IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
(Physical Hearing)

I.T.A. No. 103 & 104/Asr/2024
Assessment Years: 2014-15 and 2017-18

ITO, Ward-3(1), Ferozepur. **(Appellant)**	Vs.	M/s Jatin Agro Fort Road, 152-P, Ferozepur. [PAN:-AARPM5393F] **(Respondent)**

Appellant by	Sh. Ashray Sarna, CA
Respondent by	Sh. Sunil Gautam, CIT. DR

Date of Hearing	16.12.2025
Date of Pronouncement	15.01.2026

ORDER

Per: Udayan Dasgupta, J.M.:

Both these appeals are filed by the revenue against the orders of ld. CIT (A), NFAC, Delhi, passed u/s 250 of the Income Tax Act, 1961,(*henceforth the Act*) both dated 29.01.2024 , which has emanated from the orders of AO, Circle Ferozepur, dated 30.12.2019 passed u/s 143(3) r.w.s. 147 of the Act (*for A.Y. 2014-15)* and order dated 28.12.2019 passed u/s 143(3) of the Act *(for AY 2017-18)*.

2. The facts and issues contained in both the years being identical, are taken up for disposal together for the sake of convenience and we take up *ITA No. 103/Asr/2024*, first.

3. ITA No.103/Asr/2024:

The grounds taken by the revenue in Form no. 36 are as follows:

"1. That on the facts and circumstances of the case, the CIT(A) has erred on facts and law in holding that the income of the assessee from letting out its godown is chargeable under the head 'income from Business' and not under the head 'Income from House Property".

2. That on the facts and circumstances of the case, the CIT(A) has erred on facts and in law as apart from letting out of its godowns, no other services, were extended by the assessee to the lessees. Merely because one of the objectives was to let out the godown would not mean that the assessee had undertaken the activity of setting up and operating a warehousing facility for storage of agricultural produce construction of godowns and letting them out as business activity.

3. That on the facts and circumstances of the case, the CIT(A) has erred on facts and in law as the income derived from letting out the property would not amount to profits or gains from the business. From the facts of the present case, it is clear that the assessee could let out their godowns only because those were not in use at the relevant time. Therefore, the rent received by the assessee would have to be computed as income from property."

4. Brief facts emerging from records are that the assessee is an *Association of Person* (AOP) and is claimed to be engaged in *"specified business"* within the meaning of section *35AD(8)(c) (ii)* of the Act, and has made substantial investment in setting up and operating a warehousing facility for storage of agricultural produce.

4.1 Regular return declaring NIL income filed, claiming set off of current year net profit of *Rs.3,93,37,459/-* as deduction *u/s 35AD(8)(c)(ii)* of the Act, has been accepted in scrutiny proceedings u/s 143(3), vide order dated 23/12/2016.

4.2 Subsequently, the case has been reopened u/s 148 vide notice dated 29.03.2019 *(after necessary approval from higher authorities)*, mainly on the issue regarding availability of deduction claimed *u/s 35AD(8)(c)(ii)* of the Act.

The relevant portion of the ***recorded reasons*** are reproduced below for ready reference:

> "*2. The assessee has constructed a godown during the year under consideration and rented out the same to PUNGRAIN on fixed monthly rental charges. The assessee has claimed deduction u/s 35AD(8)(c) (ii) of the Act @150% of capital expenditure incurred on construction of godowns during the year. Deduction u/s 35AD(8)(c)(ii) of the Act is available in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce. The assessee has set up a warehousing facility but has rented it out to PUNGRAIN on monthly fixed rental income. No activity has been undertaken by the assessee to operate the warehousing facility. In such types of arrangements, intention of the lessor is always to eam rental income and not to operate the warehousing facility. Hence, the assessee is not operating the warehousing facility for storage of agricultural produce. In view of the facts, out of two conditions specified for claiming deduction u/s 35AD(8)(c)(ii) of the Act, only one condition is fulfilled by the assessee and hence, the assessee is not eligible for claiming deduction u/s 35AD(8)(c)(ii) of the Act The assessee did not fulfill the conditions laid down u/s 35AD(8)(c)(ii) of the Act. making it ineligible for claiming deduction u/s 35AD of the Act and thus, there arised no question*

of computing any loss as per the provisions of section 35AD of the Act. In the absence of any loss, there arised no question of setting it off against current year income.

3. During the previous year under consideration, it had earned Rs.6, 18, 29,857/-as rental income le income from a source other than from a specified business as per section 35AD of the Act. But, the treatment of rental income received from godown given on rent to PUNGRAIN as normal business income is also not correct since, business is a continuous activity which is done on year to year basis. Here, in this case the assessee let out its godown and shown income as income from business instead of income from House Property The assessee was not continuing the activity of construction of godowns and letting them out from year to year. The assessee had not undertaken any such systematic business activity of construction of godowns and letting them out as business property. Merely because the assessee had entered into an agreement with PUNGRAIN would not mean that the assessee had undertaken the activity of construction of godowns and letting them out as business activity. Therefore the income received by the assessee, by way of rent. was income received from property and it would not fall even under normal business Income. Thus, income derived from letting out the property would not amount to profits or gains from the business within the meaning of section 28(1) of

the Act. since the presence of business is absent in the present case, which however, is an elementary concept for an income to fall under the head profits & gains of business or profession.
Section 28 of the Act is reproduced as under-

"28 The following income shall be chargeable to income-tax under the and gains of business or profession"-head "Profits carned on by (i) the profits and gains of any business or profession which was the assessee at any time during the previous year"
3.1 Thus, the income earned by the assessee during the year under consideration did not fall under the purview of business income and in the absence of business activity, income derived from land or building would clearly fall under the head income from house property u/s section 22 of the Act, reproduced as under-
"Section 22 The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property"
3.2 The treatment of rental income as business income by the assessee is also contradicted by the fact that the deductor ie PUNGRAIN also treated the amount paid/credited to the account

of the assessee in the nature of rent and deducted TDS accordingly as per the provisions of section 1941 of the Act. The nature of income for a same amount in question cannot be treated differently by the deductor and the deductee. This goes to prove that the treatment of rental income as business income is again not correct.

4 In view of the above facts, the rental income of Rs 6,18,29,857 received by the assessee from PUNGRAIN was required to be assessed under the head 'Income from House Property and deduction u/s 35AD(8)(c)(ii) of the Act was not allowable to the assessee under that head as such deduction is available under the head business income and in view of the facts narrated in Para 2 above. Hence, income of Rs. 4,32,80,900/- after allowing deduction @30% from the rental income of Rs 6,18,29,857/- was chargeable to tax under the head Income from House Property. The assessee wrongly claimed deduction u/s 35AD(8)(c)(ii) of the Act at Rs. 116,48,50,757/- and wrongly set it off against declared income of the current year. Hence, the income of Rs.4.32.80,900/- which was chargeable to tax for the year under consideration escaped assessment on account of wrong presentation of facts by the assessee before the AO during the course of assessment proceedings.

5. It is further observed that deduction u/s 35AD of the Act is available in respect of any expenditure of capital nature during the previous year by the assessee. In this case, the assessee

incurred expenditure of capital nature at Rs 10,47,11,318/- only during the previous year and an expenditure of capital nature amounting to Rs. 76,83,88,594/- was brought forward from the preceeding year. The assessee has claimed deduction u/s 35AD of the Act in respect of total expenditure incurred upto 31.03.2014 whereas as per provisions of section 35AD of the Act. deduction is available only in respect of expenditure incurred during the previous year It has further been provided that such deduction is available to the assessee in the year in which it commences operations of specified business if the amount is capitalized in the books of accounts on the date of commencement of its operations However, in this case, the assessee capitalized the capital expenditure of Rs. 76,83,88,594/- in the financial year 2012-13 which was brought forward as on 01.04.2013 and an expenditure of Rs 10,47,11,318/- only was capitalized during the relevant previous year Hence, even if available, deduction u/s 35AD of the Act was available to the assessee in respect of capital expenditure of Rs. 10,47,11,318/- as against claimed by the assessee in respect of expenditure of Rs 77,65,67,171/-. Hence, deduction u/s 35AD of the Act has been claimed by the assessee wrongly.

6. As per the provisions of section 147 of the Income Tax Act, 1961, if the Assessing Officer has reasons to believe that any income may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax

which has escaped assessment and which comes to his/her notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

7 In view of the above, I have reasons to believe that income to the tune of Rs.4,32,80,900/- has escaped assessment within the meaning of provisions of section 147 of the Act Keeping in the view the above facts income of Rs.4,32,80,900/- besides any other income chargeable to tax which may come to notice subsequently during the course of assessment proceedings is held to be income escaped assessment. Proceedings u/s 147 of Act for the A.Y.2014-15 are initiated to bring the income, escaping assessment, to tax by issuing notice u/s 148 of the Act for the A.Y.2014-15.

In this case, necessary sanction to issue notice u/s 148 of the Act has been obtained separately from the Joint Commissioner of Income Tax, Range-3, Ferozepur u/s 151(2) of the Act as period of four years from the end of assessment year under consideration has not expired."

4.3 Eventually, the re-assessment has been completed by the AO on a total income of *Rs.2,30,15,640/-* (*including Rs.2.26 crores assessed under the head "income from house property" and an amount of Rs.3,83,429/- as "income from other sources"* being the portion of interest on bank deposits).

5. The matter was carried in appeal before the ld. first appellate authority, both, on the legal issue of initiation of reassessment proceedings u/s 147 of the Act and also on merits and the Ld CIT(A) has decided the *legal issue u/s 147 / 148* , against the assessee, (*for which the assessee is not in appeal),* but he has decided the issue in favour of the assessee, on merits of the case allowing the appeal by observing as follows:

> *"Legal contention: I have perused the assessment order and the submission made by the Appellant. The AO has issued notice under section 148 of the Act, within 4 years from the end of the assessment year. The submission of the Appellant that the information was on record and it is change of opinion cannot be considered as the law gives the power to the AO to bring the correct amount which has escaped assessment to tax. Mere mentioning in the assessment order that, on perusal of the assessment records does not help the Appellant to challenge the validity of the notice issued under section 148 of the Act. Hence, it is held that the notice issued and reassessment complete is valid and the Appellants ground is dismissed.*
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> *Issue on merits: I have gone through the submission made by the Appellant, the Appellant is an Association of Person which has been formed with the object of setting up and*

operating warehousing facility for storage of agricultural produce. The Appellant participated in the tenders for construction of warehouse by Punjab State Grains Procurement Corporation, and was allotted the tender for setting up of warehouse. The Appellant entered into contract for construction of warehouse vide contract dated 28/11/2011. The investment was in two years viz assessment year 2013-14 & 2014-15. It commenced the operation during the assessment year 2014-15. The Appellant claimed deduction under section 35AD of the Act, which was disallowed by the AO.

6.1. It is true that, the Appellant has formed the AOP and participated in the tender for construction of warehouse, hence, the intention/object with which the AOP was formed was to do business. The term business is defined under section 2(13) of the Act, which talks about adventure or concern in the nature of trade. When the main object of the Appellant is to establish warehouse for storage of agricultural produce, it clearly falls under section 2(13) of the Act, and hence, it has to be treated as business of the Appellant.

6.2. The AO has rejected the claim of deduction made under section 35AD(8)(C)(ii) of the Act, by stating that the income from warehousing is derived from house property and shifted the claim of the Appellant from business to house property and denied the deduction claim under section 35AD(8)(c)(ii) of the Act. To my understanding, the term "specified business" means to include "setting up and operating a warehousing facility for storage of agricultural produce". Section 35AD(1) of the Act, postulates the allowability of deduction in respect of expenditure of capital nature incurred wholly and exclusively for the purpose of any specified business carried on during the year, PROVISO below sub section (1) of section 35AD talks about the allowability during the previous year in which the Appellant commences operation. It has to be borne in mind that the Government has extended this investment linked tax incentive provided by the Government to person who setup warehousing facilities with a view to create rural infrastructure and environment. friendly alternative means of transportation for goods.

6.3. Keeping the intention/object of the Appellant and the Statute though Circular no. 5, dated 03/06/2010 reported in [2010 324 ITR (St.) 293, the Appellants claim of deduction under section 35AD of the Act, of Rs. 86,33,60,656/-, cannot

be denied. The Appellant was formed with the object of earning income and also the Appellant has made such a huge capital investment with the intention of creating rural infrastructure, which in turn supports the cause of the Government,

6.4. The income earned by the Appellant from this warehousing facility created has to be assessed as business income, and the AO has wrongly denied the deduction under section 35AD of the Act, claimed by the Appellant and also has assessed the income earned from such warehouse under the head House Property as against the income admitted by the Appellant under the head Business.

6.5. The deduction claimed under section 35AD of the Act of Rs. 86,33,60,656/-, is allowed and the income earned from warehousing facility has to be assessed as business income in the hands of the Appellant, the appeal filed by the Appellant is allowed.

7. The other ground of the Appellant about the interest income of Rs. 3,83,429/-, earned and admitted under the head business:

7.1. It can be seen from the statement produced containing the nature of investment and the interest accrued /received, the Appellant has pledged the FD for taking bank guarantee and has given as security. It is was held in the following judgment that interest income on fixed deposits pledged as margin with banks for obtaining bank guarantees etc., are taxable as business income and not as income from other sources.

a. Tuticorin Alkali Chemicals & Fertilisers Ltd. v. CIT [1997] 227 ITR 172 (SC)

b. CIT v. Karnal Co-operative Sugar Mills Ltd. [2001] 118Taxman489 (SC)

c. CIT v. Bokaro Steel Ltd. [1999] 236 ITR 315 (SC)

d. CIT v. Shahi Export House [2010] 195 taxman 163 (Delhi HC)

e. DCIT vs. G. G. Continental Traders (P.) Ltd. [2023] 151 taxmann.com 384 (Amritsar - Trib.)

7.2. Hence, going by the above judgements, I hold that the income earned on such fixed deposits were rightly admitted under the head Business. The stand of the AO dismissing the claim of the Appellant and bring to tax the amount of income under the head Other Sources, is against the law and the ground of the Appellant is allowed and the AO is directed to treat the interest earned on fixed deposits as business income."

6. Now, the revenue is in appeal before the Tribunal on the grounds contained in the memorandum of appeal and all the three grounds relates one single issue as to whether the income of the assessee is to be assessed under the head *"business"* or "other source".

7. In course of hearing, the ld. DR relied on the order of the AO and submitted that the assessee has claimed the income on warehouse rent to have arisen from *"specified business"* and provisions of section *35AD(8)(c)(ii)* of the Act 61 provides for *deduction @150% (subsequently reduced to 100%),* of the capital expenditure for construction of warehouse against any income which is earned by the assessee from such ***specified business.*** He further submitted that assessee in this case, has

claimed the net assets eligible for deduction amounting to *Rs.57.55 crores* and the amount of eligible deduction has been claimed @150% ie. *Rs.86.33 crores* and after adjusting the current year income of *3.39 crore* the balance amount of unabsorbed deduction of *Rs.82.47 crores* has been carried forward. He further submitted that the said godown is rented out by the assessee to *PUNGRAIN* (*Punjab State Grains Procurement Corporation*) on fixed monthly rental charges, against which the assessee is receiving monthly *fixed rental income* without any activity being undertaken by the assessee in the matter of operation of the warehouse and as such the deduction claimed by the assessee is not allowable, more so , considering that the intention of the lessor (*in this case, the assessee*) is always to earn rental income and not out of operation from the warehouse facility. He further submitted that since in the instant case, the assessee is not operating the warehousing facility for storage of agricultural produce he has not fulfilled the dual conditions specified under the section for claiming the deduction, due to the simple reason, that the assessee is not operating the warehouse.

7. He further submitted that assessee in the instant case has simply entered into an agreement with PUNGRAIN and has received income by way of rent which is *income from property* and it does not fall under the head *normal business income*

and it does not amount to profit or gain from the business within the meaning of *section 28(1) of the Act* , because in the instant case, the presence of business activity is totally absent.

7.1 The Ld. DR further submitted that in the instant case, PUNGRAIN has also treated the amount paid to the assessee in the nature of rent and has deducted TDS under the provisions of section *194(I) of the Act.*

7.2 The Ld. DR in support of his contention referred to the decision of *Hon'ble Apex Court* in the case of *CIT vs. M/s Shambhu investment private limited 263 ITR 143 (SC)* and submitted that the primary object of the assessee while explaining the property is to be seen and if the main intention of the assessee was to let out the property or any portion thereof, then the same has to be considered as *income from house property* and in the instant case, the intention of the assessee was simply to let out the warehousing facility, which is manifest from the *lease agreement* and the assessee has not involved itself in any complex commercial activity.

7.3 He further referred to the decision of *Hon'ble Gujarat High Court* in the case of *CIT v. New India Industries Ltd.,201 ITR 208,* and submitted that, each case has to be decided on his own facts and when the asset is in the nature of land or building the income derived by the assessee by renting out the same would fall under the head

income from house property because in such cases, it is not the factum of his business or commercial activity which brings income to him but on the other hand it is the investment in property or the ownership of the property which brings income and in such cases, leasing of property itself is the main activity and it is the investment of assessee in the property which brings income to him and it should be taxed under the head *income from house property*.

7.4 He further referred to the decision of the *Hon'ble Madras High Court in the case of CIT vs. Indian Warehousing industries Ltd. 2002 reported 258 ITR 93 (Mad HC)* where in the said case, the assessee received income by way of rent from *Food Corporation of India (FCI)* which had taken warehouses belong to the assessee on lease and the Hon'ble High Court relying on the judgment of Hon'ble Supreme Court in the case of *East India Housing & Land Development Trust Ltd. v. Commissioner of Income-Tax reported in 42 ITR 49*, held that income received from the renting out of warehouse to the *Food Corporation of India (FCI)* was assessable as *income from house property*.

7.5 Similarly, he also relied on the decision of *M/s Modern Organizers, vs. ITO, ITA No. 812/Mum/2009* where the *Hon'ble ITAT, Mumbai* has held that income

earned from letting out of godown to the FCI is to be taxed under the head *income from house property*.

8. Before concluding his argument, the ld. DR submitted that in the instant case, the assessee is only doing the maintenance to keep the godown, fit for storage and to prevent damages to food grains stored and apart from above activity there are no other commercial activity involved and as such the activity of the assessee cannot be considered as *business activity* because it is simply *letting out of the property* and all other allied activities carried out by the assessee such as providing of security, lighting, cleaning, sanitation of the premises, etc, are only incidental in nature and cannot be considered as operation of a warehousing facility.

As such, he prayed for upholding the order of the assessing officer on merits of the case.

9. Per contra, the ld. AR of the assessee, filed a *paper book* containing (i) copies of agreement of *co ownership dated 20th August, 2011 (in between three co-owners with pre determined share)* for construction of godowns for self - use or for hire purchase for storage of agricultural produce, (ii) copy of final lease agreement dated 21st March, 2014, with *Punjab State Grains Procurement Corporation*

(PUNGRAIN) , which is the outcome of a public tender floated by the lessee earlier, which resulted in execution of a binding contract in between the *lessor and the lessee earlier executed on 28th November, 2011*, giving guaranteed hiring for *nine years, seven months and three days* , of the proposed warehouse *to be constructed by way of private participation* (*the assessee in this case),* (iii) copy of completed audited balance sheet audit reports, (iv) along with copies of the written submissions filed before the lower authorities.

9.1 The ld. AR submitted that the assessee is an *AOP* which has been specifically formed for the purpose of carrying out the *business of setting up and operating a warehousing activity for storage of agricultural produce.* He further submitted that *Punjab State Grains Procurement Corporation* hereinafter referred as PUNGRAIN has floated tenders for construction of warehousing facility and the assessee participated in the said tender and after being successful in the tender bid has constructed and setup the warehouse (*as per pre determined terms and conditions of contract)* and PUNGRAIN is storing agricultural produce only in the said warehouse as lessee.

9.2 He further submitted that the assessee has entered into construction of warehouse vide *contract dated 28.11.2011* and the investment in the said

construction of the warehouse amounted *to Rs.57.55 crore* which allows the assessee a *deduction u/s 35AD(8)(c)(ii) of the Act @ 150%.*

9.3 He further submitted that the AOP was specifically formed to bag the contract of setting up the warehousing facility through the process of public tender which clearly shows the intention of the assessee that the whole efforts are made to generate business income and not to earn house property income. He further submitted that all conditions of the term *business as laid down u/s 2(13) of the Act* has been fulfilled by the assessee and he further explained that in the instant case, there has been occupation, and carrying out the commercial activity on day to day basis, rationalization of business administration, preservation of business and protection of its assets and property , payment of statutory dues and taxes and precondition of commencement, things incidental to carry out of business.

9.4 He further clarified that in the instant case, the assessee has commenced the business in the *assessment year 2014-15* and the warehouse has also commenced and he has rightly claimed the deduction which is allowable u/s 35AD(8)(c)(ii) of the Act.

9.5 The ld. AR filed a written submission and has relied upon the same for his arguments and the relevant portion of the same are reproduced for ready reference:

"Deduction in respect of expenditure on specified business.

35AD[1] An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him

Provided that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if-

(a) the expenditure is incurred prior to the commencement of its operations; and

(b) the amount is capitalised in the books of account of the assessee on the date of commencement of its operations.

10.12 On perusal of sub-section [1] of section 35AD of the Act, postulates that an Appellant shall be allowed deduction in respect of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on during the year in which such expenditure is incurred. However, in cases where such expenditure is incurred prior to the commencement of its operations by the Appellant and amount is capitalised in the books of account of the Appellant on the date of commencement of operations, then such expenditure is allowable as deduction in the previous year in which the Appellant

commences operations of his specified business. In the case on hand the relevant portion 15, clause [c] of Sub-section 8 of section 35AD of the Act, which prescribes the meaning of the expression "specified business" to include "setting up and operating a warehousing facility for storage of agricultural produce.

10.13 The term setting-up and operation is not defined under the act, hence in this context we may make a reference to the various meanings adduced to the term 'Setting-up and Operation'. As per "P. Ramanatha Aiyars-The Law Lexicon", 3rd Edition, the meaning of the terms are as under:

Setting up-means ready to commence business.

Operation means to put into or to continue in operation or activity. It also comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land.

10.14 The Appellant submits that the scope and rationale of the new provisions was explained by the Board in a Circular no. 5, dated 03/06/2010 [2010] 324 ITR (St.) 293, the relevant emphasis is reproduced for your Honors ready reference as under:

The whole intention was to create rural infrastructure and environment friendly alternate means of transportation for bulk goods, provide investment linked tax incentive has been provided by inserting a new section 35AD in the Act.

The provisions of section 28, section 43 and section 50B of the Act, have also been amended to make consequential changes. Thus, any sum whether. received or receivable in cash or kind on account of any capital asset being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD of the Act, shall be treated as taxable under section 28 of the Act. The provision will be applicable for assessment year 2010-11

10.15 This provision is investment linked tax incentive provided by the Government to persons who wish to setup and operate warehousing facilities for storage of agricultural produce with a view to creating rural infrastructure and environment friendly altemative means of transportation for goods. The question for consideration before your Honors is whether the learned Assessing Officer can disallow the claim of deduction which is expressly provided in the Act, to the Appellant when he satisfies all the conditions embedded in the section 35AD of the Act.

10.16 The Appellant during the impugned assessment year 2014-15, has commenced the business by setting-up and operating of warehouse, which was not denied by the learned Assessing Officer. The Appellant has entered into agreement with PUNGRAIN for storage agricultural produce, this is also not denied by the learned Assessing Officer. The newly constructed

warehouse was put to use for purpose of storage of agricultural produce, the income earned by the Appellant is out of lease of warehouse facility and earned income from operation of the warehouse facility. It is humbly submitted that the Appellant has complied with all the conditions of the provisions of section 35AD of the Act, and has claimed the deduction at 150% of the capital investment, which is allowable as deduction to the Appellant.

10.17 The learned Assessing Officers contention and reliance on various case laws to deny the deduction under section 35AD of the Act, which is genuinely available to the Appellant, and shifting the income earned by the Appellant which the Appellant has admitted under the head "Business or Profession" to the income under the head "House Property" is bad in law as the Government has voluntarily provided for deduction of investment linked tax incentive. The reliance placed by the learned Assessing Officer on the judgments to disallow the claim is distinguishable on facts of the case and cannot be relied upon to deny the genuine claim of deduction made by the Appellant after satisfying all the conditions under section 35AD of the Act. The learned Assessing Officer has not brought on record any judgment which is directly applicable to the Appellants case and all the judgments relied upon by the learned Assessing Officer does not talk about disallowance or claim of deduction under section 35AD of the Act.

10.18 Without prejudice to the above, it is humbly submitted that, even when there is no operating income from the warehouse and the warehouse is used for captive use, it was held that the amount incurred for warehousing facility is eligible for deduction under section 35AD of the Act (ACIT Vs. Ihsedu Agrochem Pvt. Ltd. ITA No. 5057/Mum/2014, A.Y. 2010-11, dated 29/04/2016).

10.19 Wherefore, it is humbly prayed before your Honors to hold that the Appellant has complied with all the provisions of section 35AD of the Act, and more specifically the Appellant is involved in specified business to include setting up and operating a warehousing facility for storage of agricultural produce, which was let out to PUNGRAIN and the amount received is business income of the Appellant. The Appellant has rightly claimed the deduction under section 15AD at 150% of the investment, which the learned Assessing Officer has denied, the Appellant has complied with the intention of the legislation and the disallowance of deduction under section 35AD of the Act, is against the principles of natural justice and relief. The disallowance made by the learned Assessing Officer needs to be deleted for substantial cause of justice and equity."

9.6 Thereafter the ld. AR relied on the decision of Hon'ble High Court in the case of *Haryana Warehousing Corporation Vs. ACIT 2010 328 ITR 23 (P & H)* to argue

that providing storage facilities being its main business and not merely incidental business, that being so income derived from storage facility will not be covered by the head income from house property it will be treated as income from business.

9.7 Thereafter he further referred to the decision of the *Madras High Court in the case of ACIT vs. NDR Warehousing (P.) Ltd. 372 ITR 690 (Mad)* and also *ITAT Raipur Bench order dated 22.12.2022 ITA No.68/RPR/2019 A.Y. 2014-15* to submit that in the instant case, the assessee is engaged in the business of warehousing and therefore, would fall under the head business income because the assessee is not merely letting out the warehouse, but it is the business of providing facility of storage of *agricultural produce only* , with provisions of several auxiliary services such as *pest control, rodent control and preventive measures against decay of goods stored due to vagaries of moisture/temperature, fungus formation, etc. the activity are more than simply letting out of the goods for tenancy.*

9.7 As such, he submitted and prayed that the deduction claimed by the assessee u/s 35AD (8)(c)(ii), of the Act , is legally allowable and the Ld. first appellate authority has rightly allowed the same and the appellate order may please be upheld.

10. We have heard the rival submissions and considered the materials on record and we are of the opinion that with a view to creating rural infrastructure and environment friendly alternative means of transportation for bulk goods the government has provided *investment linked taxed incentive as per provisions of section 35AD of the Act*, where the setting up and operating warehousing facilities for storage of agricultural produce is one such *specified business* as per provision of section 35AD (8)(c)(ii) on which 100% (*previously 150%)*,deduction would be allowed in respect of the whole of any *expenditure of capital nature* incurred wholly and exclusively for the purposes of specified business carried on during the previous year which also includes the capital expenditure incurred prior to the commencement of the operations of the specified business and capitalised in the books of account of the assessee on the date of commencement of operations is also eligible for deduction *(but shall not include any expenditure incurred on acquisition of any land or goodwill or financial instruments).*

10.1 In the instant case, the assessee has entered into a formal written agreement with PUNGRAIN for developing operating and maintaining the facility for storage of *agricultural produce* and it is also to be ensured that the asset is used exclusively for the *specified business* for at least eight years from the date of construction (*in*

this case, it was for more than nine years) and there is nothing wrong in the same being used by the State Government enterprise , for storage of agricultural produce only *(and not for any other goods).*

10.2 We observe that the assessee has already made the capital investment for development of the warehousing facility for use of PUNGRAIN only, for the initial period of nine plus years for storage of agricultural produce ,which evolves out of a public tender bid and has a valid agreement for physical operation with a government body and full maintenance and other business expenditure (*eg. weigh bridge and insurance)* are met by the assessee, which are all part of the specified business activity .

10.3 In the instant case, it is also observed that expenditure on account of regular maintenance, white washing, painting and repairs of exterior walls, roofing , burning of electric wiring, change of pipes, and all other allied works including annual maintenance of ***"weigh bridge"*** installed at site shall be carried out by the lessor along with ***full insurance of the warehouse*** *(which proves that it is more than an ordinary tenancy agreement).*

10.4 In the instant case, we also note that the assessee has been one of the successful bidders whereby the assessee entered into a contract with PUNGRAIN for setting up the warehousing facility by constructing the same by investing his own capital against a guarantee of nine plus years lease tenure provided by PUNGRAIN for utilising the said warehouse facility for storage of agricultural produce only *(and not for any un - specified business activity)* . Therefore, the intention of the assessee all along has been to ***carry on business*** and in the instant case, the assessee has no other income other than this and as such, we are of the opinion that in the instant case, the assessee is entitled to the deduction of section 35AD(8)(c)(ii) because the assessee has fulfilled all the conditions laid down as *specified business* and it can be said that the assessee is engaged in the specified business by *setting and operating a warehousing facility for storage of agricultural produce.*

10.5 On this issue, we are also in agreement with the opinion of the ld. first appellate authority that the AOP itself in this case, has been formed with the primary object of investing capital by the co-owners for proposed construction of warehousing facility for storing of agricultural produce (*against a minimum guarantee of nine plus years usage offered by PUNGRAIN)* inviting private participation through *open public tender* which is documented vide a separate

contract executed on *28th November, 2011 (much earlier to the date of physical existence of the storage facility)* and the same has been done with the object of earning income from business activity , with the intention of *creating rural infrastructure (* which in turn supports the cause of *Government policy),* and as such, the intention of the assessee of carrying out a business venture was very clear from the beginning resulting in setting up of this warehousing facility for use by PUNGRAIN for a minimum period of nine plus years (*as per agreement*) for storage of agricultural produce only , as per the specific provisions of the section and the warehouse has also been made operational by the usage of the same by PUNGRAIN , which as per our opinion satisfies the conditions of carrying on a "**specified business"** as provided section 35AD(8)(c) of the Act 61, and the assessee will be entitled to the deduction claimed under the provisions .

10.6 As such, we uphold the order of the Ld. CIT(A) and dismiss the revenues being devoid of merits.

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

ITA No : 104/ASR/2024 Asst Year : 2017-18

12. The facts and issues contained in this appeal filed by the revenue are identical. Our observation in ITA No: 103/ASR/2024, for the Asst year 2014-15, applies mutatis mutandis to this ITA No.104/ASR/2024, accordingly.

13. As such both the appeals of the revenue are dismissed.

Order pronounced on 15.01.2026 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-	**Sd/-**
(MANOJ KUMAR AGGARWAL)	**(UDAYAN DASGUPTA)**
Accountant Member	**Judicial Member**

AKV

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

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