

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

**I.T.A. No.83/Asr/2020
Assessment Year: 2015-16**

Sh. Nitin Aima, Wani Manzil Saidpora Iddah Gah Srinahar Kashmir, [PAN:ACNPA4599D] (Appellant)	Vs.	ACIT, Circle-3, Srinagar. (Respondent)
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Appellant by	Sh. Sandeep Vijn, CA
Respondent by	Sh. Davinder Pal Singh, Sr. DR

Date of Hearing	18.12.2024
Date of Pronouncement	27.02.2025

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Id. CIT(A)-2, Ludhiana, passed u/s 250 (6) of the Act 1961 dated 01.01.2020 which has emanated from the order of the Assistant Commissioner of Income Tax, Circle-3, Srinagar, (in short the AO) u/s 143(3) of the Act dated 27.12.2017 for A.Y. 2015-16.

2. The grounds of appeal preferred by the assessee as per memorandum of appeal are as under;

“1. That the learned CIT(A) has erred in not defeating the addition made on account of export incentives of the assessee which is exempt under section 10aa of the act.

2. The learned CIT(A) has erred in not adjudicating in respect of quantification the amount of addition made and basis of the quantum.

3. The assessee craves to add or delete any ground of appeal at the time of hearing.”

3. The brief facts are that the assessee is engaged in export business and has an unit at SEZ, Moradabad, UP, from where handicrafts are exported under the name and style of “*Shaila Exports*”. The only issue in this case is that during the year under appeal the assessee has claimed to have received export incentives by way of *duty drawback* amounting to Rs. 9.95 crores, which has been clubbed with the total turnover for the purpose of claiming deduction under the provisions of section 10AA of the Act 61, which has been disallowed by the AO due to the reasons that *Duty Draw Back receipts* (in short DDB) cannot be considered as eligible for benefit u/s 10AA , as they do not form part of ***profits and gains derived from export , of such articles or things or from services***, and for arriving at the above conclusion the AO relied on the decision of the Hon’ble Apex court in the case of

Liberty India vs CIT (317 ITR 218) , where the Hon'ble court while analysing the provisions of section 80 IB of the Act 61, the relevant portion has held as follows:

*“The next question is - what is duty drawback? Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise Act, 1944 empower Government of India to provide for repayment of customs and excise duty paid by an assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified class. The Rules do not envisage a refund of an amount arithmetically equal to customs duty or central excise duty actually paid by an individual importer-cum-manufacturer. Sub-section (2) of Section 75 of the Customs Act requires the amount of drawback to be determined on a consideration of all the circumstances prevalent in a particular trade and also based on the facts situation relevant in respect of each of various classes of goods imported. Basically, the source of duty drawback receipt lies in Section 75 of the Customs Act and Section 37 of the Central Excise Act. 18. Analysing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression "**profits derived from industrial undertaking**" in Section 80-IB.”*

4. The AO further concluded that if DDB does not fall within the expression “*profits derived from industrial undertaking*”, for the purpose of section 80-IB, then logically it can be concluded that DDB will also not fall within the expression *profits and gains derived from the export of such articles or things or from services*, as envisaged in section 10AA of the Act 61.

5. The matter was carried in first appeal before the Ld. CIT (A) and the first appellate authority has dismissed the appeal by passing a well-reasoned order:

“(relevant portion is reproduced)”

4. The submissions of the appellant have been considered in the backdrop of the objections raised by the AO in the impugned order of assessment. Before adjudicating on the dispute, it would be relevant to look at the scheme of the relevant provision i.e. section 10AA, which is a special provision in respect of newly established units in Special Economic Zones, which section was introduced in the Act by The Special Economic Zones Act, 2005, w.e.f 10th of February, 2006. Subject to the fulfilment of the prescribed conditionalities, claim of deduction under this section can be made depending upon the quantum of profits derived from export of articles or things or services. It is calculated as:

<p><i>Profit of the Business of the undertaking x Export Turnover of the undertaking (divided by) Total turnover of the business carried on by the undertaking</i></p>
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5. Here, the export turnover means the consideration in respect of export by the undertaking of articles or things or services received in, or brought into India by the assessee but does not include freight, telecommunication charges, insurance attributable to the delivery of the articles or things or computer software outside India and expenses, if any, incurred in foreign exchange in providing the technical services outside India.

6. It also merits consideration that despite the presence of section 10-AA in chapter-III of the Act, the phraseology used is "deduction", very much like chapter-VI-A instead of "exclusion" from the gross total income. Chapter-III of the Act, earlier, contained various sections which excluded certain types of incomes while computing the total income, whereas Chapter-VIA contains most of the sections which grant deductions while computing the total income. However, Finance Act, 2000, substituted sections 10A & 10B, converting them to "deduction" instead of "exclusion" provision, leaving sections 10C, 11 & 13A as "exclusion" provisions. The subsequent insertions of other sections in Chapter-III including section 10AA have retained the character of "deduction" provision. With the shift from "exclusion" to "deduction", the benefit is now akin to deductions under Chapter-VI-A.

7. The provisions of section 10AA, as stated earlier, provide for deduction from the profits and gains derived from export of articles or things or from services. Another relevant word to be noted here is "derived", which has been successively and categorically held by

various judicial fora including the Apex Court, to be different from "attributable to". The distinction in these two words is no longer res Integra in as much as the word "derived from" has been held to be of a narrower purport than "attributable to" by the Hon'ble Supreme Court in a number of decisions including that of Liberty India (Supra) which has been relied upon by the AO. Profits or gains can be said to have "derived" from an activity only if the said activity is the immediate and effective source of such profits or gains. In the case of Liberty India, the issue for consideration was "whether profit from Duty Entitlement Passbook Scheme [DEPB] and Duty Draw Back Scheme [DDB] could be said to be profit derived from the business of the industrial undertaking eligible for deduction under section 80-IB of the Income Tax Act, 1961While deciding the aforesaid issue, the Hon'ble Supreme Court analysed the scheme of DEPB & DDB and held such receipts as not derived from the business. It would be instructive to quote Paras 17 & 18 of the said order:

"17. The next question is-what is duty draw back?. Section 75 of the Customs Act, 1962 and section 37 of the Central Excise Act, 1944 empower Government of India to provide for the payment of customs and excise duty paid by an assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of a specified class. The Rules do not envisage a refund of an amount of arithmetical equal to customs duty or central Excise duty actually paid by an individual importer-cum -manufacturer. Sub-section (2) of

section 75 of Customs Act requires the amount of draw back to be determined on a consideration of all the circumstances prevalent in a particular trade and also based on the facts situation relevant in respect of each of various classes of goods imported. Basically, the source of duty draw back receipt lies in section 75 of Customs Act and section 37 of the Central Excise Act."

"18. Analyzing the concept of remission of duty draw back and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression "profits derived from industrial undertaking" in section 80-1B."

8. In view of the aforesaid categorical finding of the Hon'ble Supreme Court in respect of the receipt by way of DDB, this Appellate Authority does not get persuaded by the referred /cited decision of the Hon'ble Tribunal at Jodhpur in the case of Makers Mart (Supra) to hold that the decision rendered in the case of Liberty India does not apply to the facts situation of the present case. In any case, the issue in makers Mart was disallowance of the claim of deduction under section 10AA on the ground that the assessee purchased VAT exempted goods which were in fact, finished handicraft items, as only handicraft items are VAT free under Schedule-1 of Rajasthan Value Added Tax, 2003, whereas the claim of the assessee was that the goods purchased by it were unfinished handicraft items, which were also verified by Custom Authorities, who clearly remarked on the

purchase invoices as "unfinished items". In the appellant's case, there is no dispute regarding eligibility of the undertaking or the business of the undertaking in claiming deduction under section 10AA. The issue which requires consideration is whether DDB receipts partake the character of "profits and gains of export of articles or things". The decision cannot possibly be any different from what the Hon'ble Supreme Court has held in the case of Liberty India (Supra)."

6. Before the tribunal, the assessee has filed a paper book containing written submissions and copies of decisions of various courts and tribunals, relied upon for the purpose of his arguments and submitted that during the year under appeal the sales of the assessee were entirely export sales, and he has received duty draw back in respect of export of goods, which has not been considered eligible for the purpose of allowing deduction u/s 10AA of the Act. He further submitted that the AO has drawn a false equivalence in between deduction allowable under section 10AA and deduction u/s 80-IB of the Act 61, and has relied heavily on the decision of the Hon'ble Apex court in the case of Liberty India (supra), which was rendered in relation to section 80-IB, where the expression "*derived from*" and "*attributable to*" have been distinguished and the expression "*derived from*" has been held to be a narrower purpose than "*attributable to*". He further submitted that in section 80-IB, the deductions allowable to the assessee is on profits and gains derived from

such industrial undertaking and the method of computation of deduction is not defined in the section which has led to the litigation and the Hon'ble Apex court in Liberty India (supra) has held that DEPB benefits would constitute independent source of income beyond the first degree nexus between profits and industrial undertaking, where as in case of the assessee relating to section 10AA, the method of computation of exemption has been clearly defined in sub section (7) of Section 10AA and the deduction will be computed as under, which needs to be adopted:

Profit of the business of undertaking (divided by Total Turnover) X Export Turnover

6.1 The assessee submitted a paper book containing various decisions he relied upon for arguments along with written submission (*relevant portion reproduced*):
“Since the starting point of computation of exemption u/s 10AA is profits of business, what is to be seen is as to whether the duty drawback is business income or not. For this purpose attention is drawn to section 28(iii)c of the Income Tax Act which clearly provides that duty drawback is to be treated as business income. Once duty drawback is to be included in business income, the next step is to apply the ratio of export turnover to total turnover and to compute the income exempt u/s 10AA. The assessee was thus entitled to exemption u/s 10AA in respect of duty drawback as claimed in the return of income.

The assessing officer as well as the Id. CIT(A) were of the view that the benefit u/s 10AA is a deduction and not an exemption. This is nothing more than a weak attempt to divert the focus from the main issue as to how the benefit of section 10AA is to be computed. As provided by the legislature, the method mentioned in

the section itself has to be followed to compute the amount in respect of which benefit is available to the assessee. Section 10AA is under Chapter-III. Chapter-III deals with incomes which do not form a part of the Total income. The benefit u/s 10AA is thus an exemption and not a deduction which is covered by Chapter-VIA. Had the legislated intended to treat the benefit u/s 10AA as a deduction, it would have found place under Chapter-VIA. Without prejudice to the above, it will not make any difference if the benefit u/s 10AA is treated as an exemption or deduction provided it is computed correctly and reduced from the income earned. This aspect has been discussed below at page no. 13.

The authorities below have only confined themselves to the expression “derived from” and “attributable to” without considering the context in which these expressions have been used. There is no doubt that the Supreme Court has held that the expression “derived from” is much narrower than “attributable to”. In section 80-IB, the expression “derived from industrial undertaking” has been used whereas in section 10AA the expression used is “profits derived from the export of articles or things.” The authorities below have delved upon a part of the expression used in section 80-IB to somehow justify reduction of exemption claimed u/s 10AA. Had the full expression used in section 10AA been considered there would have been no doubt about the allowability of exemption on duty drawback. Also, the benefit u/s 10AA is on the profits and gains derived from exports. Duty drawback is received on the exports made and there is thus no doubt that duty drawback is earned from the export of goods and is thus to be included for the purposes of computing exemption u/s 10AA.”

6.2 He further submitted that (*reproduced as below*):

“As clarified by the Government itself, Duty drawback is to neutralize the duty and taxes suffered on inputs. The duty drawback is thus meant to reduce the purchase cost of the exporter and should have been correctly reduced from the purchases. Even if this accounting treatment has not been done, the Press Release clearly establishes the nexus between the purchase price and duty drawback. In view of the decision of Supreme Court in the case of Keshavji Ravji & Co vs. CIT reported at 183 ITR 1 the duty drawback should be reduced from the value of purchases as a result of which the profits earned from exports will only be in respect of value of sales credited to the Manufacturing & Trading account. The concept of netting of interest was also approved by the Supreme Court in the case of M/s ACG Associated Capsules Pvt. Ltd vs. CIT reported at 343 ITR 89 while dealing with the deduction u/s 80HHC. The ratio of the above decisions is squarely applicable to the present case also. If duty drawback is adjusted towards purchase value, no disallowance would be called. Importantly the duty drawback has not been assessed as income from other sources by the assessing officer as would be evident from the assessment order itself. The assessing officer having accepted the duty drawback income as business income could not have excluded the same from the computation of exemption u/ s 10AA in view of the specific formula provided in sub section (7) of section 10AA.”

7. Before concluding his submissions the Ld. AR of the assessee relied upon the following decisions for support, which according to him justify the exemption u/s 10AA on duty drawback:

“a) ITO vs. Makers Mart reported at 29 ITR (Trib) 444 [ITAT Jodhpur]: The judgment clearly supports the case of the assessee. This decision was given after considering the decision of Supreme Court in the case of Liberty India vs. CIT reported at 317 ITR 218. The finding of the ld. CIT(A) which was being contested by the revenue has been mentioned in the order. It was clearly brought out by the ld. CIT(A) in that case that no formula is provided in section 80-IA whereas formula is prescribed in section 10AA and 80HHC which are much nearer to each other. The decision of ITAT Mumbai in the case of Art & Crafts Exports vs. ITO which was decided in favour of the assessee wherein duty drawback was treated as income u/s 28 was also appreciated since duty drawback would consequently be a part of the income from business [please see para no. 16 of the order]. Considering all these factors, the appeal of the revenue was dismissed.

*b) Art & Crafts Exports vs. ITO reported at 66 DTR 69 [ITAT Mumbai]: The issue in the case was as to whether DEEB was eligible for exemption u/s 10BA. Sub-section (4) of section 10BA which provides for the method of computation of exemption is identical to sub-section (7) of section 10AA which is relevant to the present case. Section 10BA(4) reads as under:
"For the purposes of sub section (1), the profits derived from export out of India of eligible articles or things shall be the amount which bears to the*

profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles of things bears to the total turnover of the business carried on by the undertaking"

Section 10BA(4) being identical, was rightly considered and appreciated by the ITAT Jodhpur Bench in the case of Markers Mart discussed above. It was held in para no. 11.14 and para no. 11.15 of the judgment that in view of section 28 the assessee was entitled to the benefit u/s 10BA in respect of DEPB as it was business income.

*c) **DCIT vs. Narendra Tea Company Pvt. Ltd. [ITAT Kolkata]:** While dealing with section 10A whose provisions are similar to section 10AA it was held that benefit u/s 10A was available in respect of export benefits earned by the assessee. The decision of ITAT Special Bench in the case of Maral Overseas Ltd reported at 136 ITD 177 (Special Bench) (Indore) was relied upon [para no. 10 at page no. 53] wherein it had been held that the provision of section 10B were different from section 80IA wherein no formula had been laid down for computing the eligible business profits and that the assessee was eligible for benefit u/s 10A in respect of export incentives. Section 10A(4) which is *pari materia* to section 10AA(7). The decision of Supreme Court in the case of Liberty India was also taken note, it is respectfully submitted that the decision of Special Bench in binding on all Benches of ITAT.*

*d) **Maral Overseas Ltd vs. Addl. CIT** reported at 70 DTR 170 (Special Bench) (Indore): While dealing with section 10B it was held that export incentives are derived from the undertaking and are eligible for deduction u/s 10B. Section 10B(4) stipulates formula by apportioning profits of the*

business of the undertaking in the ratio of turnover to the total turnover. Once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking and be eligible for deduction. The fact that the provisions of section 10B(4) are pari materia to section 10AA(7) has been brought in the decision cited above. The decision of Supreme Court in the case of Liberty India was considered and distinguished in this case.

*e) **Sonic Technology (India) Inc. vs. ITO** [ITAT Ahmedabad]: It was held by the Hon'ble Bench after considering the decision of Supreme Court in the case of Liberty India vs. CIT [please see para no. 7] that once an income forms a part of the business income, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B, though the decision was given in connection with section 10B, the relevant sub-section which deals with the method of computation is sub-section (4) which is similar to sub-section (4) of section 10AA. The decision" is thus fully applicable to the present case also. There is no doubt that duty drawback is business income in view of section 28(iii).*

*f) **CIT vs. Hritnik Exports Pvt. Ltd.** Reported at 90 CCH 562 [Delhi High Court]: The high court after considering the decision of Supreme Court in the case of Liberty India approved the decision of ITAT Special Bench in the case of Maral Overseas Ltd. vs. ACIT held that sub-section (4) of section 10B does not require the assessee to establish a direct nexus with business of the undertaking and once an income forms part of business of eligible undertaking, there was no further mandate in the provisions of section 10B to exclude the same from eligible profits. The mode of*

determining the eligible deduction was similar to section 80HHC in as much as both the sections mandate to determine eligible profits as per formula contained therein, sub-section (4) of section 10B is similar to sub-section (7) of section 10AA and thus this decision is relevant to the present case also.

*g) **ACIT vs. QH Talbros Ltd.** - [ITAT Delhi]: It was held following the decision of the Delhi High Court in the case of Hritnik Export and other cases that benefit of section 10B would be available on the export incentives. As submitted above, the method of computation of exemption in section 10B is similar to section 10AA.*

The assessee is a 100 % EOU (Export Oriented Undertaking) in a SEZ (Special Economic Zone). Copy of the audited Trading account and sales account confirming that all the sales made are export sales is enclosed at page no. 116 to 120. A much liberal interpretation has been given by various judicial authorities while dealing with a case which is a 100 %EOU. Certain decisions in this regard are discussed below:

*h) **Rivera Home Furnishing vs. Addl. CIT** reported at 65 Taxmann.com 287 [Delhi High Court]: This was a case where the assessee was a 100 Export Oriented Undertaking. It was held that the amount received from the customer for cancelling export order as well as interest received from bank on FDR's kept under lien with the bank for facilitating letter of credit were eligible for deduction u/s 10B. The decision of Supreme Court in the case of Liberty India was taken note of and the decision of ITAT Bench in the case of Maral Overseas (supra) which referred to by the Delhi High Court in the case of Hritnik Exports (supra) wherein it was held that section 10A/ 10B are a complete code by themselves was approved.*

i) *CIT vs. Hewlett Packard Global Soft Ltd* reported at 87 Taxmann.com 182 [Karnataka High Court] [Full Bench]: It was held that all profits and gains of 100 % EOU including incidental income by way of interest on bank deposits or staff loans would be entitled to 100 % exemption or deduction u/s 10A/10B. After taking note of the decision of the Supreme Court in the case of *Liberty India vs. CIT*, it was held that the decisions relied upon by the revenue do not cover the cases u/s 10A and 10B which are special provisions and complete code by itself and even interest on funds parked temporarily in bank as well as interest on staff loan would be eligible. These provisions could not be compared with deduction u/s 80-HH or 80-IB. As submitted above, the method of computation of exemption in section 10B is similar to section 10AA which is presently under consideration.

7.1 The ld. AR rested his arguments on the above decisions, praying for adequate relief.

8. Per contra the Ld. DR relied on the order of the Ld. first appellate authority and argued drawing reference to the Hon'ble Apex court judgment in the case of *Liberty India (supra)* and submitted that the for the words "*derived from the export*" as envisaged in section 10AA of the Act 61, there has to be a direct nexus between the profit and the manufacturing unit (undertaking). He further submitted referring to section 28(iiic) of the Act, that *duty drawback* received by the assessee may constitute profits from business and profession, but it cannot be regarded as

derived from exports, because the assessee is receiving the DBD as per the scheme for "*duty drawback*".

Apart from the decision of the Hon'ble Apex court in *Liberty India (supra)* the Ld. DR heavily relied on the following decisions for support:

CIT vs Sterling Foods (1999) (4 SCC 98), and in the case of *Pandian Chemicals Ltd vs CIT (262 ITR 278)*.

9. He submitted that *duty draw back* stands in the same footing as incentives and entitlement, received by way of Government policy which is governed by various incentive Schemes enacted by the Government of India or flows from *Section 75 of the Customs Act, 1962*. He further submitted that the duty drawback (DBD) is a profit linked incentive and is in the nature of income which should not be credited or adjusted against costs of goods debited in profit and loss account, and thereafter, he fully relied on the observation of the Hon'ble Apex court in the case of *Liberty India (supra)*, (*which is already reproduced by us in earlier part of this order page 3*).

9.1 He concluded his arguments by referring to the computation envisaged in sub section (7) of Section 10AA, where the *profits derived from export* of the undertaking has to be worked out in proportion with *export turnover* which bears to the *total turnover* of the undertaking, and since it is already decided by the

Hon'ble Apex court , that duty drawback are simply incentives flowing from various schemes of the Government or from the provisions of the Customs Act,62 , the only logical conclusion in the instant case would be, that the same cannot be considered as a part of *export turnover*, for working out the "*profits derived from export*", because these are independent source of income without any direct nexus (*beyond the first degree*) and if the said incentives received/receivable, cannot be considered as ("*profits derived from industrial undertaking* " for the purpose of *Section 80-IB*) , then logically, the said incentives by way of DDB cannot be considered as profits derived from exports either, u/s 10AA, because both are claims of deductions , and as such he prays for sustaining the order of the Ld. CIT (A).

10. We have heard the rival submission and considered the materials on record and the contents of the paper book and the decisions relied upon by both the counsels. After perusing all the decisions submitted by the Ld. AR, on the issue, we find that the decision in the case of *Makers Mart (supra)* heavily relied upon by the assessee, in course of hearing, the basic dispute in that case was factual dispute with relation to purchase of finished or unfinished goods which has been exported, (*which is not the case here, because the eligibility of the assessee is not in dispute*),

and the rest of the decisions relied upon by the assessee are not directly on the provisions of section 10AA of the Act 61.

10.1 This aspect of the matter regarding the nature and scope of duty draw back (DBD), has already been settled by the Hon'ble Apex court in the case of *M/s Saraf Exports vs CIT, Jaipur – III*, civil appeal No 4822 of 2022 (SLP (C) No 17539 of 2016, order dated 10th April, 2023, where the Hon'ble court has considered all the earlier decisions on the issue of duty drawback and DEPD vis a vis provisions of section 28 (iiia),(iiib),(iiic)(iiid)(iiie) of the Act 61, and has laid down the law that duty drawback receipts do not form part of the net profits and they constitute independent source of income beyond first degree nexus between profits and industrial undertaking .

The relevant portion of the Hon'ble Apex court order dated 10/04/2023, is reproduced as under: (paragraph 7.1 to Para 7.4 of the said order reproduced):

“7.1 Thus, as per Sections 28(iiid) and (iiie) any profit on the transfer of the Duty Drawback and on transfer of DEPB Schemes, etc., shall be chargeable to income tax under the head “Profits and gains of business or profession”. It appears that earlier, there used to be a dispute regarding the receipt by way of incentives from the Government being in the nature of cash assistance, duty drawback, profits on transfer of DEPB Scheme, etc., i.e., as to whether these receipts were capital receipt or revenue receipt and would thus, be

taxable. However, thereafter, and in order to put an end to the dispute, the legislature by way of inserting clauses 28 (iiia), (iiib), (iiic), (iiid) and (iiie) has made the said incentives taxable under the head of “profits and gains of business and profession.

*7.2 Section 80-IB provides for deductions in respect of profits and gains from certain industrial undertakings. Therefore, as such for claiming deductions under Section 80-IB, it must be on the “profits and gains derived from industrial undertakings” mentioned in Section 80-IB. An identical question came to be considered by this Court and, more particularly, with respect to the profit from DEPB and **Duty Drawback Schemes, in the case of Liberty India (supra).***

7.3 After taking into consideration the DEPB and Duty Drawback Schemes, ultimately, it is observed and held in the case of Liberty India (supra) that DEPB / Duty Drawback Schemes are incentives which flow from the schemes framed by the Central Government or from Section 75 of the Customs Act, 1962 and, hence, incentive profits are not profits derived from the eligible business under Section 80-IB. It is observed that they belong to the category of ancillary profits of such undertakings.

7.4 Similar view was also expressed with respect to the Duty Drawback. Thereafter, in paragraph 43 of the above decision, it is observed and held that duty drawback, DEPB benefits, rebates, etc.

cannot be credited against the cost of manufacture of goods debited in the profit and loss account for purposes of Sections 80-IA/80-IB as such remissions (credits) would constitute an independent source of income beyond the first degree nexus between profits and the industrial undertaking. Thus, it is observed and held that duty drawback receipts / DEPB benefits do not form part of the net profits of eligible industrial undertakings for the purpose of Section 80-IB of the Act, 1961. The relevant discussions are in paragraphs 24, 28 to 36, 38, 39, 41, 43 and 45, which are as under: -

XXXXXXXXXX

39. Analysing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression “profits derived from industrial undertaking” in Section 80-IB.

11. Respectfully, following the law laid down by the Hon’ble Apex court, explaining the basic concept of remission of duty draw back, the source of which, flows from various Government schemes and / or statutory provisions of the Customs Act ’62, we hold that the same would constitute an independent source of income.

12. Now the pertinent question that arises, in the instant case before us, is whether such receipt / income, can be considered as “*export turnover*”, within the meaning of the explanation 1(a) of Section 10AA, *which is reproduced below:*

“Explanation 1.—For the purposes of this section,—

- (i) *“export turnover” means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.”*

13. We find that it is an inclusive definition and for all logical purpose, the words consideration, here, means sales consideration and the same is to be derived from export of articles or things received in, or brought into India by the assessee.

In the instant case before us, in our humble opinion, the *duty drawback* received or receivable, cannot be bracketed in the same category as *sales consideration* from export of articles or things or services (*so as to be covered under the above explanation*).

13.1 As such we have no hesitation in holding that, in the instant case, the duty drawback received or receivable by the assessee, cannot be considered to be *profits and gains derived* from the export of articles because it does not form part of “export turnover” as per the above explanation.

13.2 As such the order of the Ld. CIT(A) on this issue is upheld and the appeal of the assessee is rejected being devoid of merits.

14. As a result the appeal of the assessee is dismissed.

Order pronounced on 27.02.2025 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

(KRINWANT SAHAY)
Accountant Member
AKV

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

Copy of the order forwarded to:

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- (2) The Respondent
- (3) The CIT
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- (5) The DR, I.T.A.T.

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