आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

(HYBRID HEARING)

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं.**/I.T.A.No.223/VIZ/2023**
(निर्धारण वर्ष/ **Assessment Year: 2019-20**)

Nekkanti Sea Foods Limited Flat No. 1, Jayaprada Apartments Nowroji Road, Maharanipeta Andhra Pradesh – 530002 **[PAN:AAACN4664J]**	Vs.	**Asst. CIT - Central Circle – 1** Pratyakshakar Bhavan MVP Double Road Andhra Pradesh - 530020
(**अपीलधर्थी/Appellant**)		(**प्रत्यर्थी/Respondent**)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Pawan Chakrapani, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	22.07.2025
घोषणा की तारीख/Date of Pronouncement	:	25.07.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), Visakhapatnam – 3 [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/APL/S/250/2023-24/1054514486(1) dated 21.07.2023 for the A.Y.2019-20 arising out of the

order passed under section 143(3)of Income Tax Act, 1961 (in short 'Act') dated 14.06.2021.

2. The brief facts of the case are that the assessee is a limited company engaged in the business of export of frozen shrimp and other sea foods filed its return of income for the A.Y.2019-20 on 21.10.2019 declaring a total income of Rs.1,19,26,63,420/-. After processing the return of income U/s. 143(1), the case was selected for complete scrutiny under CASS and accordingly statutory notices U/s. 143(2) and 142(1) were issued to the assessee calling for the information. The assessee's representative filed its reply on line through e-filing portal. The Ld. Assessing Officer [hereinafter in short "Ld. AO"] on examination of the information furnished by the assessee noticed that assessee claimed deduction under section 80IB(11A) of the Act amounting to Rs.64,96,87,896/- on the net profits derived from J. Thimmapuram Unit. The Ld.AO noticed that assessee has included other revenue in the form of duty draw back amounting to Rs. 10,59,37,013/- and sale of licenses amounting to Rs.28,16,55,312/- aggregating to Rs.38,75,92,325/-. Accordingly, the Ld.AO issued show-cause notice proposing to reduce the receipts on account of duty draw back and sale of licenses from the net profits of the undertaking. In response, assessee filed its submissions and requested to drop the proposal of addition of receipts. After considering the submissions of the assessee, Ld. AO by relying on the decision laid down by the Hon'ble Supreme court in the case

of Liberty India *v*. CIT (SC) 317 ITR 218 disallowed Merchandise Exports from India Scheme (MEIS) of Rs.28,16,55,312/-and Duty Draw Back of Rs.10,59,37,013/- [total Rs.38,75,92,325/-] considering it as not eligible for deduction under section 80IB of the Act as claimed by the assessee and therefore made an addition of Rs.38,75,92,325/- to the total income of the assessee.

3. Aggrieved by the order of the Ld. AO, assessee preferred an appeal before the Ld. CIT(A) and filed its submissions. Ld. CIT(A) upheld the additions made by the Ld. AO, thereby dismissed the appeal filed by the assessee.

4. Aggrieved by the order of the Ld. CIT(A), assessee filed an appeal before us by raising following grounds of appeal: -

> *"1. The order of the learned Authorities below, in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
>
> *2. The Appellant denies himself liable to be assessed over and above the total income of Rs 119,26,63,420/-, returned by the Appellant, under the facts and circumstances of the case.*
>
> *3. Whether the learned Authorities below are justified in disallowing the claim of the Appellant made under section 80IB of the Act, and making an addition of Rs. 38,75,92,325/-, to the total income, under the facts and circumstances of the case.*
>
> *4. Whether the learned Authorities are justified in disallowing the amount claimed by the Appellant under section 80IB of the Act, being Rs.38,75,92,325/-, by stating that the amounts cannot be said to be derived from the industrial undertaking, under the facts and circumstances of the case.*

> *5. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
>
> *6. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

5. The only issue emanating from the grounds raised by the assessee is with respect to disallowance of claim made u/s. 80IB of the Act amounting to Rs.38,75,92,325/-.

6. On this issue Ld. Authorised Representative [hereinafter "Ld.AR"] submitted that the provisions of section 80IB of the Act states that "profits derived from the business of an industrial undertaking" cannot be applied on narrow meaning because of the fact that DEPB benefits are derived from the exports made by the assessee. Further he also stated that as per the Income Computation and Disclosure Standards (ICDS) with respect to inventories, it states that purchase price includes duties and taxes and other expenditure directly attributable to the acquisition of material and this is applicable from the A.Y.2016-17 and hence the benefit derived from the exports such as DEPB goes to reduce the cost of the purchase and hence it has been disclosed in the credit side of the Profit & Loss Account for the purpose of claiming deduction u/s.80IB of the Act. Further he also submitted that the decision of the Hon'ble Supreme Court in the case of Saraf Exports *v.* CIT [453 ITR 625] has mainly relied on the judgment of the Hon'ble Supreme Court in the case of Liberty India *v.* CIT [317 ITR 218] and is distinguishable for the reasons, where the

judgment is based on the Accounting Standards-2 and not as per ICDS–2 and hence cannot be applied to the assessee's case. In his written submissions he placed reliance on the following decisions:-

i. Saraf Seasoning Udyog *v.* ITA No. [2009] 317 ITR 202 (Raj).

ii. CIT *v.* Eltek SGS private Limited [2008] 300ITR 6 (Del.).

iii. CIT *v.* India Gelatine and Chemical Limited[2005] 275 ITR 284 (Guj).

7. Ld.AR also argued that the in the assessee's own case in ITA No. 156/VIZ/2021 dated 06.06.2022 this bench has allowed the appeal of the assessee by relying on the decision of the Hon'ble Apex Court in the case of CIT *v.* Meghalaya Steel Ltd., [2016] 383 ITR 217 (SC), he therefore submitted that DEPB benefits goes to reduce the cost of production and hence it should be considered as profits and gains derived from the industrial undertaking which is eligible for deduction under section 80IB of the Act. He also reiterated the same arguments in his written submissions filed before us.

8. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] heavily relied on the decision of the Hon'ble Supreme Court in the case of Saraf Exports *v.* CIT (supra) and argued that the Hon'ble Supreme Court's test in Saraf Exports is not based on the Accounting Methodology but on the ratio of direct nexus between profits and manufacturing activity. The claim of the assessee in the form of DEPB incentive arising out of exports arise from the Government incentive scheme linked to export performance and not to

manufacturing. Further, he also submitted that the Hon'ble Supreme Court in the case of Liberty India *v.* CIT (supra) has unambiguously held that the characterisation of government incentives "as profits derived from" is a question of law and not a result of accounting treatment. He further submitted that ICDS-II introduced for consistent income computation does not create the legal fiction making Government incentives part of profits derived from manufacturing. He also argued that Hon'ble Supreme Court while deciding the case in the case of Saraf Exports *v.* CIT (supra) distinguished the decision of the Hon'ble Supreme Court in the case of CIT *v.* Meghalaya Steel Ltd., (supra) which is not affected by accounting changes. Ld. DR also reiterated the arguments in the form of written submissions filed before us.

9. We have heard both the sides and perused the material available on record including the cases cited by the rival parties. It is an admitted fact this bench while deciding the case in ITA No. 156/VIZ/2021 dated 06.06.2022, the decision of the Hon'ble Supreme Court in the case of Saraf Exports *v.* CIT (supra) was not available. The bench relied on the decision of the Hon'ble Supreme Court in the case of CIT *v.* Meghalaya Steel Ltd., (supra) while granting relief to the assessee. Further, from the submissions of the Ld.AR it is noticed that the assessee has sold the licenses, which is a tradable product, and has characterised as "other income" in the profit and loss account. From these facts, it is observed that the assessee has not utilised the licenses for the purpose

of neutralising the customs duty while making imports which goes to the root of the matter of reducing the cost of production. In these circumstances, it cannot be said that the sale of licenses disclosed under "other income" reduces the cost of production. Subsequently, the Hon'ble Supreme Court in the case of Saraf Exports *v.* CIT (supra) distinguished the decision of the Hon'ble Supreme Court in the case of CIT *v.* Meghalaya Steel Ltd., (supra) where the incentives mainly arise due to direct subsidies and not export incentives. Further the Hon'ble Supreme Court in Para No. 7 and 8 held as under: -

> *"7. While considering the aforesaid issue/question, relevant portion of Section 28 and Section 80-IB are required to be referred to, which are as under:-*
>
> > ***"28. Profits and gains of business or profession.—****The following income shall be chargeable to income tax under the head "Profits and gains of business or profession",*
> >
> > *XXXXXXXX*
> >
> > *(iii-a) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947);*
> >
> > *(iii-b) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;*
> >
> > *(iii-c) any duty of customs or excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971;*
> >
> > *(iii-d) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);*
> >
> > *(iii-e) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);*
> >
> > *XXXXXXXX"*
> >
> > ***"80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.—****(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), (11-A) and (11- B) (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:—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in Section 33-B, in the circumstances and within the period specified in that section;

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

(iii) 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:

Provided that the condition in this clause shall, in relation to a small-scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words 'not being any article or thing specified in the list in the Eleventh Schedule' had been omitted.

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2.—Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

(iv) 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.

(3) 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 (or twelve consecutive assessment years where the assessee is a cooperative society) beginning with the initial assessment year subject to the fulfilment of the following conditions, namely:—

(i) it begins to manufacture or produce, articles or things or to operate such plant or plants at any time during the period beginning from the 1st day of April, 1991 and ending on the 31st day of March, 1995 or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular undertaking;

(ii) where it is an industrial undertaking being a small-scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant not specified in sub-section (4) or sub-section (5) at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2002.

(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial 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 such industrial undertaking:

Provided that the total period of deduction does not exceed ten consecutive asssessment years (or twelve consecutive assessment years where the assessee is a cooperative society) subject to fulfilment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2004:

Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years:

Provided also that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any subsequent year to any undertaking or enterprise referred to in sub-section (2) of Section 80-IC.

Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words "31st day of March, 2004", the figures, letters and words "31st day of March, 2012" had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule.

(5) The amount of deduction in the case of an industrial undertaking located in such industrially backward districts as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf as industrially backward district of category 'A' or an industrially backward district of category 'B' shall be,—

(i) hundred per cent of the profits and gains derived from an industrial undertaking located in a backward district of category 'A' 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 of an industrial undertaking:

Provided that the total period of deduction shall not exceed ten consecutive assessment years or where the assessee is a cooperative society, twelve consecutive assessment years:

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, 2004;

(ii) hundred per cent of the profits and gains derived from an industrial undertaking located in a backward district of category 'B' for three 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 of an industrial undertaking:

Provided that the total period of deduction does not exceed eight consecutive assessment years (or where the assessee is a cooperative society, twelve consecutive assessment years):

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, 2004.

XXXXXXXX"

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:-

> *"24. Before analysing Section 80-IB, as a prefatory note, it needs to be mentioned that the 1961 Act broadly provides for two types of tax incentives, namely, investment-linked incentives and profit-linked incentives. Chapter VI-A which provides for incentives in the form of tax deductions essentially belong to the category of "profit-linked incentives". Therefore, when Sections 80-IA/80-IB refers to profits derived from eligible business, it is not the ownership of that business which attracts the incentives. What attracts the incentives under Sections 80-IA/80-IB is the generation of profits (operational profits).*
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> *XXXXXXXX*
>
> *28. In the present batch of cases, the controversy which arises for determination is: whether DEPB credit/duty drawback receipt comes within the first degree sources?*
>
> *29. According to the assessee(s), DEPB credit/duty drawback receipt reduces the value of purchases (cost neutralisation), hence, it comes within first degree source as it increases the net profit proportionately.*
>
> *30. On the other hand, according to the Department, DEPB credit/duty drawback receipt do not come within the first degree source as the said incentives flow from the incentive schemes enacted by the Government of India or from Section 75 of the Customs Act, 1962. Hence, according to the Department, in the present cases, the first degree source is the incentive scheme/provisions of the Customs Act. In this connection, the Department places heavy reliance on the judgment of this Court in Sterling Foods [(1999) 4 SCC 98 : (1999) 237 ITR 579] .*
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> *31. Therefore, in the present cases, in which we are required to examine the eligible business of an industrial undertaking, we need to trace the source of the profits to manufacture. (See CIT v. Kirloskar Oil Engines Ltd. [(1986) 157 ITR 762 (Bom)])*
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> *32. Continuing our analysis of Sections 80-IA/80-IB it may be mentioned that sub-section (13) of Section 80-IB provides for applicability of the provisions of sub-section (5) and sub-sections (7) to (12) of Section 80- IA, so far as may be, applicable to the eligible business under Section 80-IB. Therefore, at the outset, we stated that one needs to read Sections 80-I, 80-IA and 80-IB as having a common scheme.*
>
> *33. On perusal of sub-section (5) of Section 80-IA, it is noticed that it provides for the manner of computation of profits of an eligible business. Accordingly, such profits are to be computed as if such eligible business is the only source of income of the assessee. Therefore, the devices adopted to reduce or inflate the profits of eligible business has got to be rejected in view of the overriding provisions of sub-section (5) of Section 80-IA, which are also required to be read into Section 80-IB. [See Section 80-IB(13)]. We may reiterate that Sections 80-I, 80-IA and 80- IB have a common scheme and if so read it is clear that the said sections provide for incentives in the form of deduction(s) which are linked to profits and not to investment.*
>
> *34. On an analysis of Sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section (2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial*

undertaking after specified date(s). Hence, apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking".

35. DEPB is an incentive. It is given under the Duty Exemption Remission Scheme. Essentially, it is an export incentive. No doubt, the object behind DEPB is to neutralise the incidence of customs duty payment on the import content of export product. This neutralisation is provided for by credit to customs duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components, etc. DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per the basic customs duty and special additional duty payable on such deemed imports.

36. Therefore, in our view, DEPB/duty drawback are incentives which flow from the schemes framed by the Central Government or from Section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under Section 80-IB. They belong to the category of ancillary profits of such undertakings.

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38. Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise Act, 1944 empower the 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.

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.

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41. The cost of purchase includes duties and taxes (other than those subsequently recoverable by the enterprise from taxing authorities), freight inwards and other expenditure directly attributable to the acquisition. Hence trade discounts, rebate, duty drawback, and such similar items are deducted in determining the costs of purchase. Therefore, duty drawback, rebate, etc. should not be treated as adjustment (credited) to cost of purchase or manufacture of goods. They should be treated as separate items of revenue or income and accounted for accordingly (see p. 44 of Indian Accounting Standards & GAAP by Dolphy D'Souza).

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43. Therefore, we are of the view 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 independent source of income beyond the first degree nexus between profits and the industrial undertaking.

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45. In the circumstances, we hold that duty drawback receipt/DEPB benefits do not form part of the net profits of eligible industrial undertaking for the purposes of Sections 80- I/80-IA/80-IB of the 1961 Act. The appeals are, accordingly, dismissed with no order as to costs."

7.5 Prior thereto, the treatment of "profits and gains derived from industrial undertakings" for the purpose of determining tax liability came up for consideration before this Court in the case of ***Sterling Foods, Mangalore (supra)****, which was followed by this Court in the case of* ***Liberty India (supra)****. In the case of* ***Sterling Foods, Mangalore (supra)****, in paragraph 7 and 13, it is observed and held as under:-*

"7. The question, therefore, was whether the income derived by the assessee by the sale of the import entitlements was profit and gain derived from its industrial undertaking of processing seafood. The Division Bench of the High Court came to the conclusion that the income which the assessee had made by selling the import entitlements was not a profit and gain which it had derived from its industrial undertaking. For that purpose, it relied upon the decision of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT [(1978) 2 SCC 644 : 1978 SCC (Tax) 119 : (1978) 113 ITR 84]. It was there held that the expression "attributable to" was wider in import than the expression "derived from". The expression of wider import, namely, "attributable to", was used when the legislature intended to cover receipts from sources other than the actual conduct of the business. The Division Bench of the High Court observed that to obtain the benefit of Section 80-HH the assessee had to establish that the profits and gains were derived from its industrial undertaking and it was just not sufficient that a commercial connection was established between the profits earned and the industrial undertaking. The industrial undertaking itself had to be the source of the profit. The business of the industrial undertaking had directly to yield that profit. The industrial undertaking had to be the direct source of that profit and not the means to earn any other profit. Reference was also made to the meaning of the word "source", and it was held that the import entitlements that the assessee had earned were awarded by the Central Government under the scheme to encourage exports. The source referable to the profits and gains arising out of the sale proceeds of the import entitlement was, therefore, the scheme of the Central Government and not the industrial undertaking of the assessee.

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13. We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessee. The source of the import entitlements can, in the circumstances, only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements become available. There must be, for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case the nexus is not direct but only incidental. The industrial undertaking exports processed seafood. By reason of such export, the Export Promotion Scheme applies. Thereunder, the assessee is entitled to import entitlements, which it can sell. The sale consideration therefrom cannot, in our view, be held to constitute a profit and gain derived from the assessee's industrial undertaking."

7.6 Therefore, following the law laid down by this Court in the case of ***Sterling Foods, Mangalore (supra)*** *and* ***Liberty India (supra)*** *as such, no error has been committed by the High Court in holding that on the profit from DEPB and Duty Drawback claims, the assessee shall not be entitled to the deductions under Section 80-IB as such income cannot be said to be an income "derived from" industrial undertaking and even otherwise as per Section 28(iiid) and (iiie), such an income is chargeable to tax.*

7.7 Insofar as reliance placed by the learned counsel for the assessee upon the subsequent decision of this Court in the case of ***Meghalaya Steels Limited (supra)*** *is concerned, at the outset, it is required to be noted that in the case of* ***Meghalaya Steels Limited (supra)****, it was a case of three subsidies, namely a) Transport Subsidy, b) Interest Subsidy, and c) Power Subsidy and in that context this Court observed and held that since these subsidies directly affect the cost of manufacturing, they have a direct nexus with the profits and gains of the undertaking and since these subsidies have a direct nexus, they can be said to be derived from the industrial undertaking. It is to be noted that in the case of* ***Meghalaya Steels Limited (supra)****, this Court did take note of the decision in the case of* ***Liberty India (supra)****, however, this Court specifically observed that the case of* ***Liberty India (supra)*** *was concerned with an export incentive, which is very far removed from reimbursement of an element of cost. While dealing with the decision in the case of* ***Liberty India (supra)****, this Court distinguished Duty Entitlement Pass Book and Duty Drawback Schemes and specifically observed that the DPEB / Duty Drawback Scheme is not related to the business of an industrial undertaking for manufacturing or selling its products and the DEPB entitlement arises only when the undertaking goes on to export the said product, that is, after it manufactures or produces the same. In paragraph 20, in the case of* ***Meghalaya Steels Limited (supra)****, while distinguishing the profit derived from DEPB / Duty Drawback, it is observed and held as under:-*

> *"20. Liberty India [Liberty India v. CIT, (2009) 9 SCC 328] being the fourth judgment in this line also does not help the Revenue. What this Court was concerned with was an export incentive, which is very far removed from reimbursement of an element of cost. A DEPB drawback scheme is not related to the business of an industrial undertaking for manufacturing or selling its products. DEPB entitlement arises only when the undertaking goes on to export the said product, that is, after it manufactures or produces the same. Pithily put, if there is no export, there is no DEPB entitlement, and therefore its relation to manufacture of a product and/or sale within India is not proximate or direct but is one step removed. Also, the object behind DEPB entitlement, as has been held by this Court, is to neutralise the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself."*
>
> *Thus, from paragraph 20 of the said decision, it can be seen that this Court did not disapprove of the decision of this Court in the case of* ***Liberty India (supra)****. Even in the case of* ***Meghalaya Steels Limited (supra)****, this Court did not consider the earlier decision in the case of* ***Sterling Foods, Mangalore (supra)****. Thus, the decision of this Court in the cases of* ***Liberty India (supra)*** *and* ***Sterling Foods, Mangalore (supra)****, which as such are on DEPB / Duty Drawback Schemes clinch the issue at hand. It cannot be said that the decision taken in the case of* ***Meghalaya Steels Limited (supra)*** *is contrary to the decisions in the case of* ***Sterling Foods, Mangalore (supra)*** *and* ***Liberty India (supra)****. On the contrary, the observations made in paragraph 20 can be said to be in favour of the Revenue and against the assessee.*

8. In view of the above and for the reasons stated above, the High Court has rightly held that the respondent - assessee is not entitled to the deductions under Section 80-IB on the amount of DEPB as well as Duty Drawback Schemes. We hold that on the profit earned from DEPB / Duty

Drawback Schemes, the assessee is not entitled to deduction under Section 80-IB of the Act, 1961. Any contrary decision of any High Court is held to be not good law."

10. Respectfully following the decision of the Hon'ble Supreme Court in the case of Saraf Exports *v.* CIT (supra) as aforesaid, we find no infirmity in the order of the Ld. CIT(A) and hence no interference is required. Accordingly, Grounds raised by the assessee are dismissed.

11. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 25th July, 2025.

Sd/-	Sd/-
(रवीश सूद)	**(एस बालाकृष्णन)**
(RAVISH SOOD)	**(S. BALAKRISHNAN)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated: 25.07.2025
Giridhar, Sr.PS

<u>आदेश की प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**</u>

1. निर्धारिती/ The Assessee : **Nekkanti Sea Foods Limited**
   Flat No. 1, Jayaprada Apartments
   Nowroji Road, Maharanipeta
   Andhra Pradesh – 530002
2. राजस्व/ The Revenue : **Asst. CIT - Central Circle – 1**
   Pratyakshakar Bhavan
   MVP Double Road
   Andhra Pradesh - 530020
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam