the entity eligible for deduction U/s. 80-IA, 80-IB or 80-IC' is mentioned as "Naga Hanuman Fish Packers". It was further submitted that the date of commencement of the activity was mentioned as "2/3/2016". It was also submitted that "since the date of commencement of the activity" was mentioned as 02/03/2016, therefore, the initial year would be AY: 2016-17 and not under AY: 2017-18. It was the contention of the Ld. DR that since the assessee has not claimed the deduction U/s. 80-IB of the Act for the AY: 2016-17, the assessee was not entitled to deduction U/s. 80-IB of the Act in the AY: 2017-18. In support of the above contention, the Ld. DR drawn our attention to the order of the Ld. AO at para 3.1 to 3.5 which is to the following effect:

"3.1 In response thereto, the assessee filed his reply, as under:

"1. The Profit & Loss account and Balance sheet for the unit for which the deduction claimed u/s. 80IB(11A) claimed is enclosed herewith.

2. The conditions laid mainly in the section are –

The unit (undertaking) should be engaged in the operation of the processing, preservation, packing of vegetables or meat or meat products or poultry or marine or dairy products.

The undertaking should commence its operations on or after 31.03.2009.

It should not be formed by splitting up or reconstruction of a business. It is not formed by transfer of plant and machinery and new plant and machinery should be installed.

It should not manufacture or produce any article or thing specified in Eleventh schedule

It is submitted that I am processing the marine products by processing, packing and preserving them in a cold storage. I have installed new plant and machinery in the undertaking and the unit is not formed by splitting

up. It has commenced the operations after 31.03.2009. Hence, the undertaking has satisfied the conditions laid down in the section and hence I am eligible for deduction u/s. 80IB(11A).

3. We are enclosing the details of the Plant and Machinery installed in the new undertaking. The construction and installation of the undertaking started in FY 13-14 and finished in FY 15-16. Due to the large volume and value of the transactions it is not practically possible for us to upload the documents.”

3.2 The information furnished by the assessee is perused. Though the assessee filed the reply, it is noticed that the assessee has not furnished the complete information as called for vide this office letter dated 02.12.2019. Hence, a letter dated 14.12.2019 was addressed requesting the assessee to submit the complete information on or before 16.12.2019 without fail. Further, it was also requested in that letter to furnish clear scanned copies of the P&L a/c and Balance sheet separately for the 80-IB unit, as the submitted ones are not clearly visible. However, the assessee has not furnished any reply in this regard.

3.3 It is pertinent to mention the relevant provisions of sec. 80-IB of the Act, as under:

“80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

1. it is not formed by splitting up, or the reconstruction, of a business already in existence...

2. it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

3. it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India:..

4. in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(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 foodgrains, shall be hundred percent 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 fulfillment of the condition that it begins to operate such business on or after 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.”

3.4 As can be seen from the Audit Report in Form No.10CCB dated 31.10.2017 filed by the assessee along with ITR, in col. No. 6 pertaining to name of the enterprise or undertaking eligible for deduction under section 80-IA, 80-IB or 80-IC, it is mentioned as “Naga Hanuman Fish Packers”. Further, in col. No.8 pertaining to date of commencement of operation/activity by the undertaking or enterprise, it is mentioned as 02.03.2016. This shows that, the assessee claimed deduction u/s. 80-IB(11A) in respect of the enterprise, M/s. Naga Hanuman Fish Packers, which commenced its operation on 02.03.2016. However, in col.no. 9 of the said report, it is mentioned that, the initial assessment year from when deduction is being claimed as A.Y. 2017-18. A scanned copy of the relevant portion of form no.10CCB is as under:

3.5 In this context, it may be mentioned here that, sec. 80-IB(11A) of the Act stipulates that “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 foodgrains, shall be hundred percent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year...”. In the present case, the initial assessment year is A.Y. 2016-17, as the assessee had commenced the operation on 02.03.2016, i.e., during F.Y. 2015-16. However, the assessee is not found to have claimed deduction u/s.80IB(11A) in the A.Y. 2016-17 nor furnished any report in Form No.10CCB for that year. Hence, the stipulation, as mentioned above, has not been fulfilled by the assessee.”

7. It was submitted that the Ld. CIT(A), without appreciating the facts of the case, has decided the issue in the following manner:

7.2 Ground of appeal Nos. 2 to 6 are against the action of the A.O. in denying deduction u/s.80IB, and are hence taken up together for adjudication.

The appellant is engaged in the business of processing, packing and preserving marine products. He had filed his return of income for the A.Y.2017-18 claiming deduction u/s.80IB of Rs.5,35,17,431/-. The appellant has also filed the requisite Audit Report and Form 10CCB.

However, the A.O noted that the appellant has filled in the “initial Assessment Year from when the deduction is being claimed” as A.Y.2017-18, even though he has commenced operations on 02.03.2016. It was the A.O’s stand that the appellant should have claimed deduction u/s.80IB (11A) from the A.Y.2016-17 but had not done so. The AO further noted that the report in Form 10CCB should be accompanied by P&L a/c and balance sheet of the undertaking for which the assessee claiming deduction u/s 80IB. However, the appellant had only furnished the combined P&L and balance sheet and could not furnish the P&L and balance sheet of the enterprise for which he had claimed deduction u/s.80IB. In view of the above, the AO denied deduction u/s 80IB and made an addition of Rs.5,35,17,431/-.

In the course of appellate proceedings, the appellant submitted that since the ‘Vishakpatnam Unit’ in respect of which 80IB deduction has been claimed, though commenced operation on 02.03.2016, it did not generate profit in the initial assessment year and hence deduction u/s 80IB was not claimed for A.Y.2016-17. Moreover, it was submitted that the appellant had attached the P&L a/c and balance sheet of this unit to the Form 10CCB, and this fact is acknowledged in the assessment order itself in Page 6.

In this context, it may be noted that section 80IB(11A) stipulates certain conditions for availing of deduction. The appellant has fulfilled these conditions including submission of the requisite audit report and the financials of the specified undertaking. The only remaining reason for which the deduction u/s 80IB has been denied is due to failure to claim deduction u/s 80IB in the initial assessment year.

Section 80IB (11A) states that the amount of deduction in the case of eligible undertaking –

“shall be hundred percent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty five percent (or thirty percent 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 fulfillment of the condition that it begins to operate such business on or after 1st day of April 2001.”

A plain reading of the above subsection makes it clear that the clause only stipulates the period for which the deduction shall be available, which is reckoned from the initial assessment year. It does not stipulate that the deduction has to be necessarily availed from the initial assessment year. In fact, it would be a logical absurdity to expect an entity which does not have any profit in the initial assessment year to claim deduction u/s 80IB in that year. Moreover, from the record it is seen that the appellant has submitted the requisite audited financials and Form 10CCB. It is not the case of the A.O. that the appellant is otherwise ineligible for claiming deduction u/s 80IB for any other reason. This being the case, the action of the

AO in denying the deduction u/s 80IB is unwarranted. Accordingly grounds no.2 to 6 are allowed.”

8. The Ld. DR submitted that the issue is required to be decided against the assessee and for that purposes, he drawn our attention to the order passed by the Ld. CIT(A) and submitted that the Ld. CIT(A) has wrongly relied upon the decision of the Hon'ble Delhi High Court in the case of Mr. Praveen Soni Vs CIT 2011 (Delhi), at para-6 of his order. It was further submitted that the said decision of the Hon'ble High Court of Delhi was in respect of manufacturing of activities whereas the present case falls under section 80IB(11A) of the Act. It was also submitted that the Ld. CIT(A) is erred in not sustaining the addition made by the Ld. AO.

9. Per contra, the Ld. AR relied on the order of the Ld. CIT(A) and submitted that the Ld. CIT(A) has rightly allowed the appeal of the assessee and also the provisions of section 80IB of the Act. It was submitted that there is no contradiction in assessee's name as Ramakrishna Nukala and in the P & L Account, it has been so recorded by the Ld. Assessing Officer. The ld.AR has drawn our attention to the P & L Account which is reproduced by the Ld. AO and also in the show-cause notice. It was further submitted by ld.AR that all along the assessee was earning profit from the Vizag branch which was duly mentioned in the P & L Account and at no point of time the assessee has claimed deduction for any purposes which is not eligible. It was submitted that "Naga Hanuman Fish Packers" is the brand name, of which the assessee is the Proprietor. Further, it was submitted that clause referred by the Ld. AO was only requiring to assessee to state the initial year in which the deduction has been claimed. It was also submitted that since the assessee has not claimed deduction in AY

2016-17, therefore, the assessee was right in mentioning said clause being the initial year in which for the first time deduction was claimed.

10. We have heard the arguments of both parties and perused the material on record as well as the legal provisions under Section 80IB(11A) of the Act. Section 80IB(11A) provides as under :

“80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from²¹ any business referred to in sub-sections (3) to 22[(11), (11A) and (11B)²³] (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

[(11A) The amount of deduction in a case of ⁷¹[an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or ⁷²[meat and meat products or poultry or marine or dairy products or] from] the integrated business of handling, storage and transportation of foodgrains, 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 :]

⁷²[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.]

(14) For the purposes of this section,—

⁷⁸[(a) "built-up area"⁷⁹ means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;]

⁸⁰[(aa)]"cold chain facility" means a chain of facilities for storage or transportation of agricultural produce under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;

⁸¹[⁸²[(ab)] "convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed⁸³;

(b) "hilly area" means any area located at a height of one thousand metres or more above the sea level;

(c) "initial assessment year"—

(i) in the case of an industrial undertaking or cold storage plant or ship or hotel, means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the cold chain facility or the ship is first brought into use or the business of the hotel starts functioning;

(ii) in the case of a company carrying on scientific and industrial research and development, means the assessment year relevant to the previous year in which the company is approved by the prescribed authority for the purposes of sub-section (8);

(iii) in the case of an undertaking engaged in the business of commercial production or refining of mineral oil referred to in sub-section (9), means the assessment year relevant to the previous year in which the undertaking commences the commercial production or refining of mineral oil;

84[(iv) in the case of an undertaking engaged 85[in the business of processing, preservation and packaging of fruits or vegetables or] in the integrated business of handling, storage and transportation of foodgrains, means the assessment year relevant to the previous year in which the undertaking begins such business;]

86[(v) in the case of a multiplex theatre, means the assessment year relevant to the previous year in which a cinema hall, being a part of the said multiplex theatre, starts operating on a commercial basis;

(vi) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;]

87[(vii) in the case of an undertaking engaged in operating and maintaining a hospital in a rural area, means the assessment year relevant to the previous year in which the undertaking begins to provide medical services;]

.....”

11. Section 80IB(11A) provides deduction of 100% of the profits and gains derived by such undertaking for five years, beginning with the initial assessment year and thereafter, the deduction of 25% on the profit and gains for a total period not exceeding ten years were provided.

12. Section 80IA(14)(c) has provided the definition of “initial year” which is reproduced hereinabove, and it provides that “initial year” means the assessment year relevant to the previous year in which the undertaking begins its business.

13. Rule 18BBB of Income Tax Rules provides a submission of a separate report by each undertaking claiming deduction u/s 80IB and it shall be accompanied by profit and loss account, balance sheet of the undertaking or enterprises.

14. Form 10CCB provides the proforma in which audit report under Section 80IAB is required to be filed. Form 10CCB provides as under :

FORM NO. 10CCB
[See rule 18BBB]
**Audit report under section 80-I(7)/
80-IA(7)/ 80-IB/80-IC**

1. Name of the assessee :

2. [Permanent Account Number or Aadhaar Number] :

3. Status :

4. Ownership status of the undertaking/enterprise :
 (a) Fully owned by assessee Yes No
 (b) Partly owned by assessee Yes No
 If yes, please specify the percentage of ownership :

5. Address :

6. Name of the enterprise or undertaking eligible for deduction under section 80-IA, 80-IB or 80-IC :

7. Section and sub-section of the Income-tax Act, 1961, under which deduction is being claimed :

8. Date of commencement of operation/activity by the undertaking or enterprise :

9. Initial assessment year from when deduction is being claimed :

10. Address (with District and State) of the enterprise/undertaking claiming deduction :

11. Excise/service tax registration number and office where registered :

12. Sales tax registration number and office where registered :

13. Local/State authorities from whom approval is taken (attach copy of approval) :

ELIGIBLE BUSINESS UNDER SECTION 80-IA

14. Development, operation, maintenance of an infrastructure facility:
 (a) With respect to the infrastructure facility, does the enterprise (please tick):
 Develop, Operate and maintain,
 Develop, operate and maintain, the infrastructure facility.

(b) Please specify the nature of the infrastructure facility*** :

[e.g., road, bridge, rail system, port, etc. [Explanation to section 80-IA(4)(i)]]

(c) Has the operation and maintenance of the infrastructure facility been received on transfer from its developer in accordance with the agreement with the

- Central/State Government/local authority/any other statutory body Yes No
- (d) If yes, please specify the first year of claim of deduction under section 80-IA by the developer (Attach copy of Form 10CCB of developer) :
15. Providing telecommunication services :
- (a) Please specify the nature of telecom service :
[e.g., basic telecom service, cellular service, etc. [Section 80-IA(4)(ii)]]
16. Development, operation, maintenance of industrial park/SEZ
- (a) With respect to the industrial park/SEZ, does the undertaking (please tick) :
- Develop, Develop and operate
 Maintain and operate an industrial park/SEZ
- (b) Name and address of the industrial park/SEZ^e :
- (c) Has the operation and maintenance of the industrial park/SEZ been received on transfer from its developer : Yes No
- (d) If yes, first year of claiming deduction under section 80-IA by the developer (Attach copy of Form 10CCB of developer) :
17. Generation, transmission, distribution of power :
- (a) Does the undertaking generate power or generate and distribute power Yes No
- (i) If yes, indicate the year in which the undertaking has started generating power :
- (b) Does the undertaking transmit or distribute power Yes No
- (i) If yes, indicate the year in which the new transmission and distribution lines were laid :
- (c) Has there been substantial renovation and modernisation of the existing network of transmission or distribution lines Yes No
- If yes, please specify,—
- (i) the year in which the substantial renovation and modernisation of the existing network of transmission or distribution lines took place :
- (ii) book value of plant and machinery as on 1-4-2004 :
- (iii) value of increase in the plant and machinery in the year of substantial renovation and modernisation :

ELIGIBLE BUSINESS UNDER SECTION 80-IB


18. Industrial undertakings engaged in manufacture or production of article or thing or operation of cold storage plant :
- (a) Does the industrial undertaking manufacture or produce any article or thing specified in the Eleventh Schedule Yes No
(Please specify the article or thing.....) :

15. As per Section 80IB(14)(c), “initial year” means the assessment year relevant to the previous year in which the undertaking begins its business. It is the case of the Assessing Officer that as per Form 10CCB, the date of commencement of the activities 02.03.2016 and therefore, the initial year in which the assessee begins its activity would be the assessment year 2016-17. On the basis of the above, it was concluded by the Assessing Officer that the assessee would be entitled to deduction under Section 80IB from the beginning of the initial year i.e., A.Y. 2016-17 and not from A.Y. 2017-18. It was also submitted that since the assessee has not claimed the deduction in the assessment year 2016-17 and therefore, the assessee is not entitled to the deduction under Section 80IB for the assessment year 2017-18 or not.

16. The Id.CIT(A) in the order has mentioned that though it is the case of the Assessing Officer that the assessee has commenced its operation on 02.03.2016 and the assessee should have claimed deduction u/s.80IB (11A) from the A.Y.2016-17. Further, it was noted by the Assessing Officer that the report in Form 10CCB should be accompanied by P&L a/c and balance sheet of the undertaking for which the assessee claiming deduction u/s 80IB. However, the appellant had only furnished the combined P&L and balance sheet and could not furnish the P&L and balance sheet of the enterprise for which he had claimed deduction u/s.80IB. The Id.CIT(A) had mentioned that the assessee had attached the P&L a/c and balance sheet of this unit (Vizag Unit) to Form 10CCB, and this fact is acknowledged in the assessment order itself in Page 6.

17. We have gone through page 6 of the order of Assessing Officer wherein the following Profit and Loss account of the assessee for the year ending 31.03.2017 was reproduced.

Nukala Ramakrishna(Viag Branch) Profit & Loss Account for the year ending 31.03.2017					
Particulars	Amount Rs	Amount Rs	Particulars	Amount Rs	Amount Rs
Opening Stock		15,37,09,400.00	Sales		1,56,88,36,221.55
Purchases		1,60,22,85,627.11	Other OP Income		
Direct expenses			Duty drawback	5,82,60,664.00	
Power	2,91,18,784.00		export incentive	7,46,22,232.00	13,28,82,896.00
Freight	8,03,701.00		Closing Stock		
Consumption of material and stores	78,26,530.45		IN transit		34,53,37,095.00
Fuel			Finished Goods		
Wages	1,37,71,264.00	5,30,20,239.45			
Gross Profit		23,80,40,925.89			
		2,04,70,96,212.55			2,04,70,96,212.55
Advertisement		1,67,146.00	Gross Profit		23,80,40,925.89
Audit fee		6,38,750.00	Indirect incomes		
Commission		1,61,29,364.00	interest received	1,11,025.00	
Consumption of stores and spares		4,63,69,063.85	Processing charges	5,66,57,486.00	
Conveyance		3,41,063.00	difference in exchange dollar	1,25,76,694.00	
Donation		1,42,895.00	other income	1,49,228.00	
Depreciation		4,14,82,700.00	vehicle rent	4,91,596.00	6,99,86,029.00
Interest		4,76,96,142.00			
Freight		3,80,03,413.00			
Guest House expenses		1,43,329.00			
Hotel, boarding and lodging		29,630.00			
Insurance		24,69,963.00			
Power and fuel		34,10,326.00			
Professional / Consultancy / Technical fees		55,26,795.00			
Rents		1,50,000.00			
Repairs - Machinery/Furniture		1,17,64,593.00			
Salaries and other benefits					
Salaries and wages	1,26,00,751.00				
Bonus					
PF & ESI contribution	6,19,994.00	1,32,20,745.00			
Sales promotion (excluding Advertisement)		10,04,517.00			
Staff welfare		16,63,119.00			
Taxes and rates paid					
Service tax	32,56,414.00				
VAT/Sales tax	3,435.00				
excise	2,67,270.52				
Cess	1,640.00				
Other rate	18,08,176.00	53,16,935.52			
Telephone		2,54,413.00			
Travelling		5,80,227.00			
Other expenses					
Bank charges	20,41,263.00				
postage	1,48,134.00				
printing	21,28,087.00				
misc expenses	2,81,347.00				
subscriptions	3,81,121.00				
ad expenses	10,14,702.00				
reoperative expenses write off	4,45,020.00	64,39,674.00			
Net Profit		6,50,32,151.52			
		30,80,26,954.89			30,80,26,954.89



For RAO & MANOJ ASSOCIATES
Chartered Accountants
Suryacandra RAO
CA SURYACANDRA RAO, Y
Partner
Membership No.:022696
Firm.Regn. No.006396S


N RAO

And further, it is mentioned as under :

NUKALA RAMA KRISHNA A.Y. 2017-18
Computation of Total Income for year ending 31-03-2017

Profit of the undertaking for the Financial Year 2016-2017	6,50,32,151.00	
Less:		
Previous Year 2015-16 Loss set off	-1,15,14,720.00	
Adjusted Profit		5,35,17,431.00

N S S



This computation clearly speaks that the profit arrived at by the assessee in the P&L a/c at Rs.6,50,32,151/-, relates to Shri Nukala Ramakrishna (vizag branch) for the year ending 31.03.2017, and from this, after setting off of previous year loss, the adjusted profit was arrived at by the assessee at Rs.5,35,17,431/-, which is shown by the assessee as deduction u/s. 80-IB in the ITR. As such, the deduction claimed u/s. 80-IB in the ITR is not exclusively of the enterprise/undertaking engaged in the business as stipulated u/s. 80IB(11A)."

18. From perusal of the order of Assessing Officer and the finding of the Id.CIT(A), it is clear that the assessee has complied with the conditions of filing of the balance sheet, profit and loss account along with form 10CCB. Now the question remains whether the Id.CIT(A) was right in allowing the claim of the assessee under Section 80IB(11A) from A.Y. 2017-18 despite the fact that the assessee has begins its business with effect from 02.03.2016 on account of the following reasons :

"A plain reading of the above subsection makes it clear that the clause only stipulates the period for which the deduction shall be available, which is reckoned from the initial assessment year. It does not stipulate that the deduction has to be necessarily availed from the initial assessment year. In fact, it would be a logical absurdity to expect an entity which does not have any profit in the initial assessment year to claim deduction u/s 80IB in that year.

Moreover, from the record it is seen that the appellant has submitted the requisite audited financials and Form 10CCB. It is not the case of the A.O. that the appellant is otherwise ineligible for claiming deduction u/s 80IB for any other reason. This being the case, the action of the AO in denying the deduction u/s 80IB is unwarranted. Accordingly, grounds no.2 to 6 are allowed.”

19. We have gone through the finding of the Id.CIT(A). Though it is correct that it will be logically absurd to ask the assessee to claim the deduction in the assessment year 2016-17 when it has not generated any profit. In our considered opinion, there is no bar in law to claim the deduction in the assessment year 2017-18 for the first time as claiming of deduction in the assessment year 2016-17 is not sine qua non for claiming the deduction in the subsequent year. The law only provides deduction of 100% for a period of five years from the beginning of the “initial year” and the “initial year” has been defined u/s 80IA(14)(c) which means the year in which the assessee begins its business. Therefore, we do not find any illegality in the order passed by the Id.CIT(A) to grant deduction in the assessment year under consideration. The question whether the initial year would be for the purpose of considering the deduction would be 2017-18 (as claimed by the assessee) or 2016-17(as per the Assessing Officer) would not be relevant for adjudication for the present year. In any case, the assessment year 2017-18 would definitely fall within 5 years, even if, we agree for the sake of arguments that the ‘initial year’ should be 2016-17. However, this issue since not relevant for the purpose of deciding the controversy is left open to be decided in the appropriate proceedings for the purposes of manufacturing of articles, the hon’ble Delhi High Court in the case of Praveen Soni Vs. CIT reported in (2011) 79 CCH 0266 Del High Court after considering plethora of judgments has adjudicated the ground in paras 5 and 6 as under :

“5. It is, thus, clear that on two grounds, the benefit of s. 80-IB was denied to the assessee-appellant and for these reasons, the aforesaid two substantial questions of law in respect of these two grounds were framed while admitting this appeal. As far as second question of law is concerned, viz., whether the assessee can be denied the benefit of s. 80-IB of the IT Act simply because of the reason that he did not avail this benefit in the initial assessment year, i.e., 1998-99, it should not detain us for long. Sec. 80-IB is a special provision giving benefits to certain class of industries. It provides for deduction in respect of profits and gains to industrial undertakings other than infrastructure development undertakings. The conditions for claiming this benefit are stipulated in sub-s. (2) thereof. One of the conditions, with which we are concerned, is that the assessee manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India. Special provision is made in respect of those industrial undertakings which fulfil the conditions prescribed in sub-s. (2) of s. 80-IB of the IT Act, if such industrial undertaking happens to be small-scale industries. This is incorporated in sub-s. (3) of s. 80-IB of the IT Act. In such a case, the amount of deduction in the case of an industrial undertaking shall be twenty-five per cent (or thirty per cent where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years.

6. If the assessee fulfils the requirement of small-scale industrial undertaking (which aspect shall be dealt while answering other question of law), it is not in dispute that the assessee would have qualified for this deduction from the asst. yr. 1998-99. Had the assessee claimed this benefit in that year, he would have been allowed this benefit for 10 consecutive years, i.e., till asst. yr. 2007-08. The assessee, thus, becomes entitled to claim the benefit in the asst. yr. 1998-99. However, merely because of the reason that though the assessee was eligible to claim this benefit, but did not claim in that year would not mean that he would be deprived from claiming this benefit till the asst. yr. 2007-08, which is the period for which his entitlement would accrue. The provisions contained in s. 80-IB of the IT Act nowhere stipulate any condition that such a claim has to be made in the first year failing which there would be forfeiture of such claim in the remaining years. It is not the case of the assessee that he should be allowed to avail this claim for 10 years from the asst. yr. 2004-05. The assessee has realized his mistake in not claiming the benefit from the first asst. yr. 1998-99. At the same time, the assessee foregoes the claim upto the asst. yr. 2003-04 and is making the same only for the remaining period. There is no reason not to give the benefit of this claim to the assessee if the conditions stipulated under s. 80-IB of the IT Act are fulfilled.

20. In view of the above, we find merit in the contentions of the Ld. AR. The provisions of Section 80IB(11A) do not mandate that the deduction must be claimed from the initial assessment year. The assessee's business commenced on 02/03/2016, and from the assessment year 2017-18 the assessee has earned the profits and claimed the deduction as per law. The various discrepancies pointed out by the ld.AR are trivial in nature and would not disentitle the assessee who is otherwise eligible for claiming the deduction. We have already noted that the assessee has filed all the requisite permissions along with Form 10CCB. Thus, in our considered opinion, the assessee is eligible for deduction under Section 80IB of the Act. In view of the above findings, we hold that the assessee is entitled to the deduction under Section 80IB(11A) for the Assessment Year 2017-18. Accordingly, the addition of Rs. 5,35,17,431/- made by the AO under Section 80IB(11A) is hereby deleted.

ISSUE NO.2

21 Issue no.2 is with respect to the addition of cash deposits during the demonetization period u/s 69A of the Act of Rs.1,68,54,000/-.

22. Before us, the ld.DR submitted that the Assessing Officer had made the addition of Rs. 1,68,54,000/- under Section 69A of the Act based on unexplained cash deposits made during the demonetization period. The ld.DR further submitted that the appellant had failed to provide adequate details regarding the bifurcation of the deposits into specified bank notes (SBN) and non-SBN. The ld.DR further submitted that the addition was made after duly considering the appellant's

submissions, and it was justified in view of the incomplete explanation provided by the appellant.

23. Per contra, the Ld.A.R. submitted that the appellant's cash deposits were recorded in the books of accounts, which were duly audited. The appellant explained that the cash deposits were derived from business sales (primarily fish sales), which were correctly reflected in the books. The Ld.A.R. pointed out that neither the Assessing Officer had rejected the books of accounts, nor disputed the sale figures or income. The Ld.A.R. further submitted that the appellant provided day-wise cash deposit records, month-wise breakdowns, and bank account details to substantiate his case that the cash deposits were legitimate business transactions and sourced from sales proceeds and cash on hand. The Ld.A.R. also relied upon the decision in the case of Polepalli Srinivasulu Gupta vs. DCIT, wherein the Tribunal has upheld the legality of the SBN deposits during the demonetization period, stating that deposits, made within the legal framework, should not be treated as unexplained income. The Ld.A.R. argued that Section 69A was not applicable in the appellant's case, as the cash deposits were already recorded in the books of accounts and hence, the addition made by the Assessing Officer u/s 69A of the Act should be deleted.

24. We have heard the rival contentions and perused the material on record. The issue in the present case is whether the addition of Rs. 1,68,54,000/- made by the Assessing Officer under Section 69A is justified in light of the facts and submissions presented. Upon careful examination of the case records, we observe that the appellant's books of accounts were duly audited, and the cash deposits in question were

properly recorded in these books. We find that during the course of assessment, Assessing Officer has not rejected the books of accounts, nor were any discrepancies found with respect to the declared sales figures or other income, which indicates that the appellant maintained accurate and complete records and were consistent with the business transactions. Therefore, there is no reason to doubt the authenticity of the deposits made into the bank accounts. The appellant has provided a detailed and comprehensive explanation regarding the sources of the cash deposits. The alleged cash deposits of Rs. 1,68,54,000/- were primarily sourced from the sale of fish, a perishable commodity transacted largely in cash and that part of the deposits originated from cash on hand from earlier withdrawals. The explanation given by the appellant was substantiated by supporting documents, including day-wise and month-wise details of the cash deposits, as well as bank account statements. The appellant has fully disclosed the nature of its business and the source of the funds, which were consistent with the income recorded in the books of accounts.

25. Section 69A of the Income Tax Act pertains to unexplained money or valuables not recorded in the books of accounts. However, in the present case, the appellant has duly recorded the cash deposits in the books of accounts, and has also provided a satisfactory explanation regarding their sources. As the conditions outlined under Section 69A for making an addition do not apply here, the reliance on this provision by the Assessing Officer appears to be misplaced. Furthermore, the appellant's submission aligns with the legal precedent set by the Polepalli Srinivasulu Gupta case, which validates the deposits made using SBN during the demonetization period and holds that such deposits cannot be treated as unexplained income. Based on these facts and the legal precedent, we find that the Assessing Officer's decision to invoke Section 69A and make the addition of Rs. 1,68,54,000/- is not

justified as the appellant has sufficiently explained the sources of the cash deposits, and the books of accounts have not been rejected or disputed. Therefore, we are of the considered view that the addition made by the Assessing Officer is incorrect. Accordingly, we uphold hold the order of LD.CIT(A) and dismiss ground no.4 raised by the Revenue.

26. In the result, the appeal of Revenue is dismissed.

ITA No.412/Viz/2024 for A.Y. 2018-19

As the facts and issues in this case are identical to the appeal of Revenue in ITA No.252/Viz/2024 for A.Y. 2017-18, the reasoning provided by us in deciding the Revenue's appeal in ITA No. 252/Viz/2024 shall apply, mutatis mutandis, to this appeal as well. Accordingly, the appeal of Revenue in ITA No.412/Viz/2024 for A.Y. 2018-19 is dismissed.

27. In the result, the appeal filed by the Revenue for A.Y. 2017-18 is dismissed.

28. C.O.Nos.05 and 02/Viz/2024

In view of our decision in Revenue's appeal, the Cross-Objections filed by the assessee are dismissed as infructuous. Accordingly, the C.O., filed by the assessee are dismissed.

29. In the result, C.O.s, filed by the assessee are dismissed.

30. To sum up, both the appeals of Revenue and the Cross Objections of the assessee are dismissed.

Order pronounced in the Open Court on 4th February, 2025.

Sd/-	Sd/-
(S. BALAKRISHNAN) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER

Visakhapatnam, dated 04.02.2025

OKK/spc

Copy to:

S.No	Addresses
1	Shri Ramakrishna Nukala, 5-3, Sector-9, Balaji Residency, MVP Colony, Visakhapatnam, Andhra Pradesh.
2	DCIT, Circle-3(1), 50-92-34/1, 2 nd Floor, Infity Towers, Sankara Mattam Road, Santhipuram, Andhra Pradesh-530016.
3	Pr. CIT, Visakhapatnam.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order