IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1139 OF 2021

Gateway Terminals India Pvt. Ltd. .. Appellant

Versus

Deputy Commissioner of Income-tax,
Raigad .. Respondent

WITH

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4963 OF 2021

Gateway Terminals India Pvt. Ltd. .. Petitioner

Versus

Income Tax Appellate Tribunal,
Mumbai & Ors. .. Respondents

P. F. Kaka, Senior Adv. a/w Adv. Manish Kanth i/b. Adv. Atul K. Jasani for the Appellant/Petitioner.

Adv. Akhileshwar Sharma for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON : JULY 1 , 2025

PRONOUNCED ON : AUGUST 26, 2025

JUDGEMENT (per Firdosh P. Pooniwalla, J.)

1. The Appellant/ Petitioner is a Joint Venture Company of APM Terminals Mauritius Limited and Container Corporation of India Limited (a Government undertaking).The Appellant/Petitioner will hereinafter in this order be referred to as the Appellant.

2. The Appellant has filed the present Appeal challenging the Order dated 28th May, 2020 passed by the Income Tax Appellate Tribunal (hereafter referred to as the " the ITAT") Bench – "G" Mumbai in ITA No. 300/Mum/2018 for the Assessment Year (A. Y.) 2012-13, wherein the ITAT has *inter alia* rejected the claim of the Appellant for deduction of interest under Section 80IA of the Income Tax Act, 1961 (herein after referred to as " the IT Act").

3. The Appellant filed a Miscellaneous Application against the said Order dated 28th May, 2020, submitting that the Order contained grave errors of both facts and law. By an Order dated 27th April, 2021, the ITAT dismissed the said Miscellaneous Application. The Appellant

has filed the present Writ Petition challenging the said Orders dated 28th May, 2020 and 27th April, 2021.

4. We will first consider the Appeal filed by the Appellant.

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5. The Appellant, during the previous year relevant to A.Y. 2012-13, was engaged in its only business of operating and maintaining a container terminal at Jawaharlal Nehru Port Trust (JNPT), which was eligible for deduction under the provisions of Section 80IA of the IT Act.

6. During the previous year relevant to A.Y. 2012-13, interest income arose out of the said eligible business of the Appellant. It is the case of the Appellant that interest was earned out of money accrued from the eligible business of the Appellant and the same was also utilized for the purpose of its eligible business. The interest was earned from fixed deposits maintained with banks for the purpose of the business and related to the business of the Appellant. Interest was also

earned on refund of taxes due to wrongful deduction of TDS by the customers of the Appellant.

7. The twin business reasons for parking the funds in fixed deposits with the bank were :-

a) under the License Agreement dated 10th August, 2004 (hereinafter referred to as "the said License Agreement") with JNPT, the Appellant was under an obligation to replace cranes after a certain period. These cranes are a significant portion of the machinery and equipment of the Appellant. The failure to replace the cranes as per the said License Agreement would result in a revocation of the license by JNPT. Therefore, a portion of the funds were periodically deposited/kept aside by way of fixed deposits to meet the contractual obligations required to be fulfilled in order to continue the Appellant's business of operating and maintaining the container terminal.

b) The interest also arose due to parking of funds in compliance of this Court's Order dated 2nd July, 2012, arising out of a tariff dispute between the Appellant and the Tariff Authority for Major Ports (TAMP). The Tariff collected by the Appellant

from its customers was in dispute and the same was made subject to final orders of this Court.

8. The Appellant filed its Return of Income for the A.Y. 2012-13 claiming deduction under Section 80IA of the IT Act of its business income, which included the interest income as mentioned above.

9. During the course of the assessment proceedings, by an Assessment Order dated 29th February, 2016, the Assessing Officer (hereinafter referred to as "AO") accepted the Petitioner's claim for deduction under the provisions of Section 80IA of the IT Act, which also included the interest earned on fixed deposits as being a part of the business income. The interest income arising out of income tax refund was taxed by the AO under the head "Income from other Sources".

10. Against the said Assessment Order dated 29th February, 2016, the Appellant preferred an Appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "CIT (A)"].

11. CIT (A), in the course of hearing of the Appeal filed by the Appellant, issued an "Enhancement Notice", under Section 251(2) of the IT Act, proposing to disallow deduction under Section 80IA of the IT Act for various amounts *interalia* including interest earned on fixed deposits, which was accepted as being part of business income and accordingly allowed as deduction by the AO. The Appellant responded to the said Enhancement Notice vide its various submissions. The CIT(A), by an Order dated 31st October, 2017, rejected the Appellant's submissions qua eligibility of interest earned on fixed deposits under Section 80IA of the IT Act as not being derived from an industrial undertaking. The CIT (A) was of the view that the interest income derived from the bank against parking of surplus funds cannot be considered to be derived from the activity of the industrial undertaking merely by reason of the fact that the activity may be resulting in earning the said income in an indirect, incidental or remote manner.

12. Aggrieved by the CIT(A) Order dated 31st October, 2017, the Appellant preferred an Appeal before the ITAT.

13. By an Order dated 28th May, 2020, the ITAT rejected the contentions of the Appellant.

14. The Appellant thereafter filed a Miscellaneous Application against the Order dated 28th May, 2020 passed by the ITAT. In the Miscellaneous Application, the Appellant submitted that the Order passed by the ITAT contained grave errors both in fact and in law.

15. The Appellant also filed an Appeal, being the present Appeal, before this Court, against the said Order dated 28th May, 2020 of the ITAT.

16. The Miscellaneous Application of the Appellant was rejected by the ITAT by an Order dated 27th April, 2021. The Appellant filed the present Writ Petition challenging the said Order dated 27th April, 2021 passed in the said Miscellaneous Application.

17. Mr. Porus Kaka, the learned Senior Counsel appearing on behalf of the Appellant, submitted that the Appellant had entered into the said License Agreement with JNPT to develop and construct a

container terminal at JNPT on a Build Operate Transfer (BOT) basis. The Appellant had accordingly developed and constructed a container terminal on a BOT basis. Under the said License Agreement, the Appellant has a license to operate and maintain the said terminal for a period of 30 years. As a mandatory condition for operating and maintaining the port, Clauses 8.34 to 8.36 of the said License Agreement required the Appellant to replace the equipment at a certain time and to plan for such replacement of equipment well ahead of such due date for replacement.

18. Mr. Kaka submitted that, prior to signing the said License Agreement for JNPT, while the bidding process was underway, the Appellant had confirmed to JNPT, by a letter dated 19th February, 2004, that it would replace the equipment within a stipulated time as per Clause 3.85 of RFP, Volume -III. This undertaking was in addition to the said Clauses 8.34, 8.35 and 8.36 of the said License Agreement.

19. Mr. Kaka submitted that, in accordance with its obligation under the said License Agreement, the Appellant began the process of

planning for the replacement of the equipment well ahead of the due date by setting aside money in fixed deposits for the said purpose.

20. Mr. Kaka further submitted that, in addition, the Tariff Authority for Major Ports (TAMP), by its order dated 19th January, 2012, had significantly reduced the tariff charged by the Appellant. The same was challenged by the Appellant in this Court by filing Writ Petition (L) No. 1410 of 2012. This Court, by its Order dated 2nd July, 2012, granted ad-interim relief to the Appellant allowing it to charge and collect tariff at the rates prevailing prior to reduction of tariff by TAMP. However, the Appellant was directed to keep an account of every such transaction. Further, collection of any tariff amount over and above the new tariff prescribed was made subject to further orders of this Court.

21. Mr. Kaka submitted that the financials of the Appellant for A.Y 2012-13 clearly reflect the above position. Mr. Kaka submitted that the Appellant had an obligation to replace cranes costing approximately Rs. 531 crores and had also received differential tariff, under the order of this Court, aggregating to approximately Rs. 29 crores. The

Appellant, in order to comply with its obligation for maintaining and operating the port and accounting for differential tariff, kept money in fixed deposits aggregating to approximately Rs. 169 Crores. Upon this interest was earned amounting to Rs. 8,67,66,538/-, upon which deduction under Section 80IA was claimed.

22. In addition, Mr. Kaka also referred to the financials of the Appellant for the years ending 31st March, 2023 and 31st March, 2024 to show the redemption of fixed deposits by the Appellant for actual purchase of cranes under its obligation under the said License Agreement. The said financials showed that fixed deposits amounting to Rs. 280 crores 51 lakhs (approx.) and Rs. 16 crores 70 lakhs (approx.) were redeemed during these financial years and cranes worth Rs. 562 crores (approx.) were simultaneously purchased.

23. Mr. Kaka further submitted that it is undisputed that planning for replacement and actual replacement of cranes was a part of the mandatory obligation of the Appellant for developing, operating and maintaining the infrastructure facility i.e. the port.

24. Mr. Kaka submitted that this is also accepted by CBDT who has vide its Order dated 21st April, 2006 granted an approval under Section 10 (23G). While granting such approval CBDT had approved the business of the Appellant as an eligible business under clause (d) of the Explanation to sub-section (4) (i) of Section 80IA of the IT Act.

25. Mr. Kaka submitted that Section 80IA applies to two categories of assessees, i.e, one who has profit and gain derived by an industrial undertaking or an enterprise from a business referred to in sub-section(4) of 80IA of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility. Mr. Kaka submitted that the term “enterprise” in Section 80IA (1), read with the business referred to in Section 80IA (4), is much wider in construct and meaning. It covers all income having nexus or which is a part of the eligible business of developing, operating and maintaining any infrastructure facility.

26. Mr. Kaka submitted that the fixed deposits resulting into interest were maintained by the Appellant under its obligation to replace cranes under Clauses 8.35 and 8.36, read with Appendix 15, of

the said License Agreement. He further submitted that a portion of the fixed deposits was also maintained due to the tariff dispute in respect of which this Court had granted ad-interim relief to the Appellant with an obligation to keep aside the differential amount until the dispute finally gets settled/ adjudicated. Mr. Kaka submitted that both the aforesaid reasons are directly and inextricably linked to the eligible business defined under Section 80IA of the IT Act.

27. In support of his submissions, Mr. Kaka relied upon the following judgements:-

(a) *CIT v/s. Karnataka State Co-operative Apex Bank. (2001) 251 ITR 194 (SC);*

(b) *CIT v/s. Bangalore District Co-operative Central Bank Ltd. (1998) 233 ITR 282 (SC);*

(c) *CIT v/s. Shree Rama Multi Tech Ltd. (2018) 403 ITR 426 (SC);*

(d) *Arul Mariammal Textiles Ltd. v/s. Assistant CIT (2018) 97 Taxmann.com 298 (Madhya Pradesh);*

(e) *CIT v/s. Lok Holdings (2009) 308 ITR 356 (Bom)*

(f) *CIT v/s. Indo Swiss Jewels Ltd. (2006) 284 ITR 389 (Bom);*

(g) *ITO v/s. Hiranandani Builders (2017) 83 Taxmann.com 65 (ITAT- Mum);*

(h) *PCIT v/s. Hiranandani Builders (Income Tax Appeal No.1413 of 2016);*

(i) *CIT v/s. JagdishPrasad M. Joshi (2009) 318 ITR 420 (Bom)*

(j) *TEMA Exchangers Manufactures Pvt. Ltd., v/s. ACIT (Income Tax Appeal No. 415 of 2004-Bom)*

28. Further, Mr. Kaka submitted that, in the following judgements, the Courts have allowed interest and similar receipts to be included for working out the exemption under Sections 80IA, 80I, 88C etc. as long as there is nexus to the business;-

(a) *CIT v/s. Meghalaya Steels LTD. [2016] 383 ITR 217 (SC);*

(b) *CIT v/s. Nagpur Engineering Co. Ltd., [2000] 245 ITR 806 ;*

(c) CIT v/s. Symantec Software India Pvt. Ltd., (ITXA No. 1534 of 2012);

(d) PCIT v/s. Dishman Pharmaceuticals and Chemicals Ltd. [2019] 417 ITR 373;

(e) ACG Associated Capsules Pvt. Ltd., v/s. CIT [2012] 343 ITR 89 (SC);

(f) Topman Exports v/s. CIT [2012] 342 ITR 49 (SC).

29. In addition, Mr. Kaka also referred to the following judgements:-

(a) CIT v/s. Paramount Premises Pvt. Ltd., [1991] 190 ITR 259 (Bom);

(b) Odisha Power Generation Co-operation Ltd., v/s. ACIT [2023] 456 ITR 495 (Orissa);

(c) CIT v/s. Reliance Energy Ltd.,[2022] 441 ITR 346 (SC).

30. With respect to interest on TDS refund, Mr. Kaka submitted that tax at source was wrongly deducted by vendors/customers from the payment made for using the port facility and, therefore, the tax deducted was directly a part of the sales receipts of the Appellant. Therefore, the interest for the delay in payment of sales prices has to be from the eligible business. He submitted that the decision of this Court in *Hiranandani Builders* ***(supra)*** is directly on the issue of deductibility of interest on income tax refund under Section 80IA of the IT Act. In this regard, he further placed reliance on the judgement of the Hon'ble Supreme Court in ***CIT v/s. Govinda Choudhury & Sons [1993] 2003 ITR 881 (SC)*** and the decision of this Court in ***CIT v/s. Bhansali Engineering Polymers Ltd., [2008] 306 ITR 194 (Bom).***

31. In conclusion, Mr. Kaka submitted that it is undisputed that the interest income has arisen directly out of the obligation of developing, operating and maintaining the port facility and/or of wrongful withholding by vendors from the payments made for using the port facility. He submitted that, hence, the same squarely falls within Section 80IA of the IT Act and deduction in respect thereof ought to be allowed.

32. On the other hand, Mr. Akhileshwar Sharma, the learned Advocate for the Respondents, supported the Order dated 28th May, 2020 passed by the ITAT. Mr. Sharma submitted that the mandate of the IT Act was to allow deduction of profit from any business (eligible business). However, the Appellant was seeking to read the same as profit by an undertaking or an enterprise. Mr. Sharma submitted that the expression profit from business does not refer to the profit of the assessee but the profit derived from specified business activity.

33. Mr. Sharma further submitted that the mandate of the IT Act is to promote creation of infrastructure assets. The legislature has decided to forgo the tax on profit generated in the process of creation of infrastructure assets. Mr. Sharma submitted that the assessee is free to deploy its funds in any manner it decides, but the same is immaterial for the purpose of deduction under Section 80IA. The profit so deployed may generate further profit, i.e., the fruits of profit. However, the entire profit made by the assessee in a year is not allowed for deduction but only that part of the profit which is generated in the process of creation of eligible infrastructure assets is deductible.

34. Mr. Sharma further submitted that, in Section 80IA of the IT Act, the expression "*derived by*" an undertaking or an enterprise is limited/ qualified by the expression "*from any eligible business*". He submitted that this limitation on profit for deduction under Section 80IA of the I.T. Act from an eligible business applied to all assessees whether they were an undertaking or an enterprise.

35. Mr. Sharma further submitted that whether interest income is income from other sources or is business income derived from an eligible business is primarily a question of fact for which the ITAT is the final authority and therefore no question of law arises in the present case.

36. In support of his submissions Mr. Sharma relied upon the following judgements :

a) Liberty India Vs. CIT [2009] (183) Taxmann.com 349(SC)

b) Shah Originals Vs. CIT [2023] 156 Taxmann. com 695 (SC)

c) CIT Vs. Sterling Foods [1999] 104 Taxmann.com 204 (SC)

d) CIT Vs. Swani Spices Mills Pvt. Ltd. (2011) 12 Taxmann.com 432 (BOM)

e) Asian Cement Industries Vs. ITAT (2012) 28 Taxmann.com 290 (J & K)

f) CIT Vs. Common Effluent Treatment Plant (Thane, Belapur) Association (2010) 192 Taxmann.com 238 (BOM).

37. Mr. Sharma also sought to distinguish various judgements relied upon by Mr. Kaka. We will deal with the same while dealing with the judgements relied upon by Mr. Kaka.

ANALYSIS AND CONCLUSIONS

38. By an Order dated 27th March 2023, this Court admitted the present Appeal on the following substantial questions of law :

"i) Whether, on the facts and in the circumstances of the case, and in Law, the Tribunal was right in denying the deduction under section 801A of the Act on business income in the nature of interest from fixed deposits with the bank?

(ii) Whether, on the facts and in the circumstances of the case, and in law, the Tribunal was right in denying the deduction under Section 801A of the Act on interest on TDS refund?"

39. Before we consider the rival arguments of the parties, it would be appropriate to refer to the relevant provisions of Section 80IA :

"[(1) 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 percent of the profits and gains derived from such business for ten consecutive assessment years.]

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(4) This section applies to-

(i) any enterprise carrying on the business [of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining] any infrastructure facility which fulfils all the following conditions, namely:-

(a) it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;]

[(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;]

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:"

... ...

"[Explanation.- For the purposes of this clause, infrastructure facility" means-

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea];]"

40. In our view, the issues that arise for our consideration are as follows :-

a) Whether the Appellant is entitled to deduction under Section 80IA of the IT Act on interest from fixed deposits which were placed by the Appellant :

i) for planning for replacement of equipment as per the provisions of the said License Agreement.

ii) due to the tariff dispute in respect of which this Court granted ad-interim relief to the Appellant with an obligation to keep aside the differential tariff amount until the dispute finally get settled/ adjudicated.

b) Whether the Appellant is entitled to deduction under Section 80IA of the IT Act on the interest received by it on TDS refunded to it.

41. To consider and decide these issues it would be appropriate to refer to the case law on the subject referred to by the parties. We will first refer to some of the relevant judgements relied upon by the Appellant.

42.1 *In CIT Vs. Karnataka State Co-operative Bank* ***(supra)*** the question before the Hon'ble Supreme Court was as to whether, on the

facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the interest income arising from the investment made out of the reserve fund is exempt under Section 80P (2) (a) (i) of the IT Act.

42.2 The Hon'ble Supreme Court held as under :

> *".....it is not disputed, that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business....."*
>
> *(emphasis supplied)*

42.3 Hence, the Hon'ble Supreme Court held that, if placement of funds is imperative for the purposes of carrying on the business, the interest income derived therefrom would be income from the assessee's business and entitled to deduction under Section 80P (2) (a) (i) of the I.T. Act.

42.4 Mr. Sharma sought to distinguish this judgement on the ground that, in this case, the assessee was a bank engaged in carrying on the business in banking. The issue was with reference to Section 80P (2) (a) (i) of the IT Act where the deduction was allowed from the whole of the amount profits and gains of business attributable to any one or more of such activities.

42.5 In our view, the distinction sought to be made by Mr. Sharma is not relevant. The Hon'ble Supreme Court has not arrived at its conclusion on the basis of the word "attributable" found in Section 80P of the IT Act but on the basis that the placement of funds was imperative for the purpose of carrying on the banking business. Hence, we are not able to accept the distinction sought to be made by Mr. Sharma.

43.1 *In CIT Vs. Shree Rama Multi Tech Ltd.* ***(supra)*** the point for consideration before the Hon'ble Supreme Court was whether interest accrued on account of deposit of share application money is taxable income.

43.2 The Hon'ble Supreme Court held as under :

".....The common rationale that is followed in all these judgments is that if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the prime purpose of doing the act in question which resulted into accrual of some additional income then the income is not liable to be assessed and is eligible to be claimed as deduction. Putting the above rationale in terms of the present case, if the share application money that is received is deposited in the bank in the light of the statutory mandatory requirement then the accrued interest is not liable to be taxed and is eligible for deduction against the public issue expenses. The issue of share relates to capital structure of the company and hence expenses incurred in connection with the issue of shares are to be capitalized because the purpose of such deposit is not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit is merely incidental. In the present case, the respondent was statutorily required to keep the share application money in the bank till the allotment of shares was complete. In that sense, we are of the view that the High Court was right in holding that the interest accrued to such deposit of money in the bank is liable to be set off against the public issue expenses that the company has incurred as the interest earned was inextricably linked with requirement of the company to raise share capital and was thus adjustable towards the expenditure involved for the share issue"

(*emphasis supplied)*

43.3 Hence, the Hon'ble Supreme Court held that if there is any surplus money which is lying idle, and it has been deposited in the bank for the purpose of earning interest, then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the primary purpose of doing the act in question which resulted into accrual of some additional income, then the income is not liable to be taxed and is eligible to be claimed as a deduction.

44.1 In *Arul Mariammal Textiles Ltd* ***(supra),*** the issue before the Madras High Court was whether total interest income on the monies kept with the bank by way of margin money for taking foreign Letter of Credit by the assessee to the tune of Rs. 74,34,478 is eligible to be claimed as a deduction under Section 80IA of the IT Act.

44.2 Relying on the judgement of the Hon'ble Supreme Court in *Shree Rama Multi Tech* ***(supra),*** the Madras High Court held as under

> *"....25. In the instant case, the requirement of the Assessee to furnish the fixed deposit was a pre-condition to enable the Assessee to open a foreign Letter of Credit for the purpose of import of critical components for the manufacture of wind mill. This incidentally had earned some interest. As pointed out by the Hon'ble Supreme Court in Shree Rama Multi Tech Ltd., it is not*

the Assessee's surplus money, which was deposited by way of fixed deposit, which had earned interest, on the contrary, it was a pre-condition for the purchaser/Assessee to enable him to import the critical component for the purpose of manufacturing, Furthermore, it is not the case of the Revenue that the amount was deposited in fixed deposit solely for the purpose of earning interest nor it is the case of the Revenue that the amount, which was deposited in fixed deposit was a surplus money, which was lying idle in the hands of the Assessee. Therefore, whatever income accrued is merely incidental and not the prime purpose of doing the act in question, which resulted into accural of some additional income and therefore, the said income is not liable to be assessed and is eligible to be claimed as deduction. ....."

44.3 Mr. Sharma sought to distinguish the said judgement on the ground that paragraph 25 thereof makes it clear that the facts of the said case were different from the facts of the present case. The said case was in respect of interest earned on margin money kept with the bank for taking a Letter of Credit. Mr. Sharma submitted that the Court in paragraph 25 noted that the furnishing of the fixed deposit was a pre-condition to enable the assesee to open a foreign Letter of Credit. Mr. Sharma submitted that, in the present case, there is no such pre condition for the Appellant to place fixed deposits.

44.4 We are unable to agree with the distinction sought to be drawn by Mr. Sharma. In our view, the facts of the said case are applicable to the present case. In the said case, the fixed deposit was a pre-condition to enable the assessee to open a foreign letter of credit. In the same way, in the present case, the Appellant had to place fixed deposits for planning for replacement of equipment as per the provisions of the said License Agreement and also due to the tariff dispute in respect of which this Court had granted ad-interim relief to the Appellant to collect the existing tariff with an obligation to account for the differential tariff amount and subject to further orders of this Court. Hence, in our view, the said judgement clearly applies to the facts of the present case.

45.1 *In Indo Swiss Jewels Ltd* ***(supra)*** the question of law before this Court was:-

> *"Whether the findings of the Income-tax Appellate Tribunal that the interest income received by the assessee is in the nature of business income and deduction under sections 80HH and 80-I are available to the assessee is justifiable in law?"*

45.2 This Court held as under :

> *"…...From the facts and circumstances of the present case it is clear that the inter-corporate deposits were made by the assessee from the surplus funds that were set apart for the payment of imported machinery. That the said deposits were withdrawn and payment was made towards import of the machinery is also not questioned by the Revenue. The interest earned on the short-term deposits of the money kept apart for the purpose of business has to be treated as income earned on business and cannot be treated as income from other sources.*
>
> *We, accordingly, answer the question in favour of the assessee and against the Revenue….."*

45.3 Hence, in this case, this Court held that interest earned on short term deposits of money kept apart for the purpose of business has to be treated as income earned from the eligible business and could not be treated as income from other sources.

45.4 Mr. Sharma sought to distinguish the said judgement on the ground that the facts in that case were different. Mr Sharma submitted that the order for import was already placed by the assessee and the assessee was waiting for delivery of imported machinery for which funds were kept apart. Mr. Sharma also submitted that the said

judgement was also distinguishable as it contained no discussion on the expression "derived from".

45.5 We are not able to accept the distinction sought to be made by Mr. Sharma. The facts in the said case and in the present case are not different as, in both cases, money was kept apart for the purposes of business, and actually utilised for the purpose of business. Although the said judgement contains no discussion on the words "derived from", the facts of the said judgement are very similar to the facts of the present case and hence the ratio of the said judgement applies to the present case.

46.1 In *ITO Vs. Hiranandani Builders* ***(supra)*** the ITAT, after considering the decision of the Hon'ble Supreme Court in *Liberty India* ***(supra)*** (which we have considered later in this judgement), held (i) that interest on TDS refund received by the assessee would be entitled to deduction under Section 80IA (ii) that interest received on fixed deposits kept with banks out of the lease deposit amounts received from its lessees by the assessee would be entitled to deduction under Section 80IA.

46.2 Paragraphs 11, 12 and 14 of the said judgement are relevant and are set out here below :

> *"11. The first receipt disputed by the revenue relates interest received from the Income tax department on the refund received by it. We have earlier noticed that the income derived by the assessee from the operation of IT Parks and SEZ is the lease income received from the occupants of the premises. However, the assessee could not receive the gross lease income from the lessees, since the lessees are required to deduct tax at source (TDS) from the lease rent as per the provisions of Income tax Act. Hence, the non-receipt of the TDS portion of the lease rent is beyond the control of the assessee. However, the Income tax department was constrained to refund a portion of TDS, since the income of the assessee is deductible u/s 801A of the Act. On the amount so refunded, the Income tax department has paid interest, as per the provisions of the Act. Under these set of facts, it was contended by the assessee that the refund of TDS amount is akin to delayed payment of lease rent along with interest and hence the interest amount shall partake the character of lease rent as per the decision of Hon'ble Supreme Court in the case of Govinda Choudhury & Sons (supra). The assessee has also submitted that the lessees would not have deducted TDS. if no-deduction certificate had been issued by the AO in time, in which case, the question of granting refund along with the interest would not have arisen. In that scenario, the assessee would have been in a position to use the TDS portion of the lease rent for business purposes, including for repaying the loans taken for construction of IT parks and SEZ. Accordingly, in the alternative, it was*

submitted by the assessee that the interest on TDS refund should be netted off against the interest payment, in which case also, the interest on TDS would get deduction u/s 801A automatically.

12. Thus, we notice that the TDS deduction from lease rental income was beyond the control of the assessee and also due to the delay in getting no- deduction certificate from the AO. In view of the same, the assessee was deprived of funds to the extent of TDS amount, which would have otherwise used for the purpose of business purposes including repayment of loan taken for construction of IT parks and SEZ The Income tax department was required to pay interest only due to the delay in granting refund of TDS. In the case of Liberty India (supra), relied upon by the AO, the assessee therein received DEPB credits as per the scheme framed by the Government of India. Hence the Hon'ble Supreme Court held that the primary source of the DEPB receipt is the scheme framed by the Government. However, in the instant case, TDS deduction is integral part connected with the receipt of lease income and the same cannot be separted from the activity carried on by the assessee. Since the lease income is the primary source of the assessee and since the TDS has been deducted from the said primary source and since the assessee was deprived of a portion of lease rent for a temporary period for the reasons beyond the control of the assessee, there is some merit in the contention of the assessee that the interest on TDS refund should be equated with the interest on delayed payment of business receipts. In our view, the assessee has got strong case in the alternative contentions that interest received by it on the TDS refund should be netted off against the interest expenditure for the purpose of computing the profits and gains derived from the

undertaking, in which case, the interest income need not be assessed separately and it would automatically get deduction u/s 801A of the Act due to netting off. In view of the above, we uphold the decision taken by the Ld CIT(A) on this issue.

14. The next receipt relates to the interest received on FDR. The assessee had received lease deposits from the lessees, which is required to be returned to them upon vacating the premises. Since the possibility of vacating the premises in the middle is always there, in which event the lease deposits are required to be refunded, the assessee was not in a position to use the entire lease deposits for business purposes including for repayment of loans taken by it. Hence, as a prudent business policy, the assessee was constrained to keep part of the lease deposits into the Fixed deposits maintained with banks. The said fixed deposits have earned interest income. Thus, we notice that the assessee was required to keep part of lease deposits amounts in fixed deposits out of business compulsion. Since the lease rental income is the primary source of the assessee, in our view, the keeping of fixed deposits shall form integral part of the business of operation of IT parks and SEZ. We also find merit in the alternative argument of the assessee that the interest income should be netted off against the interest expenditure, since the assessee was constrained to keep part of lease deposits into fixed deposits in view of the peculiar nature of activities of the assessee instead of using the same for business purposes including repayment of loan. In view of the above, we do not find any infirmity in the decision taken by the Ld CIT(A) on this issue."

46.3 Hence, the ITAT held that TDS deduction is an integral part connected with the receipt of lease income (which is the primary source of income of the assessee) and the same cannot be separated from the activity carried on by the assessee. The ITAT also held that assessee was required to keep a part of the lease deposits amounts in fixed deposits out of compulsion and therefore was entitled to deduction under Section 80IA of the IT Act in respect of said interest.

47.1 In *PCIT Vs. Hiranandani Builders* ***(supra)*** this Court agreed with the view of the ITAT and dismissed the Appeal filed by the revenue.

47.2 Mr. Sharma sought to distinguish the said judgement in *Hiranandani Builders* by submitting that the findings of the ITAT are essentially factual and based upon the appreciation of the business activities of the assesee and that the same was rendered in view of the peculiar nature of the activities of the assessee. Mr. Sharma further submitted that in the Appeal, this Court did not lay down any law but merely confirmed the findings of fact of the ITAT.

47.3 We are unable to accept the said distinction sought to be drawn by Mr. Sharma. As stated hereinabove, in the said case, the ITAT clearly held that TDS deduction is an integral part connected with the lease income of the assessee and the same cannot be separated from the activity carried on by the assessee. The ITAT also held that the assessee was required to keep a part of the lease deposit amount in fixed deposits out of business compulsion and therefore was entitled to deduction under Section 80IA in respect of the said interest.

47.4 Whilst dismissing the Appeal of the Revenue, this Court held that it was broadly in agreement with the view of the ITAT and therefore put its imprimatur on the said decision of the ITAT. Hence, the distinction sought to be drawn by Mr. Sharma is not of any substance.

48.1 In *CIT Vs. Meghalaya Steels Ltd.* ***(supra)*** the issue before the Hon'ble Supreme Court was whether the money received by the assessee as transport subsidy, interest subsidy and power subsidy qualified for deduction under Section 80IB (4) of the IT Act.

48.2 The Hon'ble Supreme Court held as under :

"The judgment in Sterling Foods lays down a very important test in order to determine whether profits and gains are derived from business or an industrial undertaking. This court has stated that there should be a direct nexus between such profits and gains and the industrial undertaking or business. Such nexus cannot be only incidental. It therefore found, on the facts before it, that by reason of an export promotion scheme, an assessee was entitled to import entitlements which it could thereafter sell. Obviously, the sale consideration therefrom could not be said to be directly from profits and gains by the industrial undertaking but only attributable to such industrial undertaking inasmuch as such import entitlements did not relate to manufacture or sale of the products of the undertaking, but related only to an event which was post manufacture namely, export. On an application of the aforesaid test to the facts of the present case, it can be said that as all the four subsidies in the present case are revenue receipts which are reimbursed to the assessee for elements of cost relating to manufacture or sale of their products, there can certainly be said to be a direct nexus between profits and gains of the industrial undertaking or business, and reimbursement of such subsidies. However, Shri Radhakrishnan stressed the fact that the immediate source of the subsidies was the fact that the Government gave them and that, therefore, the immediate source not being from the business of the assessee, the element of directness is missing. We are afraid we cannot agree. What is to be seen for the applicability of sections 80-IB and 80-IC is whether the profits and gains are derived from the business.

So long as profits and gains emanate directly from the business itself, the fact that the immediate source of the subsidies is the Government would make no difference, as it cannot be disputed that the said subsidies are only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products……"

48.3 Hence, the Hon'ble Supreme Court held that there should be a direct nexus between the profit and gains and the industrial undertaking or business and that such nexus cannot be only incidental.

49.1 In *CIT Vs. Govind Choudhury & Sons* ***(supra)***, the Hon'ble Supreme Court held as follows :

"6. This brings us to a consideration of the second question. The sum of Rs. 2,77,692 was received by the assessee as interest on the amounts which were determined to be payable by the assessee in respect of certain contracts executed by the assessee and in regard to the payments under which there was a dispute between the two parties. The assessee is a contractor. Its business is to enter into contracts. In the course of the execution of these contracts, it has also to face disputes with the State Government and it has also to reckon with delay in payment of amounts that are due to it, if the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on

by it. It would not be correct to say, as the Tribunal has held, that this interest is totally de hors the contract business carried on by the assessee. It is well-settled that interest can be assessed under the head `Income from other sources' only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to it de hors the business which is carried on by it. In our view, the interest payable to it certainly partakes of the same character as the receipts for the payment of which it was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the award and treated as 'income from other sources'. The second question is, therefore, answered in favour of the assessee and against the revenue."

49.2 Hence the Court held that if amounts are not paid to the contractor at the proper time, and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contractors. It is obviously contributable and incidental to the business carried on by the contractor.

49.3 Mr. Sharma sought to distinguish the said judgement on the ground that, in the said judgement, the issue was whether interest, in

the facts of the case, was business income or not. Mr. Sharma further submitted that the interest was earned not by any act of the assessee but it was under an arbitration and the interest was awarded due to delayed payment by the State Government. Mr. Sharma submitted that, hence, the said judgement is distinguishable on facts.

49.4 We are unable to agree with the said distinction sought to be drawn by Mr. Sharma. The fact that the interest was awarded by an arbitration award due to delayed payment by the State Government, does not in any way detract from the ratio of the said judgement that interest paid due to delayed payment is only an accretion of income from business and is therefore attributable and incidental to that business.

50. The principles derived from the aforesaid judgements relied upon by Mr. Kaka can be summarized as follows:

a) If placement of funds is imperative for the purpose of carrying on business, the interest income derived therefrom would be income from the assessee's business and is entitled to the deduction.

b) If the placement of deposits in the bank is not for parking surplus funds which are lying idle but for some other purpose connected with the business, then the interest therefrom is eligible for the deduction.

c) Interest earned on short term deposits of money kept apart for the purposes of the business is to be treated as income earned from the business and cannot be treated as income from other sources.

d) If the assessee is required to keep amounts in fixed deposits due to business compulsions, it would be entitled to the deductions under Section 80IA of the IT Act in respect of the said interest.

e) There should be a direct nexus between the profits and gains and the business in order to be entitled to the deduction.

f) Interest on TDS refund received by the assessee would be entitled to the deduction as TDS deduction is an integral part connected with the receipt of business income by the assessee and the same cannot be separated from the business of the assessee.

g) If amounts are not paid to the contractor at the proper time, and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts and is clearly derived from the business carried on by the contractor.

51. Having set down the principles derived from the aforesaid judgements, first we will consider the issue as to whether the Appellant is entitled to the deductions under Section 80IA of the IT Act on interest from fixed deposits which were placed by the Appellant:-

(i) for planning for replacement of equipment as per the provisions of the said License Agreement;

(ii) due to the tariff dispute in respect of which this Court granted ad-interim relief to the Appellant with an obligation to keep aside the differential tariff amount until the dispute finally gets settled/adjudicated.

52. It is not in dispute that the business carried on by the Appellant is an "eligible business" under sub-section (4) of Section 80IA. Therefore, the only question that arises is whether the said

interest earned by the Appellant is profits and gains derived by the enterprise of the Appellant from such eligible business.

53. In this regard it has to be appreciated that the Appellant had entered into the said License Agreement with Jawaharlal Nehru Port Trust (JNPT) to develop and construct a container terminal at JNPT on Build Operate Transfer (BOT) basis. The Appellant had accordingly developed and constructed the container terminal on BOT basis. Under the said License Agreement, the Appellant had a license to operate and maintain the terminal for a period of 30 years. As a mandatory condition for operating and maintaining the port, the said License Agreement [in the clauses set out below], required the Appellant to replace the equipment at a certain time and to plan for such replacement of equipment well ahead of such due date for replacement.

> *"8.34 The Licensee shall, at all times during the Licence Period, at its own risks, costs, charges and expenses, perform and pay for maintenance repairs, renewals and replacements in the Licensed Premises and/or the Project or any parts thereof, whether due to use and operations or due to deterioration of materials, so that on the expiry or Termination of this Licence, the same shall, except, normal wear and tear, be in as good condition as at the commencement of the Licence.*

8.35 The Licensee agrees and undertakes to replace the major container handling equipments by new container handling equipments having specifications not inferior to those of the equipments being replaced and as per the following provisions:

(i) Replacement of Rail Mounted Quay Crane latest by the 17th Year from the date of existence of this asset;
(ii) Replacement of Rail Mounted Yard Gantry Crane latest by the 17th Year from the date of existence of this asset;
(iii) Replacement of Rubber Tyred Yard Gantry Crane latest by the 12th Year from the date of existence of this asset;

8.36 For the purpose of replacement of equipments under this Agreement, the date of existence of the replacement assets shall be as per Appendix 15. The Licensee agrees to plan for replacement of the equipments well ahead of the due date of replacement of the equipments as per the provisions of this Article 8.35 & 8.34. Equipments so replaced as indicated at Article 8.35 above shall be certified by Independent Engineer to ensure that they are in conformity with the provisions of Appendix 7. For this purpose, a new Independent Engineer shall be appointed by the Licensee duly approved by the Licensor in accordance with provisions of ARTICLE 6- Any remuneration to such Independent Engineer shall be borne by the Licensor."

(emphasis supplied)

54. Prior to signing the said License Agreement, whilst the bidding process was underway, the Appellant had also confirmed to JNPT, by a letter dated 19th February, 2004, that "we confirm that we

will replace equipments within the stipulated time as per clause 8.35 of RFP, Volume III". This undertaking was in addition to the aforementioned Clauses 8.34, 8.35 and 8.36 of the said License Agreement and was also made a part of the said License Agreement as Appendix 15.

55. In accordance with its obligations under the said License Agreement, the Appellant began the process of planning for replacement of the equipment well ahead of the due date by setting aside money in fixed deposits.

56. In addition, the Tariff Authority for Major Ports (TAMP), by its Order dated 19th January, 2012, had significantly reduced the tariff charged by the Appellant. The same was challenged by the Appellant in this Court. This Court, by an Order dated 2nd July, 2012, granted ad-interim relief to charge and collect tariff at the rates prevailing prior to reduction of the tariff. However, the Appellants were directed to keep account of every such transaction, and the collection of tariff amount over and above the new tariff prescribed, was made subject to further orders of this Court.

57. The financials of the Appellant for AY 2012-13 clearly reflect the aforesaid. The Appellant had an obligation to replace cranes costing approximately Rs. 531 crores and also had received differential tariff under the ad-interim order of this Court aggregating to Rs. 29 Crores. The Appellant, in order to comply with its obligations for maintaining and operating the port and accounting for differential tariffs, kept money in fixed deposits aggregating to approximately Rs. 169 Crores. Upon this, interest was earned amounting to Rs. 8,67,66,538/-, and on which deduction under Section 80IA of the IT Act was claimed.

58. In addition, the Appellant also referred to financials for the years ending 31st March, 2023 and 31st March, 2024 to show the redemption of fixed deposits by the Appellant for actual purchase of cranes by the Appellant under the said License Agreement. The financials for the aforesaid years show that fixed deposits amounting to Rs. 280 Crores and 51 Lakhs (approximately) and Rs. 16 Crores and 70 lakhs (approximately) were redeemed during these financial years and cranes worth Rs. 562 Crores were simultaneously purchased.

59. In our view, the aforesaid facts clearly show that:

a) the placement of fixed deposits was imperative for the purpose of carrying on the eligible business of the Appellant

b) the placement of fixed deposits is not for parking surplus funds which are lying idle. This is also demonstrated by the fact that the Appellant had used these fixed deposits for purchasing cranes for the eligible business.

c) there is a direct nexus between the fixed deposits and the eligible business of the Appellant.

60. In these circumstances, in our view, the Appellant is entitled to the deduction [under Section 80IA of the Act] on the interest earned from fixed deposits which were placed by the Appellant for planning of replacement of equipments as per the provisions of the said License Agreement and due to the tariff dispute.

61. The second issue that arises for our consideration is whether the Appellant is entitled to the deduction under Section 80IA of the IT Act on the interest received by it on TDS refunded to it.

62. With respect to interest on TDS refund, the TDS was wrongly deducted by the vendors/customers of the Appellant from the payment made to the Appellant for using the port facility and, therefore, the TDS wrongly deducted was directly a part of the sales receipt of the Appellant from the eligible business. The TDS refund arose to the Appellant due to the excess TDS cut by the customers against payment to be made to the Appellant and therefore the TDS was a part of the business receipt of the Appellant. Had the customers not deducted excess amount of TDS, the Appellant would have received the surplus funds which would be used for the business purpose/ repayment of loans etc.

63. The aforesaid facts shows that the TDS refund received by the Appellant is an integral part connected with the receipt of business income by the Appellant and the same cannot be separated from the business of the Appellant. In these circumstances, in our view, the Appellant is entitled to deduction under Section 80IA of IT Act, on the interest received by it on TDS refunded to it.

64. Having arrived at the aforesaid conclusions, it would be necessary for us to deal with the judgements relied upon by Mr. Sharma for the Revenue.

65.1 The first judgement relied upon by Mr. Sharma for the Revenue is *Liberty India* ***(supra).*** In this judgement the Hon'ble Supreme Court held

a) Section 80IB 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.

b) Sections 80I, 80IA and 80IB of the IT Act have a common scheme, and if so read, it is clear that the said sections provide for incentives in the form of deductions which are linked to profits and not to investment.

c) Analyzing the concept of remission of duty drawback and DEPB (Duty Entitlement Passbook Scheme), the Hon'ble Supreme Court was satisfied that remission of duty is on

account of the statutory/ policy provisions of the Customs Act/ Scheme (s) framed by the Government of India. In these circumstances, the Hon'ble Supreme Court has that the profits derived by way of such incentives do not fall within the expression "profits derived from industrial undertaking" in Section 80IB.

65.2 In our view, the judgement in *Liberty India* ***(supra),*** is distinguishable on facts. In *Liberty India* ***(supra)***, the Hon'ble Supreme Court held that the words "derived from" intended to cover sources of first degree i.e. profit and gains derived directly from the business. On this basis, the Hon'ble Supreme Court held that, analyzing the concept of remission of duty drawback and DEPB (Duty Entitlement Passbook Scheme), it was satisfied that the remission of duty was on account of Statutory/Policy provisions of the Customs Act/ Scheme (s) framed by the Government of India, and therefore, held that the profits derived by way of such incentives did not fall within the expression "profits derived from industrial undertaking" in Section 80IB.

65.3 In the present case, the interest sought as the deduction is derived directly from the eligible business of the Appellant as held by us hereinabove. As held by the Hon'ble Supreme Court in *Meghalaya Steels* ***(supra),*** there is a direct nexus between the interest and the business of the Appellant. Therefore, the facts of the present case are clearly distinguishable from the facts in the case of *Liberty India.*

65.4 Further, in *Hiranandani Builders* ***(supra),*** the ITAT, after considering the decision of the Hon'ble Supreme Court in *Liberty India* ***(supra)***, held that interest on TDS refund received by the assessee would be entitled to the deduction under Section 80IA of the IT Act, and that interest received on fixed deposits kept with banks out of the lease deposit amounts received by the assessee from its lessees would be entitled to the deduction under Section 80IA. In ***PCIT Vs. Hiranandani Builders,*** this Court agreed with the view of the ITAT and dismissed the Appeal filed by the Revenue.

65.5 In *Meghalaya Steels* ***(supra)***, the Hon'ble Supreme Court held as under in respect of *Liberty India* ***(supra).***

> *"..20* ***Liberty India*** *being the fourth judgment in this line also does not help the Revenue. What this court was concerned with was an export incentive, which is very far removed from reimbursement of an element of cost. A Duty Entitlement Pass Book Drawback Scheme is not related to the business of an industrial undertaking for manufacturing or selling its products. Duty entitlement pass book entitlement arises only when the undertaking goes on to export the said product, that is after it manufactures or produces the same. Pithily put, if there is no export, there is no duty entitlement pass book entitlement, and therefore its relation to manufacture of a product and or sale within India is not proximate or direct but is one step removed. Also, the object behind the duty entitlement pass book entitlement, as has been held by this court, is to neutralise the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself. .."*

65.6 The aforesaid also clearly shows that the facts in *Liberty India* ***(supra)*** are distinguishable from the facts in the present case

66.1 The next judgement relied upon by the Revenue is *Shah Originals* ***(supra).*** In that case the question that fell for consideration of the Hon'ble Supreme Court was whether the gain on foreign exchange

fluctuation in the EEFC account of the assessee partakes the character of profits of the business of the assessee from exports and can the gain be included in the computation of deduction under profits of the business of the assessee under Section 80HHC of the IT Act.

66.2 The Hon'ble Supreme Court has held as follows :

"12. In interpreting Section 80 HHC, the expression "derived from" has a deciding position with the other expression viz "from the export of such goods or merchandise". While appreciating the deduction claimed as profits of a business, the test is whether the income/profit is derived from the export of such good/ merchandise.

12.1 Let us read the very relevant words in Section 80 HHC of the Act, namely, "derived by the assessee from the export of such goods or merchandise", in the background of interpretation given to the said expression by this Court. The Section enables deduction to the extent of profits derived by the assessee from the export of such goods and merchandise and none else.

12.2 The policy behind the deductions of profits from the business of exports is to encourage and incentivise export trade. Through Section 80HHC, the Parliament restricted the deduction of profit from the assessee's export of goods/merchandise. The interpretation now suggested by the

assessee would add one more source to the sources stated in Section 80 HHC of the Act. Such a course is impermissible. The strict interpretation is in line with a few relative words, namely, manufacturer, exporter, purchaser of goods, etc. adverted to in Section 80 HHC of the Act. From the requirements of sub-sections (2) and (3) of Section 80 HHC, it can be held that the deduction is intended and restricted only to profits of the business of export of goods and merchandise outside India by the assessee. Therefore, including other income as an eligible deduction would be counter-productive to the scope, purpose, and object of Section 80 HHC of the Act.

13. In Topman Exports (supra), a converse case is available, where a receipt, pursuant to or in terms of a statutory provision, is treated as income derived from the export business. The instant case is not proved or stated as falling within a statutory requirement/benefit. At foremost, by applying the meaning of the words "derived from", as held in the catena of cases, we are of the view that profits earned by the assessee due to price fluctuation, in the facts and circumstances of this case, cannot be included or treated as derived from the business of export income of the assessee. The assessee can be correct that the computation shall be as per Sections 28 to 44 of the Act if the receipt or income is from an export business. As the controversy between the assessee and the Revenue is whether the profit earned on the foreign exchange falls under business income or income from other sources, the interpretation of clause (baa) in Section 80 HHC is not attracted to the case on hand. Hence,

for the above reasons, we hold that the gain from foreign exchange fluctuations from the EEFC account does not fall within the meaning of "derived from" the export of garments by the assessee. The profit from exchange fluctuation is independent of export earnings, and the impugned judgment correctly answers the point."

66.3 This judgement is also distinguishable on facts. In the said judgement, the Hon'ble Supreme Court held that the profits earned by the assessee due to foreign exchange price fluctuation cannot be said to be derived from the business of export of the assessee under Section 80HHC.

66.4 In the present case, as held by us above, the interest earned by the Appellant is directly related to the business of the Appellant and therefore is deductible.

67.1 Mr. Sharma then relied upon the judgement of the Hon'ble Supreme Court in *Sterling Foods* ***(supra).*** In the said case, the assessee-firm was engaged in processing prawns and other sea food, which it exported during AYs 1975-76 and 1976-77. It also earned some import

entitlements granted by the Central Government under an Export Promotion Scheme. The assessee was entitled to use the import entitlement itself or sell the same to others. The assessee sold the import entitlements that it had earned to others. Its total income for the aforementioned assessment years included the sale proceeds for such import entitlements and it claimed relief under Section 80HH of the IT Act in respect of sale proceeds of the import entitlements.

67.2 Section 80HH provides that if the gross total income of an assessee includes any profit and gains derived from an industrial undertaking, the assessee is entitled to be allowed, in the computation of his total income, a deduction from the profit and gains derived from the industrial undertaking of an amount equal to 20% thereof.

67.3 On these facts, the Hon'ble Supreme Court held as follows :

> *"12. We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessee. The source of the import entitlements can,in the circumstances, only be said to be the Export Promotion Scheme of the Central Government where under the export entitlements become available. There must be, for the application of the words 'derived from` direct nexus between profits and gains and the*

industrial undertaking. In the instant case the nexus is not direct but only incidental. The industrial undertaking exports processed sea food. By the reason of such export, the Export Promotion Scheme applies. There under, the assessee is entitled to import entitlements, which it can sell.The sale consideration there from cannot, in our view, be held to constitute a profit and gain derived from the assessees' industrial undertaking."

67.4 This judgement is also distinguishable on facts. The Hon'ble Supreme Court held that the sale consideration of the import entitlements that the assessee was entitled to under the Export Promotion Scheme did not have a direct nexus with the industrial undertaking of the assessee and therefore could not be said to be derived from the industrial undertaking.

67.5 In the present case, as held by us above, the interest earned by the Appellant is directly related to the business of the Appellant, and therefore, is deductible. In these circumstances, the judgement in *Sterling* ***(supra),*** also does not help the case of the Revenue.

68.1 Mr. Sharma then relied upon the judgement of this Court in *Swani Spice Mills Pvt. Ltd.* ***(supra).*** The issue which fell for

determination in this case was whether the interest that was received by the assessee towards discounting local sale bills and on inter-corporate deposits constituted income which would fall under the head "profits and gains of business or profession" or whether it would constitute income from other sources.

68.2 This Court held that where an assessee invests its surplus funds in order to earn interest and to obviate its funds lying idle, such income would not fall for classification as business income. This Court further held as follows :

> *" On the explanation of the assessee, which has been extracted in extenso in paragraph 6 of the order passed by the Assessing Officer, it is impossible for this court to come to the conclusion that the interest which has been received by the assessee bears a direct and proximate relationship with the export activity. Evidently, the explanation of the assessee is sufficient to indicate that the funds which are utilized for discounting local sale bills of private parties are those which are surplus to the business. These surplus funds of the assessee are utilized for discounting bills on which the assessee received discounting charges. The same would hold true insofar as intercorporate deposits are concerned. Income received by way of discounting charges and interest on intercorporate deposits would not fall under the head of profits and gains of business or profession but would fall under the head of income from other sources. Having no direct*

and proximate nexus with the export activity such income has to be wholly kept out of the reckoning for computing the deduction under section 80HHC."

68.3 This case is also distinguishable on facts. In this case, this Court held that the assessee had used its surplus funds for discounting bills and for placing intercorporate deposits. Therefore, the income received by way of discounting charges and interest on corporate deposits would not fall under the head of profit and gains of business or profession, but would fall under the head of income from other sources. This court further held that such income had no direct and approximate nexus with the export activity of the assessee and had to be wholly kept out of the reckoning to compute the deduction under Section 80HHC of the IT Act.

68.4 On the other hand, in the present case, the interest earned by the Appellant was not from parking its surplus funds which were lying idle, but out of funds invested for the purpose of the business of the Appellant and on refund of TDS and therefore was deductible under Section 80IA. This clearly shows that the present case is different on facts from the case in *Swani Spice Mills* ***(surpa).***

69.1 Mr. Sharma then relied upon the judgement of the J & K High Court in *Asian Cement Industries* ***(supra).*** The issue that arose for consideration in this case was, whether on the facts and circumstances of the case, the assessee is entitled to deduction under Section 80IB of the IT Act on interest earned by it on fixed deposits kept as guarantee with the Electricity Department and the bank for securing bank limits.

69.2 The Court held as under :

> *"24.A bare look at section 80-IB(4) would reveal that reference made to 'profits and gains derived from such industrial undertakings' and not to 'profit and gains derived from any business of the industrial undertaking. A conjoint reading of Section 80-IB(1) and 80-IB(4) would reveal that the expression 'profits and gains derived from any business' is to be read as 'profits and gains derived from the industrial undertaking' and the scope and ambit of Section 80-IB(1) is not in any manner wider than that of 80-IB(4). A holistic view of Section 80. IB would reveal that what is intended by the Haw Makers to qualify for deduction is 'profits and gains derived from the industrial undertaking'. "There is, therefore, no reason to bring within the fold of 'profits and gains derived from industrial undertakings' any income beyond the activities of the industrial undertakings on the ground that the words 'any business' finds expression in 80-IB(1)."*

69.3 This judgement, apart from not being binding on us, proceeds on the basis that profits and gains should be derived from the industrial undertaking and not from the business of the industrial undertaking.

69.4 On the other hand, in the present case, we have considered whether the profits and gains are derived by an enterprise from any business referred to in sub section (4) of Section 80IA (eligible business). On considering the same, it is very clear that the interest earned by the Appellant is directly related to the business of the Appellant and therefore is deductible under Section 80IA.

70. The next decision relied upon by Mr. Sharma was the decision of this Court in *Common Effluent Treatment Plant* ***(supra).*** This decision is not applicable to the facts of the present case as, in this case, the assessee was an Association incorporated under Section 25 of the Companies Act, 1956 and the issue before this Court was whether the Tribunal was justified in holding that interest on bank deposits,

other deposits and income tax refunds is not chargeable to tax on the principal of mutuality.

71. For the aforesaid reasons, in our view, the judgements relied upon by Mr. Sharma for the Revenue do not take the case of the Revenue any further.

72. In the impugned order dated 28th May, 2020, in respect of issues arising for consideration before us, the ITAT held as under

> *"8. We are of the considered opinion that interest on Income Tax arises to The assessee as per the statutory provisions of Income Tax. The law mandate provision of interest to the assessee for deprivation of use of money due to excess payment of tax. This interest accrues to the assessee as per statutory mandate only and it accrues to every assessee under certain conditions irrespective of manner of earning of the income. The source of the interest was necessarily to be traced to the fact that the assessee was deprived of use of money due to excess payment of taxes and the same would bear no nexus with the business activities being called out by the assessee. The argument that lower TDS would have mean lower interest expenditure is misplaced. The deduction of interest is allowed to the assessee as per the mandate of Sec. 36(1)(iii) only. The TDS is also deducted as per statutory mandate only and the same is applicable to each type of assessee under certain*

conditions. Therefore, the said argument, in our opinion, would not materially alter the basic fact that the interest on Income Tax refund would bear no nexus with the eligible activities being carried out by the assessee. Going by the ratio of Liberty India ***(supra),*** *we confirm the stand of Ld. CIT(A) in the impugned order. This ground stand dismissed.*

9. Similar analogy would apply to interest on fixed deposits since the accrual / source of interest would be traced to investment made by the assessee with the Banks in the shape of FDRs notwithstanding the motive which led to make those investments. The assessee's only source of income may be the earnings from eligible business but the accrual of interest could not be said to have any nexus with the eligible business rather the same would be traced to investments made by the assessee with the Bank. The words derived from would not cover sources of income beyond first degree. Therefore, the action of Ld. CIT(A) in bringing to tax the same, is upheld. Consequently, ground No. II stands dismissed."

73. In our view, for all the reasons stated hereinabove by us, these conclusions and findings of the ITAT are erroneous and are required to be set aside.

74. For all the aforesaid reasons, we hereby pass the following Order in this Appeal :

A) The Appeal is hereby allowed and the impugned Order dated 28th May, 2020 of the ITAT is partly set aside.

B) The questions of law are answered in the negative i.e. in favour of the Appellant and against the Revenue.

C) The Revenue is directed to grant deduction under Section 80IA of the I.T. Act to the Appellant on business income in the nature of interest from fixed deposits with the bank and on interest on TDS refund for the A.Y. 2012-13.

75. In the facts and circumstances of the case, there will be no order as to costs

WRIT PETITION NO. 4963 OF 2021

76. This Writ Petition is filed challenging the impugned order dated 28th May, 2020 passed by the ITAT. This Writ Petition further challenges the Order dated 27th April, 2021 passed by the ITAT in Miscellaneous Application No. 283/MUM/2020 filed by the Appellant for rectification of the Order dated 28th May 2020 under Section 254 (2) of the IT Act.

77. Since, in the judgement passed in Income tax Appeal No.1139 of 2021, we have allowed the Appeal, partly set aside the impugned Order dated 28th May, 2020 and answered the questions of law in favour of the Appellant, this Writ Petition does not survive and therefore is disposed of as infructuous.

78. In the facts and circumstances of the case, there shall be no order as to costs.

79. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**