**IN THE INCOME TAX APPELLATE TRIBUNAL**
**BENCH, INDORE**

**ITA No.538/Ind/2010**
**Assessment Year: 2007-08**

**M/s MAA VAISHNO DEVI**
**GINNING PRESSING UDHYOG**
**DHAMNOD**
**PAN NO:AAFFM4114N**

**Vs**

**DEPUTY COMMISSIONER OF INCOME TAX**
**1(1), INDORE**

**Joginder Singh, JM and R C Sharma, AM**

**Dated: September 25, 2011**

**Appellant Rep by:** Shri S C Goyal, Adv.
**Respondent Rep by:** Shri Arun Dewan, Sr. DR

**ORDER**

**Per: Joginder Singh:**

This appeal is by the assessee against the order dated 12.5.2010 of the learned CIT(A)-I, Indore on the following grounds:

1. That, on the facts and in the circumstances of the case, the ld. first appellate authority erred in not allowing deduction u/s 80-IB of Rs.21,07,643/- as claimed by the assessee firm.

2. That, on the facts and in the circumstances of the case, the ld. first appellate authority has further erred in not allowing deduction u/s 80-IB of Rs.21,07,643/- as the assessee firm derives income from industrial undertaking only, hence eligible for deduction.

3. That without prejudice to above, the ld. CIT(A) below erred in not granting deduction u/s 80IB:

| | |
|---|---|
| a) Excess Cash | Rs.8,98,524/- |
| b) Interest Credited | Rs.7,33,623/- |
| c) Income from Weighbridge | Rs.3,70,710/- |

2. During the hearing, we have heard Shri S.C. Goyal, Ld. Counsel for assessee and Shri Arun Dewan, Sr. DR. So far as ground nos.1 & 2 in the grounds of appeal are concerned, it pertains to not allowing deduction of Rs.21,07,643/- u/s 80-IB of the

Act. The crux of arguments on behalf of the assessee is that the assessee is engaged in ginning and pressing of cotton, therefore, the impugned income is derived from industrial undertaking. Our attention was drawn to pages 26 and 29 of the paper book by further placing reliance upon the decisions in *CIT vs. Eltek SGS P. Ltd. (300 ITR 6) (Del)*, *CIT vs. Jagdish Prasad M. Joshi (318 ITR 420) (Bom), Liberty India vs. CIT (317 ITR 218) (SC)*, *CIT vs. Advance Detergents Ltd. (228 CTR 356) (Del), National Legguare Works vs. CIT (288 ITR 18) (P & H)* and *CIT vs. Paras Oil Extraction Ltd. (230 ITR 266) (MP)*. On the other hand, the crux of arguments on behalf of the revenue is that the excess cash, interest credited and income from beverage are not the income derived from industrial undertaking, therefore, the impugned order was supported. A plea was also raised that no evidence was furnished by the assessee evidencing that the impugned amount was generated from the manufacturing activities of the assessee. In reply, the Ld. Counsel for assessee contended that the assessee is having only income from business activities from industrial undertaking, therefore, it is an allowable deduction u/s 80-IB of the Act. Alternatively, it was contended by the Ld. Counsel for assessee that the ld. CIT(A) erred in not granting deduction u/s 80-IB for excess cash of Rs.8,98,524/-, interest credited of Rs.7,33,623/- and income from weighbridge to the tune of Rs.3,70,710/-

3. We have considered the rival submissions and perused the material available on file. Brief facts are that survey u/s 133A was carried out on 26.2.2007 at the business premises of the assessee. During survey, the assessee declared additional income of Rs.71,41,756/- on account of excess stock and Rs.8,98,524/- on account of excess cash. Before coming to any conclusion, we are reproducing hereunder the relevant provisions of Section 80-IB of the Act.

Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.[80a]

80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in subsections (3) to [81][(11), (11A) and (11B)[81a]] (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[82] by splitting up[82], or the reconstruction[82], 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 reestablishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, 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, [83][2002].

[84](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 assessment years (or twelve consecutive assessment years where the assessee is a co-operative 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, [85][2004]:

Provided further that in the case of such industries in the North- Eastern Region, as may be notified[86] 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:

[87][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:]

[88][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, [89][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[90], by notification[91] 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, [92-94][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, [92-94][2004].

(6) The amount of deduction in the case of the business of a ship shall be thirty per cent of the profits and gains derived from such ship for a period of ten consecutive assessment years including the initial assessment year provided that the ship-

(i) is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(ii) was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(iii) is brought into use by the Indian company at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995.

(7) The amount of deduction in the case of any hotel shall be-

(a) fifty per cent of the profits and gains derived from the business of such hotel for a period of ten consecutive years beginning from the initial assessment year as is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may, having regard to the need for development of infrastructure for tourism in any place and other relevant considerations, specify by notification in the Official Gazette and such hotel starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001:

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal

corporation, notified area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001:

Provided further that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules95 made under this Act and where the said hotel is approved by the prescribed authority before the 31st day of March, 1992, shall be deemed to have been approved by the prescribed authority for the purpose of this section in relation to the assessment year commencing on the 1st day of April, 1991;

(b) thirty per cent of the profits and gains derived from the business of such hotel as is located in any place other than those mentioned in sub-clause (a) for a period of ten consecutive years beginning from the initial assessment year if such hotel has started or starts functioning at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001:

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee, town area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001;

(c) the deduction under clause (a) or clause (b) shall be available only if-

(i) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose;

(ii) the business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;

(iii) the hotel is for the time being approved by the prescribed authority[95]:

Provided that any hotel approved by the prescribed authority[95] before the 1st day of April, 1999 shall be deemed to have been approved under this sub-section.

[96][(7A) The amount of deduction in the case of any multiplex theatre shall be-

(a) fifty per cent of the profits and gains derived, from the business of building, owning and operating a multiplex theatre, for a period of five consecutive years beginning from the initial assessment year in any place :

Provided that nothing contained in this clause shall apply to a multiplex theatre located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Chennai, Delhi, Mumbai or Kolkata;

(b) the deduction under clause (a) shall be allowable only if-

(i) such multiplex theatre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(ii) the business of the multiplex theatre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or of plant previously used for any purpose;

(iii) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed[97] and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

(7B) The amount of deduction in the case of any convention centre shall be-

(a) fifty per cent of the profits and gains derived, by the assessee from the business of building, owning and operating a convention centre, for a period of five consecutive years beginning from the initial assessment year;

(b) the deduction under clause (a) shall be allowable only if-

(i) such convention centre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(ii) the business of the convention centre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose;

(iii) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed[98], and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.]

(8) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of five assessment years beginning from the initial assessment year if such company-

(a) is registered in India;

(b) has the main object of scientific and industrial research and development;

(c) is for the time being approved by the prescribed authority[99] at any time before the 1st day of April, 1999.

1[(8A) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such

business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company-

(i) is registered in India;

(ii) has its main object the scientific and industrial research and development;

(iii) is for the time being approved by the prescribed authority[2] at any time after the 31st day of March, 2000 but before the 1st day of April, [3][2007];

(iv) fulfils such other conditions as may be prescribed[4].]

[5][(9) The amount of deduction to an undertaking shall be hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following, namely:-

(i) is located in North-Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997;

(ii) is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997;

(iii) is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 5a[but not later than the 31st day of March, 2012].

The following clauses (iv) and (v) shall be inserted after clause (iii) of sub-section (9) of section 80-IB by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010:

(iv) is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (hereafter referred to as "NELP-VIII") under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begins commercial production of natural gas on or after the 1st day of April, 2009;

(v) is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April, 2009.

Explanation.-For the purposes of claiming deduction under this subsection, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95- ONG.DO.VL, dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking".]

[6][(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, [6a][2008] by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,-

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,-

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.-For the purposes of this clause,-

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; [6b][and]

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.]

The following clauses (e) and (f) shall be inserted after clause (d) of sub-section (10) of section 80-IB by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010:

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:-

*(i) the individual or the spouse or the minor children of such individual,*

*(ii) the Hindu undivided family in which such individual is the karta,*

*(iii)any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.*

[6c]*[Explanation.-For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).]*

(11) Notwithstanding anything contained in clause (iii) of sub-section (2) and sub-sections (3), (4) and (5), the amount of deduction in a case of industrial undertaking deriving profit from the business of setting up and operating a cold chain facility for agricultural produce, 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 the operation of such facility in a manner that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) and subject to fulfilment of the condition that it begins to operate such facility on or after the 1st day of April, 1999 but before the 7[1st day of April, 2004].

[8][(11A) The amount of deduction in a case of [9][an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or [9a][meat and meat products or poultry or marine or dairy products or] from] the integrated business of handling, storage and transportation of foodgrains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001.]

The following proviso shall be inserted after sub-section (11A) of section 80-IB by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010 :

Provided *that the provisions of this section shall not apply to an undertaking engaged in the business of processing, preservation and packaging of meat or meat products or poultry or marine or dairy products if it begins to operate such business before the 1st day of April, 2009.*

[10]*[(11B) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if-*

*(i) such hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008;*

*(ii) the hospital has at least one hundred beds for patients;*

*(iii) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and*

*(iv) the assessee furnishes along with the return of income, the report of audit in such form and containing such particulars as may be prescribed[11], and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.*

*Explanation.-For the purposes of this sub-section, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.]*

*[12][(11C) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital located anywhere in India, other than the excluded area, shall be hundred per cent of the profits and gains derived from such business for a period of five consecutive assessment years, beginning with the initial assessment year, if-*

*(i) the hospital is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;*

*(ii) the hospital has at least one hundred beds for patients;*

*(iii) the construction of the hospital is in accordance with the regulations or bye-laws of the local authority; and*

*(iv) the assessee furnishes along with the return of income, a report of audit in such form and containing such particulars, as may be prescribed[12a], and duly signed and verified by an accountant, as defined in the Explanation to sub-section (2) of section 288, certifying that the deduction has been correctly claimed.*

*Explanation.-For the purposes of this sub-section-*

*(a) a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the local authority concerned;*

*(b) "initial assessment year" means the assessment year relevant to the previous year in which the business of the hospital starts functioning;*

*(c) "excluded area" shall mean an area comprising-*

*(i) Greater Mumbai urban agglomeration;*

*(ii) Delhi urban agglomeration;*

*(iii)Kolkata urban agglomeration;*

*(iv) Chennai urban agglomeration;*

*(v) Hyderabad urban agglomeration;*

*(vi) Bangalore urban agglomeration;*

*(vii) Ahmedabad urban agglomeration;*

*(viii) District of Faridabad;*

*(ix) District of Gurgaon;*

*(x) District of Gautam Budh Nagar;*

*(xi) District of Ghaziabad;*

*(xii) District of Gandhinagar; and*

*(xiii) City of Secunderabad;*

*(d) the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.]*

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger-

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

(13) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section[13].

(14) For the purposes of this section,-

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

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

[16][17[](ab)] “convention centre” means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed[18];]

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

(c) “initial assessment year”-

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

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

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

[19][(iv) in the case of an undertaking engaged [20][in the business of processing, preservation and packaging of fruits or vegetables or] in the integrated business of handling, storage and transportation of foodgrains, means the assessment year relevant to the previous year in which the undertaking begins such business;]

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

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

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

(d) “North-Eastern Region” means the region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

[23][(da) “multiplex theatre” means a building of a prescribed area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed[24];]

(e) “place of pilgrimage” means a place where any temple, mosque, gurdwara, church or other place of public worship of renown throughout any State or States is situated;

(f) “rural area” means any area other than-

(i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the preceding census of which relevant figures have been published before the first day of the previous year; or

(ii) an area within such distance not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the stage of development of such area including the extent of, and scope for, urbanisation of such area and other relevant considerations specify in this behalf by notification in the Official Gazette[25];

(g) “small-scale industrial undertaking” means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B[26] of the Industries (Development and Regulation) Act, 1951 (65 of 1951).]

If the aforesaid provision of the Act is analysed, it speaks about deduction in respect of profit and gains from certain industrial undertaking other than infrastructure development undertaking. Sub-Section (i) of Section 80-IB speaks about gross total income (including any profit and gains) “derived from” such eligible business in accordance with and subject to provisions of this Section. Sub-Section (ii) speaks about fulfilment of all the conditions enumerated therein to such industrial undertaking. Sub-Section (iii) speaks about the percentage of deduction of such industrial undertaking and the profit and gains derived from such industrial undertaking for the specified period. If the language used in Section 80-IB is kept in juxtaposition with the facts of the present appeal and the source of income then it can be said that so far as recovery of excess cash is concerned, it was explained by the assessee that this cash was generated out of industrial undertaking of the assessee. So far as interest income is concerned, it was also not explained as to be generated from industrial undertaking. Even otherwise, interest income cannot be claimed to be from industrial undertaking. So far as income from weighbridge is concerned, the claim of the assessee is that the weighbridge is part and partial of such industrial undertaking. We are not agreeing with this submission of the assessee because the assessee has shown separate receipts from weighing business and the same cannot be part of industrial undertaking. If for argument sake, the plea of the assessee is considered to be correct then there was no necessity to charge from weighment if it is for the business of the assessee. However, the assessee has charged separately from weighment (from weighbridge), therefore, it cannot be treated to be income generated from ginning business of the assessee because the income should be “derived from” the ginning business of assessee/industrial undertaking. Even otherwise, it can be said that the income which has been “derived from” the business of ginning and pressing of cotton can only be considered for deduction u/s 80- IB of the Act and the income which has been either acquired out of income from undisclosed sources are from different business cannot be allowed to be claimed as deduction u/s 80-IB of the Act. The onus is clearly on the assessee to

explain that the impugned income was actually “derived from” the industrial undertaking.

4. Now, let us examine the issue with the help of judicial pronouncements, some of which were relied upon by the assessee. So far as the decision from Hon'ble Jurisdictional High Court in the case of Paras Oil Extraction Ltd. (supra) is concerned, it goes against the assessee because in that case, it was clearly held that the activities not incidental to activities of industrial undertaking of the assessee and the income therefrom are not allowable deduction u/s 80-I of the Act. The Hon'ble High Court further clearly held that the income from weighment charges and interest receipt, included in miscellaneous receipts are also not entitled to deduction. In the case of National Legguard Works (supra), the dispute before the Hon'ble P & H High Court was for special deduction u/s 80HHC but clearly held that the amount surrendered during survey, the burden is on the assessee to prove that it represented export profit and since the burden was not discharged, it was clearly held that the assessee is not entitled to special deduction. In the case of Advance Detergent Ltd. (supra), the assessee discharged his onus by proving that the interest received from late payments/overdue payments from the customers is to be considered as profit and gains derived from industrial undertaking for claiming deduction u/s 80-IA of the Act. However, in the present appeal, no such nexus has been proved by the assessee, therefore, this judicial pronouncement from Hon'ble Delhi High Court may not help the assessee. The Hon’ble Apex Court in the case of Liberty India (supra), the assessee was engaged in infrastructure development clearly held that for computing profit from the receipts from DEPB/duty drawback, these profits do not form part of net profit as such receipts do not form part of eligible industrial undertaking for the purpose of deduction u/s 80-I, 80- IA, and 80-IB of the Act. This judicial pronouncement from Hon’ble Apex Court rather supports the Revenue. So far as the decision from Hon'ble Bombay High Court in the case of Jagdish Prasad M. Joshi (supra) is concerned, we find that Hon'ble High Court affirmed the finding of the Tribunal in respect of Section 80-IA. In the case of Eltek SGS P. Ltd. (supra), the Hon'ble Court was considering for special deduction u/s 80-IB and difference of language used between Sections 80-HH & 80-IB.

5. We are aware that in the taxing statute, granting incentives for promoting and development, should be construed liberally but at the same time, no violence is permitted to the language used by the Legislature unless and until it results into absurdity and goes against the intention of the Legislature. The word “derived from” cannot have a wide import so as to include any income which is not generated from the eligible business and is not directly connected with such eligible business of the assessee. Our view is supported by the decisions from *CIT vs. Cochin Refineries Ltd. (135 ITR 278) (Ker), CIT vs. Cement Distributors Ltd. (208 ITR 355) (Del)*. Admittedly, ginning of cotton is a process of manufacturing, therefore, the income “derived from” such eligible business has to be allowed as deduction u/s 80-IB of the Act but the nexus of income has to be explained by the assessee. For example, Section 80-IB should not be stretched to the limit where the income “derived from” industrial undertaking, if reinvested by the assessee in a non-industrial undertaking purpose, therefore, such income from non-industrial undertaking cannot be treated as income “derived from an industrial undertaking” merely because original nucleus funds, which were reinvested, yielded interest. The income should be directly generated from/derived from the eligible business of industrial undertaking. Admittedly, the assessee is in the business of ginning and pressing of cotton and not in the business of banking and financing, therefore, the interest income, if any, received from lending of funds has to be assessed as income from other sources.

Section 57 of the Act clearly specifies the availability of deduction for working out income from other sources. Sub-Section (iii) of Section 57 specifies about incurring expenditure for earning the income and its allowability. If the assessee borrows the funds for the purpose of business hence interest paid thereon cannot be allowed or adjusted against interest income. The Hon'ble Apex Court in the case of *Pandian Chemicals Ltd. vs. CIT (262 ITR 278)* on the issue of special deduction wherein deposits were made with electricity board for supply of electricity and on the interest from such deposits clearly held that it is not "derived from" the business of undertaking. Identical ratio was laid down in *Cambay Electric Supply Industrial Co. Ltd. vs. CIT (113 ITR 84) (SC)* and *CIT vs. Alpine Solvex Ltd. (276 ITR 92) (MP)*. The Hon'ble Jurisdictional High Court while coming to a particular conclusion followed the decisions pronounced in *Sterling Foods vs. CIT (150 ITR 292) (Kar)* and own decision in *Paras Oil Extraction Ltd. (230 ITR 266)*. The Hon'ble Court also followed following decisions:

*1. Cochin Co. vs. CIT (1978) 114 ITR 822 (Ker);*

*2. Hindustan Lever Ltd. vs. CIT (1980) 121 ITR 951 (Bom);*

*3. North East Gases P. Ltd. vs. CIT (1996) 220 ITR 372 (Gauhati);*

*4. Orissa Tyres Ltd. vs. CIT (1991) 188 ITR 342 (Ori);*

*5. CIT vs. Bihar Alloy Steels Ltd. (1994) 206 ITR 350 (Pat);*

*6. Godavari Sugar Mills Ltd. (No.2) vs. CIT (1991) 191 ITR 359 (Bom); and*

*7. Cochin Refineries Ltd. (1985) 154 ITR 345 (Ker).*

The Hon'ble Apex Court in the case of Liberty India (supra) deliberated upon the meaning of "derived from". Sub-Section (v) of Section 80-IB clearly speaks about notwithstanding anything contained in any other provisions of this Act, the profit and gains of an "eligible business" to which the provisions of Sub-Section (i) applies, for the purposes of determining the quantum of deduction then the source of the eligible business has to be considered. The Hon'ble Apex Court in Liberty India (supra) while coming to a particular conclusion affirmed the following decisions:

*1. Liberty India vs. CIT (2007) 293 ITR 520 (P & H);*

*2. CIT vs. Lakhwinder Singh (2009) 317 ITR 209 (P & H);*

*3. CIT vs. Ritesh Industries Ltd. (2005) 274 ITR 324 (Del); and*

*4. Shakti Footwear vs. CIT (No.2) (2009) 317 ITR 199 (Mad).*

The Hon'ble Apex Court while arriving at to a particular conclusion also considered following judicial pronouncements:

*1. CIT vs. Kirloskar Oil Engines Ltd. (1986) 157 ITR 762 (Bom);*

*2. CIT vs. India Gelatine & Chemicals Ltd. (2005) 275 ITR 284 (Guj);*

*3. CIT vs. Lakhwinder Singh (2009) 317 ITR 209 (P & H);*

*4. CIT vs. Ritesh Industries Ltd. (2005) 274 ITR 324 (Del);*

*5. CIT vs. Sterling Foods (1999) 237 ITR 579 (SC);*

*6. Liberty India vs. CIT (2007) 293 ITR 520 (P & H);*

*7. Pandian Chemicals Ltd. vs. CIT (2003) 262 ITR 278 (SC); and*

*8. Shakti Footwear vs. CIT (No.2) (2009) 317 ITR 199 (Mad).*

In view of the above, it can be said that majority of the decisions, relied upon by the Ld. Counsel for assessee, along with others have duly been considered by the Hon'ble Apex Court and ultimately, reached to a particular conclusion. If the judicial pronouncements discussed hereinabove are kept in juxtaposition with the facts of the present appeal, one clear fact is oozing out that no evidence was either found during survey or explained by the assessee which could establish that the surrendered income was earned from industrial undertaking. There is a uncontroverted finding in the impugned order that no purchase bills, sale bills, ginning charges bills, pressing charges bills were found during survey operation which remained to be recorded in regular course of business of industrial undertaking, therefore, there is no basis for claiming the surrendered income to be generated from/derived from the industrial undertaking. There is further finding that no entry tax, sales-tax, other taxes were found paid by the assessee on such unrecorded transactions, therefore, the onus is clearly on the assessee to substantiate its claim which has not been discharged. The alternate plea raised through ground no.3 is also is without any basis, consequently, this ground is also dismissed. In view of these facts and judicial pronouncements, we find no infirmity in the stand of the ld. CIT (A). The same is affirmed.

Finally, the appeal of the assessee is dismissed.

(Order pronounced in the open Court on 25.9.2011.)