

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH 'DB': DEHRADUN**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.120/DDN/2024, A.Y. 2020-21**

Assistant Commissioner of Income Tax, Circle-1(1)(1), Aaykar Bhawan, Subhash Marg, Dehradun	Vs.	THDC India Limited Bhagirathi Bhawan, Bhagirathi Puram, Tehri, Uttarakhand, PAN: AACT7905Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri A. S. Rana, Sr.DR
Respondent by	Shri Sanjay Arora, CA Ms. Pallavi, CA

Date of Hearing	07/05/2025
Date of Pronouncement	31/07/2025

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

This appeal of the Revenue for the Assessment Year ('AY') 2020-21 is directed against the order dated 19.03.2024 of the Commissioner of Income Tax(Appeals), NFAC, New Delhi ['CIT(A)'].

2. The Revenue has raised following grounds of appeal: -

*"1. On facts and circumstances of the case and in law, whether the CIT (A) was justified in ignoring the fact that, the assessee' income earned due to excess provisions written back and late payment surcharges received on which it had claimed deduction under section 80IA of the Income Tax Act, 1961, had no direct nexus but only incidental or attributable to the assessee's eligible business activities of power generation and distribution that qualify for deduction under section 80IA of the Income Tax Act, 1961.*

2. *On facts and circumstances of the case and in law, whether the CIT (A) was correct in ignoring the Assessing Officer's (AO) remark made in the light of the Hon'ble Apex Court's decision in the case of Liberty India Vs. CIT, 183 Taxmann. 349(2009) that, the incomes derived and categorized by the assessee under the heads 'excess provisions" written back' & 'late payment surcharge' had no direct nexus with the assessee's business activities of power generation and hence, the same aren't eligible for deduction under section 80IA of the Income-Tax Act, 1961.*
3. *Whether the learned CIT(A) has erred in deleting the disallowance of deduction claimed under section 80IA of the Income Tax Act, 1961 by the assessee on the 'excess provisions written back and 'late payment surcharge' on the basis of the Hon'ble ITAT' favourable orders passed on the very same issues in the case of the assessee itself for the Assessment Years from 2008-09 to 2015-16 while ignoring the fact that, the matter had not reached judicial finality as the revenue had appealed against all the said orders of the Hon'ble Tribunal before the jurisdictional High Court of Uttarakhand.*
4. *On facts and circumstances of the case and in law, whether the order of the Ld. CIT(A) has not caused the perversity in allowing the deduction under section 80IA of the Income Tax Act, 1961 on the income received by the assessee due to late payment surcharges on the one hand while on the other hand enhancing and thereby confirming the addition made by the AO on the very same issue of late payment surcharge which were found received on accrual basis by the assessee on the debtors outstanding in its books as on 31.03.2020.*
5. *That, the appellant craves leave to add or amend any other more ground of appeal as stated above as and when needs for doing so may arise.”*

2.1 The sole substantial issue raised in this appeal is that whether the Ld. CIT(A) is justified in deleting the disallowance of deduction made under section 80IB of the Income Tax Act ('the Act') on the reasoning that the income derived from the excess provisions written back and late payment surcharges received having no direct nexus with the assessee's business activities of power

generation and the issue of perversity of the impugned order in the finding of the Ld. CIT(A) wherein he, on one hand, has deleted the addition of Rs.280,34,10,000/- on account of leviable late payment surcharge on debtors and on other hand, has enhanced the income by Rs.56,06,82,000/- on account of leviable late payment surcharge on debtors on accrual basis.

3. The relevant facts giving rise to this appeal are that the assessee, a Joint Venture company of Government of India and Government of Uttar Pradesh, is engaged in the business of generation and supply of hydroelectricity and construction of dams. It filed its Income Tax Return ('ITR') of the relevant year on 05.01.2021 declaring income of Rs.869,04,14,340/- under normal provisions of the Act and book profit of Rs.982,91,03,251/- under section 115JB of the Act. The case was picked up for scrutiny and consequential assessment was completed at income of Rs.1208,85,53,720/- as under:

S. No.	Particulars	Amount (Rs.)
1.	Disallowance of deduction claimed under section 80IA of the Act	59,39,91,068/-
2.	Addition on account of late payment surcharge leviable on outstanding debtors as on 31.03.2017	280,34,10,000/-
3.	Disallowance of provision of gratuity u/s 40A(7) of the Act.	7,38,312/-

3.1 Aggrieved with the assessment order, the assessee filed appeal before the Ld. CIT(A) and succeeded partly. Further, the Ld. CIT(A) enhanced the income by Rs.56,06,82,000/- on account of leviable late payment surcharge on debtors on accrual basis. The assessee accepted the order of the Ld. CIT(A).

However, the Revenue challenged the sole issue of disallowance of claim of deduction under section 80IA of the Act made by the Assessing Officer ('AO') on the income derived from the excess provisions written back and late payment surcharges on debtors on the reasoning that such income has not any direct nexus with the eligible business activities of the assessee.

4. Before us, the Ld. Senior Departmental Representative ('Sr. DR') submitted that the core issue in dispute; i.e. the disallowance of claim of deduction under section 80IA of the Act on the income derived from the excess provisions written back and the late payment surcharges on debtors had already been decided by the Tribunal in assessee's own cases for AYs 2008-09 to 2015-16 as mentioned in grounds of appeal. Further, he prayed for setting aside the finding of the Ld. CIT(A) on this issue as it was subjudiced before the Hon'ble High Court.

5. On the other hand, the Ld. Authorized Representative ('AR') contended that the issue of disallowance of claim of deduction of under section 80IA of the Act on the income derived from the excess provisions written back and the late payment surcharges on debtors was squarely covered by the decision of the Tribunal in the assessee's own cases for AYs 2008-09 to 2015-16 as mentioned in grounds of appeal; hence, this appeal deserved dismissal accordingly.

6. We have heard both parties and have perused the material available on the record. We find that this case is squarely covered by the decisions of the

Coordinate bench in the assessee's own cases for AYs 2008-09 to 2015-16. The relevant part of the order of the Coordinate bench in the assessee's own cases in ITA Nos.3956 & 6457/Del/2012 AY 2008-09 and 2009-10 dated 03.03.2025 reads as under:

*"7. It is seen that the entire controversy lies in a narrow compass, as to whether the above items of income qualify for deduction u/s 80-IA. At this juncture, it is relevant to set out sub-section (1) of section 80IA which provides that : `Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (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 of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years'. A perusal of the mandate of sub-section (1) manifestly divulges that the deduction is available at the rate of 100% of the profits and gains 'derived from' the eligible business. The expression 'derived from' has received the attention of the Hon'ble Apex Court in several cases. In Liberty India (supra), the question was as to whether DEPB/duty drawback is eligible for deduction u/s 80-IB. Repelling such contention raised on behalf of the assessee, the Hon'ble Apex Court held that DEPB/duty drawback are incentives which are not profits derived from the eligible business and therefore, fail to form part of net profits of the industrial undertaking for the purposes of s. 80-IA or 80-IB. It was specifically held that: `It is evident that s. 80-IB provides for allowing of deduction in respect of profits and gains derived from the eligible business. The words "derived from" are narrower in connotation as compared to the words "attributable to". In other words, by using the expression "derived from", Parliament intended to cover sources not beyond the first degree. On analysis of ss. 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-s. (2), would be entitled to deduction under sub-s. (1) only to the extent of profits derived from such industrial undertaking'. In the case of Pandian Chemicals vs. CIT (2003) 262 ITR 278 (SC), the issue was whether the Interest earned by industrial undertaking on deposits with Electricity Board qualifies for relief under s. 80HH. In this section also, the expression used is `derived from'. Answering the question in favour of the Revenue, the Hon'ble Summit Court held that:*

*'The words 'derived from' in s. 80HH must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with Electricity Board cannot be said to flow directly from the industrial undertaking itself. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant'. It is discernible from a survey of the above and several other decisions on the point that the expression 'derived from' is narrower in scope vis-à-vis the expression 'attributable to it.' An income to be 'derived from' a particular source, must have a direct and immediate nexus with such source. In other words, such income must directly emanate from the eligible undertaking and should not have an indirect nexus alone. If an income is indirectly connected with the eligible undertaking, then that income loses the direct nexus and hence cannot be considered as 'derived from' the eligible undertaking. With the above understanding of the ambit of the expression 'derived from,' we now move forward to determine as to whether the two items on which the ld. CIT(A) directed to allow deduction can be construed as 'derived from' the industrial undertaking.*

*I. Excess provision written back:*

*8. This amount represented reversal of excess provision of salary made in the past in respect of pay revision which was implemented during the previous year under consideration. The claim of the assessee before the ld. CIT(A) was that since the provision was found to be in excess, it was written back in the accounts as 'Income' during the previous year. There is hardly any need to emphasize that salary paid by an undertaking is part of expenditure otherwise deductible in computing the income derived from the eligible undertaking. If in the preceding year, the deduction was claimed for a higher sum, which reduced the eligible profit with such higher amount of deduction and the actual expenditure turned out to be less with the result that the excess provision gets written back in the instant year, it cannot be characterized as anything other than part and parcel of profit derived from eligible enterprise. In reality, the excess provision written back is not an income in itself, but, a reduced amount of eligible deduction in the computation of profits derived from eligible enterprise. We, therefore, approve the view taken by the ld. CIT(A) on this issue.*

*II. Late payment charges:*

*9. The ld. CIT(A) has recorded that this receipt represented extra payment received by the assessee from its customers on account of late payment of their dues. The character of this receipt has not been disputed by the ld. DR. In essence, the late payment charges are nothing, but, part of sale consideration which cannot be viewed differently. Once deduction is available on sale consideration, there can be no reason to deny deduction on such late payment charges, which are part and parcel of such sale consideration. We, therefore, uphold the impugned order allowing deduction u/s 80IA on this amount.”*

7. Respectfully, following the decisions of the Coordinate bench in the assessee's own cases for AYs 2008-09 to 2015-16 (supra), we hereby do not find any infirmity in the finding of the Ld. CIT(A) on the core issue of the claim of deduction under section 80IA of the Act on the income derived from the excess provisions written back and the late payment surcharges on debtors. Hence, we decline to interfere with the finding of the Ld. CIT(A) on this score. Thus, all relevant grounds in this regard raised by the Revenue stand dismissed accordingly. As far as the issue of perversity raised in this appeal, we are of the considered view that this matter, in view of the above finding, becomes academic in nature. Hence, this ground is left open.

8. In the result, the appeal of the Revenue is dismissed as above.

Order pronounced in open Court on 31<sup>st</sup> July, 2025.

Sd/-

**(C. N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 31/07/2025  
Binita, Sr. PS

Sd/-

**(AVDRESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

ITA No.120/DDN/2024  
THDC India Ltd.

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI