आयकर अपीलीय अधीकरण, न्यायपीठ – " बि" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

(समक्ष)Before श्री जी. डी. अग्रवाल, उपाध्यक्ष , श्री बी. आर. मित्तल्, न्यायीक सदस्य एवं/and श्री महावीर सिंह, न्यायीक सदस्य)

[Before Hon'ble Shri G. D. Agrawal, V.P., Hon'ble Shri B. R. Mittal, JM & Hon'ble Shri Mahavir Singh, JM]

आयकर अपील संख्या / I.T.A No. 1305Kol/2008

निर्धारण वर्ष/Assessment Year: 2005-06

Deputy Commissioner of Income-tax, C.C. XX, Kolkata	Vs	Rajesh Kr. Drolia (PAN AACHR 8294 R)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /For the Appellant: Shri D. R. Sindhal

प्रत्यर्थी की ओर से /For the Respondent: Shri Dilip Loyalka/Smt. Shreya Loyalka

आदेश/ORDER

Per Mahavir Singh, JM (महावीर सिंह, न्यायीक सदस्य)

The Hon'ble President, Income-tax Appellate Tribunal, vide order dated 08.06.2010, constituted this Special Bench under section 253(3) of the Income Tax Act,1961(hereinafter called as 'the Act') to consider and adjudicate following questions:

> *"1. Whether Ld. CIT(A) erred in law as well as in fact in allowing deduction u/s. 80-IB to the assessee on the income earned from 'job work' which comprises of repairs and maintenance?*
>
> *2. Whether Ld. CIT(A) erred in law as well as in fact in treating the income from repairing and maintenance at par with the income from manufacturing for the purpose of Sec.80-IB?"*

2. The brief facts giving rise to above questions are that assessee filed its return of income on 28.10.2005 declaring total income at Rs.1,11,320/-. Assessee is a manufacturer of moulds for ball pen and mould parts in Union Territory of Dadra and Nagar Haveli. Assessing Officer issued notices under sections 143(2) and 142(1) of the I. T. Act, 1961 (hereinafter referred to as "the Act") requiring assessee to submit books of account and other related details. In response to notices, assessee stated that it is a manufacturing unit and has claimed deduction u/s. 80-IB of the Act. It failed to produce details by stating that fire broke out in the office premises of Today's Writing Products Ltd and all records of assessee placed there were destroyed. It was stated that assessee HUF through Karta Shri Rajesh Kumar Drolia was one of the promoter/director of Today's Writing Products Ltd. No books of account were produced except few preliminary details and break up of various expenses to substantiate its claim of deduction

u/s. 80-IB of the Act. Accordingly, Assessing Officer proceeded to complete assessment u/s. 144 of the Act discussing facts that assessee HUF is engaged in manufacturing of moulds mainly supplied to main group concern namely Today's Writing Products Ltd. and M/s. Premium Writing Products. According to Assessing Officer, these two concerns are engaged in manufacturing of ball pens by using moulds supplied by assessee. The Assessing Officer noted that the assessee provided services to Today's Writing Products Ltd. and M/s. Premium Writing Products by way of repair and maintenance of moulds sold to them. The assessee charged job work charges for such repairs and services at Rs.96,01,410/- and claimed deduction u/s. 80-IB of the Act. The Assessing Officer after going through assessment records for assessment year 2003-04 noted that similar claim of deduction u/s. 80-IB of the Act was disallowed because it provided only services for repairing and maintenance of moulds which does not constitute manufacturing activity as it does not manufacture any article or thing and by this process no new article or thing comes into existence. The Assessing Officer noted that same moulds existed all along, prior or after repairs and maintenance and discussing the case law of Hon'ble Apex Court in the case of CIT Vs. Gem India Manufacturing Co. (2001) 249 ITR 307 (SC) disallowed claim of deduction u/s. 80-IB of the Act. The Assessing Officer disallowed the deduction claimed by the assessee on profits from job work charges at Rs.16,05,356/- u/s. 80-IB of the Act. Aggrieved, assessee preferred appeal before CIT(A), who allowed claim of assessee relying on Tribunal's order for assessment years 2003-04 and 2004-05 by giving following finding:

> *"3. It is seen from the perusal of the assessment order that the dispute about the nature of manufacturing process in connection with the claim of the appellant for deduction u/s. 80-IB is identical in this matter with the disputes in assessment year 03-04 and 04-05. It is further seen that they have been adjudicated upon by the Hon'ble ITAT in those assessment years in favour of the appellant. Respectfully following the order of the ITAT in the case of appellant in the assessment years, the present appeal is allowed.*

Aggrieved, revenue came in appeal before Tribunal and this appeal was referred to special bench by the order of Hon'ble President.

3. Ld. CIT-DR Sh. D. R. Sindhal argued on behalf of revenue. He stated facts that amounts of sales, job work income, total deduction claimed by assessee u/s 80-IB of the Act and deduction u/s 80-IB of the Act on job work receipts for Assessment Years 2003-04, 04-05 and 05-06 are as under:-

A.Y	Sales	*Job work Income repair and maintenance charges*	Total 80-IB claim	Amount of 80-IB claim on job work income

03-04	Rs.52,49,200/-	Rs.1,34,12,290/-	Rs.73,08,307/-	Rs.44,82,673/-
04-05	Rs.80,86,500/-	Rs.1,11,63,660/-	Rs.72,94,272/-	Rs.43,94,985/-
05-06	Rs.98,10,000/-	Rs.96,01,410/-	Rs.53,58,756/-	Rs.34,31,642/-

He argued that repair and maintenance is not an ancillary activity of the assessee and perusal of assessment order for Asstt. Yr.2003-04 reveals that assessment was framed U/s.144 of the Act, as assessee did not produce books of accounts before AO and also did not submit the details as called for by AO u/s.142(1) of the Act. He referred to relevant observations of the A.O. for Asstt. Yr. 2003-04, which are as below:-

> *"In response to Notice Shri Rajesh Singh, FCA and A/R of the assessee appeared and produced certain details. Assessee is a manufacturing unit claimed deduction u/s.8OIB. Therefore, a detail requisition was made for different particular related to manufacturing activities but Ld. A/R failed to produce such details. Above all no books of a/cs was produced before me for examination. Only a few preliminary details were produced on 07-12-2005 and thereafter, no compliances was made when 142(1) notice was served as early as in October, 2005. Therefore, I proceed to complete the assessment u/s. 144 to the best of my judgment on the basis of materials available in record."*

Ld. CIT-DR argued that once assessee did not file details and did not produce books of account, it is not possible to know exact nature of "job work charges" on which assessee claimed deduction u/s.801B of the Act. He argued that CIT(A) and Tribunal in these assessment years felt that "job work charges" in this case means manufacture or production of any article or things on behalf of others. He referred to paragraph 6 of CIT(A)'s order for assessment year 2003-04 and argued that this misinterpretation of job work is clear as under:

> *"The submissions are carefully considered. It is not disputed that the appellant used to get deduction u/s.80-IA or 80 IB in the earlier assessment years with identical facts. While it is true that the findings in the earlier assessment year, are not binding upon the tax authorities considering the matter, ordinarily the earlier findings are not unsettled if they are not arbitrary or perverse and if they are arrived at after making due enquiries. The claim of the appellant is that the decision in the assessment order u/s. 143(3) of allowing deductions u/s.8OlA/IB was arrived at after making due enquiries.*
>
> *The relevant expression in section 80-lA/80-IB is whether the profits and gains are derived from an undertaking engaged in activities listed in the relevant sections manufacturing or producing any article or thing. There is no dispute in the case that the appellant derives profit from manufacturing plastic moulds. It also cannot be disputed that plastic mould is an article or thing. The written submission on behalf of the appellant relies upon several authorities which hold that an article or thing manufactured on behalf of others on job work basis, is also manufacturing an article or thing. Although, the authorities rendered their judgments in the context of other sections, the expression interpreted by them is whether an article or thing is manufactured. Kerala High Court in the case of Forbes Ewart and Figgis Pvt. Ltd (supra) specifically considered whether manufacturing activity as job work on the raw material supplied by the other party would amount to manufacturing an article in terms of section 32A of the Act, It was held that intermediate items produced by any manufacturing activity which are used as components by another manufacturer in producing the final product for the market is also an article or thing, the portion of which would entitle the producer for relevant deductions under the law. Whether the raw material is purchased by the appellant or supplied*

by the buyer of the product is not relevant for deciding whether the appellant manufactured an article or thing out of such materials purchased by itself or received from others, If it is job work, the profits of the manufacturer would to this extent be less than the profits in the case of manufacturing on its own. Therefore, such adjustments as are required in the case of job work manufacturing, is already done by the market conditions. The only question is whether the plastic mould amounts to manufacturing of article or thing. That the raw material is received from the purchaser is an irrelevant consideration. So also the fact that the product is purchased by the supplier of raw material. Hence it is held that the appellant produces an article or thing with entitlement to deductions claimed."

He further argued that even Hon'ble Tribunal got confused and interpretation of 'job work charges" continued. He referred to relevant portion of the order of Tribunal for A.Y.03-04 which is as below:-

"The A.O held that the deduction could be available to an industrial undertaking which manufactures or produces the article or things to the extent the assessee manufactures on behalf of others, the real nature of its activity is to provide services. The assessing officer was referring to the written response from the appellant that while assessee manufactured moulds for plastic ball pens, the sister concerns manufactured ball pens and components. The assessee supplied these moulds to the sister concerns and also undertook repairs and maintenance of moulds. According to the A.O., repairs and maintenance certainly do not constitute manufacturing. The A.O. omits to consider the main activity of the assessee, namely to manufacture moulds and supply them to sister concerns. Repairs and maintenance of moulds is an ancillary and an allowed activity. Even if the assessing officer disallowed the deduction u/s.80-lB erroneously emphasizing the marginal part of the work of the assessee, namely, providing repairs and maintenance support, the question still remains whether the assessee carrying out manufacturing on behalf of others, can be said to be manufacturing an article or thing to qualify for deduction u/s.80-IB."

He argued that in this Order Tribunal heavily relied upon erroneous interpretation of "job work charges" by CIT(A) and also referred to the decision of Amritsar bench of ITAT and confirmed the order of CIT(A). Similarly, he narrated facts that Assessment order for Asstt. Yr. 2004-05 has also been passed by AO u/s.144 of the Act, as again assessee did not file required details and did not produce books of account. He stated that in this year also nature of "job work charges" remained vague, unclear and liable to be misinterpreted by CIT(A) as well as Tribunal relying upon their earlier orders for deciding appeal for Asstt. Yr. 2004-05.

4. He narrated facts from Asstt. Yr. 2005-06, that assessee took plea that there was fire in its premises and again many of details could not be furnished by the assessee. However, most importantly, during assessment proceedings of A.Y.2005-06, assessee filed cost break-up and the kind of work done in job work manufacturing which is as under:-

"Cost break-up:
Jai Durgcs Engineering Company is manufacturing Plastic Moulds & their components for writing instruments industries. Mould is heart of ballpen design & it is a creative job. A mould is not similar to another mould hence cost of each mould vary with other mould. The cost of mould depends of simplicity/ complexity of its design, size & number of cavity in each mould. The cost of I set of ballpen mould varies from

Rs.8.00 lacs to Rs.20.00 lacs depending upon above criteria's. In manufacturing of a mould the basic raw material are various kinds of Iron & Steel, Tools, Jigs & almost 80% cost is that of labour payment. This is basically a techno-labour oriented job.

Job work Manufacturing
We are doing job work for those parties to whom we sold the moulds. Job work is basically manufacturing of mould parts which are needed regularly by those parties to keep the mould in running condition & get their production. We are doing the same from last 4-5 years and we are eligible to claim deduction u/s.801B and we got the same in the previous Assessment years from the department."

Ld. CIT-DR, in view of above facts, argued that said job work is nothing but repairing and maintenance of the mould which have been sold by assessee earlier. Therefore, decisions of Tribunal for A.Y.2003-04 and A.Y.2004-05 will not cover the appeal pending for A.Y.2005-06. He stated that Tribunal in its order for Asstt. Yr. 2004-05 has relied upon decision of ITAT, Amritsar Bench in the case of Sharoff Electricals Pvt. Ltd. v ACIT (2004) 89 TTJ 761(Asr), wherein it was held that repairing of old transformers un-disputably being use of same machinery and therefore, benefit u/s.8OHH/80I of the Act could not be denied. Therefore, he stated that the decision of ITAT Amritsar Bench relied upon by assessee is distinguishable on facts in the present case as assessee is only making repairs and maintenance of moulds produced earlier by assessee. Ld. CIT-DR further distinguished case law of Hon'ble Bombay High Court in the case of CIT Vs. Buckau Wolf New India Engineering Works Ltd. (1984) 150 ITR 180 (Bom) by stating that words used in section 80-I of the Act were "attributable to" wherein Hon'ble Bombay High Court mentioned words attributable to have been deliberately used by legislature and they have wider import than the expression derived from and he stated that words used in Section 8OIB of the Act are 'derived from' which has narrow meaning. He also referred to case law of Hon'ble Kerala High Court in the case of CIT Vs. A. M. Moosa (1999) 237 ITR 867 (Ker), wherein it is held that profit must be derived from business activities related to industrial undertaking and that income by way of sale of import licence, export house premium and customs draw bock will not be entitled for deduction U/s.80J and 8OHH of the Act. He also referred to the case law of Hon'ble Kerala High Court in the case of CIT Vs. Forbes Ewart & Figgis (P) Ltd (1999) 238 ITR 762 (Ker), which contains issue of job work manufacturing and has no relevance to the facts of assessee's case. He stated that for claiming deduction U/s.801B of the Act there must be manufacture or production of a new article and there is overwhelming judicial opinion in favour of this proposition. For this, Ld. CIT-DR placed reliance on the case of law of Hon'ble Apex Court in the case of Tamil Nadu State Transport Corporation Ltd v CIT (2001) 252 ITR 883 (S.C.), wherein it is held that tyre retreading does not amount to production and production means, which brings into existence a new article. When a tyre wears out, its life may be renewed by retreading but a different and distinct commodity cannot be said to have come into existence as a result of retreading and

therefore, the business of retreading of tyres did not amount to production of a new article entitling assessee to relief U/s.80J and u/s.8OHH of the Act. According to him, this decision is squarely applicable to the case of assessee as the nature of job work in the case of this assessee is nothing but repairs and maintenance of moulds sold earlier. He stated facts that due to repairs and maintenance of old moulds, their life might be renewed and they might become useful for further use. But, the activity of repairing and maintenance brings no new article or thing, therefore, assessee is not eligible for deduction U/s.80-IB of the Act on such job charges.

5. Ld. CIT-DR further relied on the decision of Hon'ble Kerala High Court in the case of CIT v Vijaya Retreaders (2002) 253 ITR 53 (Ker), wherein it is held that there should be manufacture or production of a new article but retreading of tyres gives no new article and, therefore, it is held that assessee is not entitled for deduction U/s.80I of the Act. Further, he relied on the decision of Hon'ble Apex Court in the case of CIT v Relish Foods (1999) 237 ITR 59 (SC), wherein it is held that the condition precedent before deduction U/s.80HH of the Act is that new article must come into existence as a result of manufacture or production and has held that when raw shrimps and prawns are subjected to the process of cutting head and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps and prawns and do not become other distinct commodity and therefore, deduction U/s. 80HH of the Act is not available to the assessee. He further relied on the decision of Hon'ble Apex Court in the case of CIT v Gem India Manufacturing Co. (2001) 249 ITR 307 (SC), wherein Hon'ble Apex Court held that subjecting raw, uncut diamonds to a process of cutting and polishing, which yields the polished diamonds does not amount to manufacture or production of an article or thing as a new article or thing does not come into existence and therefore, the assessee is not eligible for deduction U/s.801 of the Act. He also relied on the decision of Liberty India v CIT reported in (2009) 317 ITR 218 (SC), wherein it is held that the words "derived from" are narrower in connotation as compared to the words "attributable to" and that by using the expression "derived from" the Parliament intended to cover sources not beyond the first degree and also that the source of receipts must be manufacture and production of an article. Ld. CIT-DR referred to words used in Section 35B of the Act as "manufacture and production". He referred to the case law of CIT v Tara Agencies (2007) 292 ITR 444 (SC), wherein Hon'ble Apex Court has held that the activity of blending of tea will not amount to manufacture or production and therefore, Hon'ble Supreme Court denied weighted deduction U/s.35B of the Act to assessee. He also referred to the decision of coordinate bench of this Tribunal, Chennai Benches in the case of DXN Herbal Manufacturing (India) Pvt. Ltd. v ITO (2009) 3l6 ITR (AT) 126 Chennai), wherein it is held that the activity of mixing of mushroom powder and

putting them into capsules is neither manufacturing nor production of article and therefore, the assessee is not entitled to deduction U/s.801B of the Act.

6. Ld. CIT-DR further stated that recently Hon'ble Delhi High Court, exactly on similar issue where after sales service, whether entitled to deduction u/s. 80HH and 80I of the Act was the subject matter in the case of Honda SIEL Power Products Ltd. v CIT (2009) 318 ITR 309 (Delhi), wherein it is held that assessee is not entitled to deductions U/s. 80 HH and 80 I of the Act on profits from sale of imported machinery and spare parts used for providing after sales service. In view of the facts of present case and case laws above relied upon, Ld. CIT-DR stated that deduction U/s.801B of the Act will be available to assessee only if a new article comes into existence as a result of manufacture or production but in the present case, assessee is doing only repairs and maintenance of old moulds which were sold by him earlier in the garb of so-called job charges. According to him, as a result of repairs and maintenance, no new articles come into existence and it is neither manufactured nor production, therefore, it is not entitled for deduction U/s.80-IB of the Act, on the so-called job charges. Accordingly, he urged before us that the order of CIT(A) be reversed and that of the AO be restored.

7. On the other hand, the Ld. Counsel for the assessee stated facts that assessee is a manufacturer of moulds for ball pen and mould parts in the Union Territory of Dadra and Nagar Haveli and these moulds are hollow design of ball pen parts which are manufactured with the help of Injection moulding machines. He stated that mould manufactured by the assessee consists of the under mentioned parts which are also manufactured by the assessee itself:

a) Punches
b) Pin Point
c) Guide Pins
d) Guide/Degree Bush
e) Hanging Pin/Link Rode
f) Ejector Bush
g) Cavities

He briefly stated process for manufacturing each of above parts for which separate processes & separate set of machines are used and narrated brief description of manufacturing of each part as below:

> *"a) Punches: For manufacturing punches H13 & H11 steel are used & it is cut to the size of the punch with the help of special cutting machines and then rough turning is done on it with the help of turning machines. Thereafter its hardening is carried out as per need i.e. vacume or Furnace hardening. The hardening should be 46-48 as per Rockwell Hardening Scale.*

Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines. Thereafter these punches are diamond polished & hard chromed which involves very high precision and technique like electroplating and carried out with the help of sophisticated machine which is a manufacturing activity in itself.

b) Pin Point: For manufacturing pin points H13 & H11 steel are used & it is cut to the size of the pin point with the help of special cutting machines and then rough turning is done on it with the help of turning machines. Thereafter it is given for furnace hardening. The hardening should be 42- 44 as per Rockwell Hardening Scale. Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines through specialized EDM drills. These pin points are now put to spark erosion with the help of sparking machines & hard chromed.

c) Guide Pins: For manufacturing of Guide pins EM36 steel are used & it is cut to the size of the guide pins with the help of special cutting machines. Then rough turning is done on it with the help of turning machines. Thereafter it is given for furnace hardening. Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines. These guide pins are lubricated with special lubricants and grooves are attached.

d) Guide/ Degree Bush: For manufacturing of Guide bush EM24 steel are used & it is cut to the size of the guide bush with the help of special cutting machines. Then rough turning is done on it with the help of turning machines. Thereafter it is given for furnace hardening and hardening should be 58 as per Rockwell Hardening Scale. Thereafter cylindrical grinding surface grinding are done with the help of cylindrical & surface grinding machines.

e) Hanging Pins/Link Rode : For manufacturing of Hanging pins nickel chrome steel are used & it is cut to the size of the hanging pins with the help of special cutting machines. Then rough turning is done on it with the help of turning machines. Thereafter it is given for vacuum hardening and hardening should be 44 as per Rockwell Hardening Scale. Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines.

f) Ejector Bush: For manufacturing of Ejector Bush H13 steel are used & it is cut to the size of the Ejector Bush with the help of special cutting machine. Then rough turning is done on it with the help of turning machines thereafter it is given for furnace hardening and hardening should be 46 as per Rockwell Hardening Scale. Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines.

g) Cavitites: For manufacturing of Cavities H13 chrome/stavessar steel are used & it is cut to the size of the Cavities with the help of special cutting machine. Then rough turning is done on it with the help of turning machines. Thereafter it is given for furnace hardening and hardening should be 46 as per Rockwell Hardening Scale. Thereafter cylindrical grinding, surface grinding are done with the help of cylindrical & surface grinding machines. In each cavities electrodes are inserted."

The Ld. Counsel for assessee stated that manufacture of above parts with its own material as well as steel supplied by customers and sale of moulds as well as supply of mould parts manufactured qualifies for deduction u/s 80-IB of the Act, whether manufactured on its own material or on job work basis. The assessee is basically a manufacturer and he referred an example of 'Voltas' an air conditioning machine manufacturer who manufactures compressor, cooling coil, body of air conditioner and other parts. He sells complete air conditioning machine as well as parts like compressor, cooling coil etc and in case air-conditioning machine develops problem and its compressor is replaced by manufacturer, the activity may be repair

for the customer but same is a sale of manufactured part for Voltas. Similarly Hewlett Packard (HP) manufactures computers and computer parts like motherboard, CPU, hard disk, screens, keyboard etc and it sells fully assembled computers as well as its parts. According to him both sales are sales of manufactured items only but in case customer gets hard disk of computer replaced, it may be repair work for the customer but it is a sale of manufactured part (hard disk) for HP. He also referred to the contrary, that if a person buys hard disk from market and replaces the same in the computer of a customer, the same may be termed as repairing activity. In view of this he argued that supplying of manufactured parts in the course of after sales service is very much manufacturing activity. He stated in reference to the Special Bench that issues framed by revenue predicates that income shown to have been earned from "job works" in fact represents assessee's income from repairs and maintenance but this premise is far from facts. He stated facts that assessee provided after sales service to its valued customers, which is essential for selling moulds. After sales service is an exclusive service to its own customers and it is not that assessee carries on the business of doing repair. He argued that even if part of job work is after sales service, that is immaterial, because after-sale service is an indispensable part of manufacturing, almost universally, undertaken by manufacturers to maintain confidence and dependence of the users and to retain market of manufactured items. The Ld. Counsel for the assessee referred to the decision of Delhi Bench of ITAT in the case of ACIT v. Woodword Governors India (P) Ltd. (2007) 15 SOT 362 (Del), wherein it is held that the activity of after sale service is manufacturing activity and observed as under:

> *'In the instant case, the assessee company was engaged in manufacture, sale and servicing of industrial application electronic controls etc. On the profit earned by the industrial undertaking, the assessee claimed deduction under s. 80-IB. As per provisions of s. 80-IB, assessee is entitled to deduction in respect of profits and gains from certain industrial undertakings as referred to in sub-s.s (3) to (11) of the Act. The deduction is computed with respect to profits and gains derived from such industrial undertaking for a certain period as specified in the Act. The profit on which the assessee is entitled to claim deduction should be arising out of manufacture or production of the article or things specified in the Act. In the instant case, the assessee company was basically engaged in, manufacturing of its products. There is no dispute with regard to the claim of deduction on the profits derived from such manufactured goods. In addition to it, the assessee company was also providing training to employees of its customers for the use of the products sold to them and* ***also providing after sales services and repairing of the products sold to its customers.*** *The activities which are related to activity of manufacture and sale of products are that of provision of training of the customers' employees for being able to use the products and after sale service and repairs.* ***The profit from these activities are indeed "derived" from industrial undertaking and formed part of manufacturing products.*** *As the assessee is engaged in the business of manufacture and sale of high precision governors and other control devices. Given the high technical precision it is incumbent upon the assessee to not only adequately train the customers' employees to be able to use such products but as and when the need arises provide after sales service and repair such products for their continued efficient use. Admittedly, all these activities are carried out by the undertaking itself and only supplement the manufacturing activity being carried out by the undertaking. Thus, the essential ingredient of nexus between the profit and the*

undertaking gets established. There is no infirmity in the order of the CIT(A) for allowing deduction under s. 80-IB even in respect of profits derived from training of customers' employees and after sales services and repairs'.

Ld. Counsel for the assessee also referred to the decision of Ahmedabad Bench of ITAT in the case of DCIT Vs. Mira Industries 87 ITD 475 (Ahd), wherein similar view is expressed

8. Ld. Counsel for the assessee further referred to the decision of Amritsar Bench of ITAT in the case of Saraf Electricals (P) Ltd (supra), wherein it is held manufacturing new items and servicing used ones needing debugging after operation for a time involving the use of same machinery required for manufacturing, in such situation, repair is no different from manufacturing. He drew support from CIT v. Tamil Nadu Treatment Testing Services (P) Ltd. 238 ITR 529(Mad), wherein it is held therein that giving heat treatment to toughen the untreated crankshafts and forgings and castings for use in automobiles is manufacturing though there occurs no physical change through operations. Ld. Counsel for assessee argued that because of preponderance of judicial view of manufacture on own account and on job work as on a parity, revenue has raised this issue that job work indeed represents after sale repair work and contests the eligibility for exemption to the extent income represents income from such repair allegedly to pass off as job work. He argued that, of late, there has been a legislative development. Now a definition of the word "manufacture" which is determinant of issues in the case has been carved out and emergence of the definition alters the scenario. He stated that until recently nowhere in Section 80 IA or 80 IB of the Act and, for that matter, in the Act, no definition of the word 'manufacture' was available. The absence of definition of the word was not by chance but by design to leave the word to its widest amplitude possible consonant with incentive nature of benefits of deduction/exemption under various sections hinging on manufacture as the central condition precedent. According to him, this proved to be prone to dispute and thus counter-productive. Ld. Counsel for the assessee referred to Export Import Policy 2002 to 2007 (hereinafter Exim policy for short), whereby manufacture is defined in Chapter DC, which is as follows:

"Manufacture" means to make, produce, fabricate, assemble, process or drawing into existence by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, polishing, blending, reconditioning, repair, refurbishing, testing calibration, reengineering. "Manufacture" for the purpose of this policy shall also include agriculture, aquaculture, animal husbandry, floriculture, pisci-culture, poultry, sericulture, viti-culture and mining.

Ld. Counsel stated that until recently, it is a fact that, this definition was in a different Act with the object of imposing restrictions on import and export activity, which was considered a constraint on its importation in the Act in the context of its incentive provisions. He argued

that this obstacle is removed by reason of the fact that this very definition has been bodily lifted into Section 2(r) of the Special Economic Zones Act 2005 with effect from 10.2.2006. According to him, selfsame definition has been incorporated in Section 10AA of the Act by reference to said section 2(r) of SEZ Act and changed its definition in Exim Policy. The definition in section 2(r) reads as under:

> *"Manufacture" means to make, produce, fabricate, assemble, process or drawing into existence by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, polishing, blending, reconditioning, repair, cutting, refurbishing, testing calibration, reengineering. "Manufacture" for the purpose of this policy shall also include agriculture, aquaculture, animal husbandry, floriculture, pisci-culture, paultry, sericulture, viti-culture and mining".*

In view of the above, Ld. Counsel for the assessee argued that one striking aspect in this connection is that it is clause (c) of schedule of the SEZ Act that has inserted Section 10AA after Section 10A of the Act and Clause (iii) of Explanation 1 below sub-section (9) of Section 10AA contains the definition of "manufacture" by reference to Section 2(r) of the SEZ Act 2005. It reads: *"manufacture" shall have the same meaning as assigned to it in clause (r) of Section 2 of the Special Economic Zones Act 2005.* Thus it is incorporation of definition of "manufacture" in the SEZ Act and in turn in Exim Policy in the Act by reference. He further stated that besides Section 10AA of the Act, the SEZ Act 2005 also inserted Section 80IAB of the Act and thus SEZ Act has the elevation as a supplemental source of legislation in the Act and the two sections cited are creatures of wedlock between the two. In the light of the above, Ld. Counsel for the assessee argued that the work relating to "repair" finds place in definition of "manufacture" as adopted for the purpose of Section 10AA of the Act and it is for the first time that a definition of the word "manufacture" is available in the Act. According to him, this brings an end to the harrowing hunt for its meaning and, therefore, as a logical extension of presence of definition in the Act, issue raised by Revenue gets settled in vindication of Tribunal's earlier orders for series of past assessment years favouring assessee's case, immaterial whether the income from job works wholly or in part represents income from repair. Ld. Counsel for the assessee also argued that logic for calling into aid the definition in section 10AA of the Act is straightforward and forthright and provisions of deduction in Section 80-IB of the Act are undisputedly meant to encourage entrepreneurs to set up manufacturing undertakings in identified backward areas. This section gives entrepreneurs reward for undergoing hardihood in venturing out in such areas and contributing towards nation's strife for even growth of the industry nationwide. So, it is essentially an incentive provision and a relief provision as well. This needs a purposive approach while giving the word "manufacture" its connotation.

9. Ld. Counsel for the assessee referred to section 10AA of the Act, which is also an incentive provision given to a manufacturer as a booster to 100% export oriented industrial activity in the Special Economic Zones and, therefore, Section 80-IB and 10AA of the Act quite justifiably be said to stand on the equation from the object of social benefit. He referred to major intersecting points in the fundamentals of the two sections are as follows:

(i) both concern industrial undertaking manufacturing goods
(ii) in identified area – identified backward areas in the case of 80-IB and special economic zones demarcated by the SEZ Act 2005 for section 10AA.

He stated that only additional angle for section 10AA of the Act is that the industrial undertaking has to be 100% export-oriented, but that does not impair the fundamental unity or equation of two provisions. According to him, section 5 of the SEZ Act sets out as guidelines for notifying Special Economic Zone of which the primary factor among other factors is generation of additional economic activity and again, under its section 6, the zones are to be demarcated as processing and non-processing areas. The processing area means area for setting up Units for activities, being the manufacture of goods, or rendering services; or (b) the area exclusively for trading or warehousing purposes; while the non-processing area are for activities other than those specified under clause (a) or clause (b). He argued that the pertinence of the provisions of SEZ Act lies in demonstrating the kindred nature of the two provisions of the Act where both have as the presiding object the spread of the activity of manufacture and generation of economic activity in the areas where the same are most desired from welfare point of view and the nation's socio-economic enrichment. They both offer incentive to win over the entrepreneurs' skepticism about prospects of industry in such areas. The exemption or deduction of profit is meant to arouse motivation for entrepreneurs to divert their industrial ventures to such areas and thus, indisputably, the objects of special favours and situations calling for same analogy. He referred to Explanation defining "manufacture", which is prefaced by words "for the purpose of this section" i. e. section 10AA of the Act, but it dispels the ambiguity, uncertainty and confusion over the word used in other sections of the Act with object similar to that of section 10AA of the Act. The equation of objects makes the definition useful as a guide for the purpose of unlocking the mind of legislature with regard to the word occurring elsewhere in the Act. For this the Ld. Counsel for the assessee relied on the decision of Hon'ble Delhi High Court in the case of DIT v. Shree Visheshwar nath Memorial Public Charitable Trust (2011) 333 ITR 248 (Del), wherein it is held that the definition of the word in some other statute can be borrowed in case the word is not defined in the Act. But he stated that in the instant case the definition of manufacture is available in the Act itself though in different section. As such there is no reason for not adopting the same. Ld. Counsel for the

assessee also referred to the decision of Kerala High Court in the case of *Tata Tea Ltd. Vs. ACIT reported in (2010) 234 CTR 90 (Ker), (2010) 189 Taxman 303 (Ker.),* wherein it has applied this definition of manufacture in section 10AA of the Act in defining manufacture for section 10B even in the absence of the definition in that Section and has held that processing of blending tea amounts to manufacture and the income therefrom is entitled to the exemption under section 10B of the Act. Originally section 10B of the Act defined manufacture to include processing, but the said definition was deleted by the Finance Act 2000. The issue was whether with the disappearance of the definition benefit of exemption for income from processing under section 10B of the Act pales out. The High Court answered in negative, holding that deletion of definition was not for restriction but for further enlargement of the meaning. He also referred to another decision of Hon'ble Kerala High Court, viz., *Girnar Industries Vs. CIT (2010) 230 CTR (Ker) 401, (2010) 187 Taxman 136*, wherein it took the view that in the absence of definition of "manufacture" in 10A of the Act, aid can be taken from its definition in Section 10AA of the Act. Ld. Counsel finally argued that since definition of "manufacture" in Section 10AA of the Act includes repair as one of the parameters of the expression "manufacture", it is only fair, reasonable and irresistible that repair should also be taken as a parameter of "manufacture" for the purpose of Section 80-IB of the Act. There is nothing in the object of Section 80-IB of the Act, which can be said to be repugnant to the object of Section 10AA of the Act. Both provisions stand on equation in regard to the basic nature of the objects, i.e., growth of industry - one, for the purpose of export development and the other for the purpose of removing the pockets of industrial backwardness of the national economy. So, they are public interest provisions and fundamentally marked by a common trait of betterment of national economy. Ld. Counsel for the assessee finally relied on settled law that a provision for deduction, exemption or relief should be interpreted liberally, reasonably and in favour of assessee and it should be so construed as to effectuate the object of legislature and not to defeat it. He relied on CIT Vs. Gwalior Rayon Silk Mfg. Co. Ltd. 196 ITR 149 (SC), Bajaj Tempo v. CIT 196 ITR 188(SC); CIT v. U. P. Cooperative Federation Ltd. 176 ITR 435(SC); Mysore Minerals v. CIT 239 ITR 775 (SC); Broach Distt. Cooperative Cotton Sales, Ginning and Pressing Society Ltd. v. CIT, Ahmedabad 177 ITR 418(SC); CIT, Madras v. South Arcot District Cooperative Marketing Society Ltd. 176 ITR 117(SC); Amritsar v. Strawboard Manufacturing Co. Ltd. 177 ITR 431(SC); CIT Bombay and Others v. Mahindra and Mahindra Ltd. and Others 144 ITR 225(SC); CBDT v. Aditya V Birla 170 ITR 137(SC); CIT, Central-I Calcutta V. Birla Bros. Pvt. Ltd. 133 ITR 373(Cal); CIT v Salem Textiles Ltd 237 ITR 662(Mad); CIT, Tamil Nadu I v Simpson and Company 122 ITR 283(Mad); J.K.Abdul Jabbar v CIT 237 ITR 389(Mad); CIT v K.S.Chandrasekaran, Sundaram Finance Ltd 216 ITR 455(Mad); CIT, Gujarat I v. Satellite Engineering Ltd. 113 ITR 208(Guj); CIT Gujarat v.

Gujarat State Warehousing Corporation 124 ITR 282(Guj); CIT v Gujarat Oil and Allied Industries 201 ITR 325(Guj); CIT v. Mahant Oil Industries Pvt. Ltd 193 ITR 620(Kar); Gokuldas Export V. CIT 200 ITR 401(Kar); CIT v. Bhageeratha Engineering Ltd. 193 ITR 674(Ker); CWT v. N. C. John 233 ITR 475(Ker); CIT v. Trinity Hospital 225 ITR 178(Raj); Jammu and Kashmir Tourism Development Corporation v. CIT 248 ITR 94(J&K).

10. The Ld. Counsel, without prejudice to above arguments and case laws, argued that if at all there are decisions which create doubt, it is a settled law that in case of doubts the construction most beneficial or favourable to assessee should be adopted even if it results in his obtaining a double advantage and if it is a case of considering respective hardships or inconveniences of revenue and assessee, the court should lean in favour of assessee. For this, he referred to decisions of CIT vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC), CIT v. Shivarudrappa 200 ITR 1, 6 , CIT vs. Multi Metals Ltd. (1991) 188 ITR 151 (Raj), CIT vs. Bharat Nidhi Ltd. (1983) 141 ITR 740 (Del) and CIT vs. International Computers Ltd. (1981) 131 ITR 1 (Bom), Central Provinces & Berar Provincial Co-operative Bank Ltd. v. CIT (1946) 14 ITR 479, CIT v. Mirza Ataullaha Baig & Anr. (1993) 202 ITR 291, Oudh Sugar v. CIT 222 ITR 726, CIT v. Lokmat News Papers Pvt. Ltd. (1995) 216 ITR 199. In view of this, Ld. Counsel stated that cumulative effect of judicial principles clearly indicates contra-indication for the case sought to be made out against assessee and even in the absence of definition of manufacture, liberal construction requires that repair by way of after-sale service as the integral part of manufacture. It is empiric axiom that all manufacturers provide customers using their products' after-sale service, so to construe such after sales service as part of manufacturing activity is quite reasonable.

11. Ld. Counsel for the assessee distinguished case laws cited by revenue of the Supreme Court in Tamil Nadu State Transport Corporation Ltd. (supra) as well as the decision of the Kerala High Court in Vijaya Retreaders (supra), wherein it has been held that tyre-retreading is not production. In the above cases assessees were not the manufacturers of tyres or retread rubber. They were purchasing retread rubber from tyre manufacturers and pasting the same on the worn tyres. As such they were not manufacturers. This decision is non- germane to the present issue. In view of this fact, he stated that repair in assessee's case is after-sale service as all manufacturers universally offer to their customers. He also distinguished case Relish Foods (supra) stating that it has been held that decapitating, dressing, deveining and freezing shrimps and prawns is no process of manufacturing or producing. This is also not relevant. Here the assessee is admittedly a manufacturer of ball pen moulds. The assessee undertakes repair of the moulds manufactured by it as after-sales service. He also distinguished another case cited by

revenue of Gem India Manufacturing Co. (supra) where cutting and polishing diamond was held as not amounting to manufacture or production. This case is also not applicable to the assessee because the assessee is admittedly a manufacturer of moulds. The next case relied upon by the revenue is Liberty India (supra), wherein it has been held that the word derived from is narrower than the words 'attributable to'. This case is also not applicable as the entire profit of the assessee has been directly derived from manufacturing activity only. The next case relied upon by the revenue is Tara Agencies (supra). This case related to blending of tea. At the time of the judgment definition of the word manufacture was not available in the Act and after its incorporation Kerela High in the case of Tata Tea Ltd (supra) has held tea blending to be manufacture after distinguishing the case of Tara Agencies (supra). Moreover assessee is not carrying on blending activity. The next case relied on is DXN Herbal Manufacturing (India) Pvt. Ltd. (supra), wherein the question arose whether mixing mushroom powder and filling in capsules was construable as manufacture and Tribunal answered in negative. The case of the assessee is not that of any mixing activity. The assessee is very much carrying on manufacturing activity.

12. Ld. Counsel for the assessee further distinguished the case law of Hon'ble Delhi High Court in the case of Honda Siel Power Products Ltd. (supra), wherein the Delhi High court held that sale of imported spare parts for after sale service does not amount to manufacture. In this case Honda Siel was importing complete gensets, spare parts and also assembling few gensets. The Court held that profit from sale of imported spare parts cannot be held to be profit from manufacturing activity. However in the case of the assessee it sells parts manufactured by itself. As such this case also does not apply to the assessee. He tried to negate the argument of revenue that tax deduction at source is a proof that payments made by parties are not for sale of manufactured goods but for repair and this inference is totally inconsistent with realities. The assessee claimed that manufacture is part of job work, i.e. of materials supplied by other parties for moulds to be manufactured by assessee. The assignment of such job work is treated as contract and tax deduction has no bearings, whether assessee received payments for job work done or repair work. Tax deduction proves nothing to disentitle assessee from benefit of deduction u/s 80-IB of the Act. In view of the above, since the assessee is not carrying out any repair work, it is the manufacturer of moulds and mould parts and providing after sales service to its customers, the entire profit is derived from manufacturing activity only and as such is entitled to deduction u/s 80-IB of the Act on its entire income. So, whole dispute is superfluous. Moreover in view of settled principle of law to interpret provisions of deduction and exemptions or relief liberally, reasonably and in favour of assessee so as to effectuate the object of legislature and not to defeat it and in case of doubts the construction most beneficial or

favourable to the assessee should be adopted even if it results in his obtaining a double advantage, the assessee should not be denied deduction u/s 80-IB of the Act on job work.

13. We have heard rival contentions and gone through facts and circumstances of the case. The admitted facts are that assessee is engaged in manufacturing of moulds and also carrying on repairs and maintenance of same moulds sold to buyers. The assessee's total receipt from job work charges including repairing and services are at Rs.96,01,410/-. The assessee claimed entire job work charges including repairing and services as deduction u/s. 80-IB of the Act and Assessing Officer disallowed deduction u/s. 80-IB of the Act from job work charges at Rs.16,05,356/- out of profit from job charges disclosed at Rs.35,32,470/- on the basis that the same comprises receipts of repairs and maintenance. Now, above question referred whether income earned from job work which includes repairs and maintenance is to be allowed deduction u/s. 80-IB of the Act. First of all, we have to go through provisions of section 80-IB of the Act. The relevant provision of section 80-IB (1) and (4) of the Act reads as under:

> *Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.*
>
> ***80-IB.*** *"(1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to [41][(11), (11A) and (11B)] (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."*
>
> *"(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"*

Section 80-IB was introduced w.e.f. 1.4.2000 by the Finance Act, 1999 as a result of substitution of the then existing section 80-IA of the Act. The scope and effect of the introduction of section 80-IB by the Finance Act, 1999 has been clarified in the departmental circular no.779 dated 14th September, 1999, which was further amended by Finance Act, 2000 w.e.f. 1.4.2001, by Finance Act, 2001 w.e.f. 1.4.2002, by Finance Act, 2002 w.e.f. 1.4.2003, by Finance Act, 2003 wr.e.f. 1.4.2004 and by Finance Act, 2004 w.e.f. 1.4.2005. The scope and effect of the above stated amendments have been made clear by Board Circular no.795 dated 9th August, 2000 vide para 37, 37.2, 37.3 and 37.4 as under:

> *"37. Tax holiday in respect of undertakings set up in industrially backward States and Union Territories of the Eighth Schedule and industrially backward districts extended up*

to 31st March, 2002.- 37.1 Under the existing provisions of section 80-IB of the Income-tax Act, 1961, a deduction is allowed, in computing the taxable income, in respect of profits derived from a new industrial undertaking or the business of a hotel.

'37.2 For encouraging industrialization in industrially backward States, the Finance Act, 1993, provided for a five year tax holiday for industrial undertakings set up in industrially backward States and Union Territories specified in the Eighth Schedule, which start manufacture or production during the period beginning on the 1st day of April, 1993, but before the 31st day of March, 2000. After the first five years, a deduction of 30 per cent of profits in the case of companies (25 per cent. in the case of other assessees) is allowed for the subsequent five years. Similarly, a five year tax holiday is available to undertakings set up in notified industrially backward districts of Category "A" and a three year tax holiday to those set up in industrially backward districts of Category "B", which begin manufacture or production after 1st October, 1994, but on or before 31st March, 2000.

37.3 The Finance Act, 2000, extends the tax holiday to undertakings set up in industrially backward States and Union Territories as specified in the Eighth Schedule, which start manufacture/production even after 31st March, 2000, but on or before 31st March, 2002. It also seeks to extend the tax holiday to undertakings set up in industrially backward districts on or before 31st March, 2002.

37.4 The amendments will take effect from 1st April, 2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years. [Section 39)"

We find that the expression used in section 80-IB of the Act is "where the gross total income of an assessee includes any profits and gains derived from any eligible business 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….", it means that the purpose for providing deduction from business profits u/s. 80-IB of the Act was to encourage industrial activity in India and it is inconceivable that deductions should be made available in respect to profits and gains which are not derived from an activity having a direct nexus to the industrial activity as contemplated in this section. The entire section has to be read as a whole and interpretation placed thereon has to be fit the overall scheme of the provision, which is to encourage industrial activity in India and if the interpretation sought to be placed by Ld. Counsel for assessee is accepted, then it might possibly lead to a situation where profits from repairs and maintenance apart from job work for which industrial undertaking has been set up for manufacturing may undertake very little manufacturing in an assessment year but assessee yet claimed deduction from the profits and gains of business including repairs and maintenance. We find in the context of section 80-IB of the Act and that of section 80-HH and section 80-I of the Act are inasmuch as are in parametria, because in both sections 80-HH and 80-I of the Act uses the expression "profits and gains derived from an industrial undertaking", the burden is on assessee to show that income earned from an activity, the profits from which are claimed to qualify for deduction has immediate and direct nexus to essential activity of the industrial undertaking. In this context, Hon'ble Apex Court in the case of Pandian Chemicals Ltd. Vs.

CIT (2003) 262 ITR 278 reiterates this distinction and insist that only such business profit that have a direct nexus to the essential business activity of assessee, can qualify for deduction u/s. 80-HH of the Act. Hon'ble Apex Court in Pandian Chemicals Ltd. (supra), affirming the decision of Hon'ble Madras High Court in CIT Vs. Pandian Chemicals Ltd. (1998) 233 ITR 497 (Mad), held as under:

"The High Court rejected the submission of the appellant by relying upon the decision of this court in Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84, where this court had clearly stated that the expression "derived from" had a narrower connotation than the expression "attributable to" (page 93) :

"In this connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression 'derived from', as, for instance, in section 80J. In our view, since the expression of wider import, namely, 'attributable to', has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said (page 328) :

"The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the geneaological tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition."

This definition was approved and reiterated in 1955 by a Constitution Bench of this court in the decision of Mrs. Bacha F. Guzdar v. CIT [1955] 27 ITR 1 at page 7. It is clear, therefore, that the word "derived from" in section 80HH of the Income-tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with Electricity Board cannot be said to flow directly from the industrial undertaking itself.

The learned counsel appearing on behalf of the appellant has referred to several decisions of the Madras High Court in order to contend that the word "derived from" could be construed to include situations, where the income arose from something having a close connection with the industrial under- taking itself. All the decisions cited by the appellant have been considered by the Madras High Court in the case of Pandian Chemicals Ltd. [1998] 233 ITR 497. We see no reason to disagree with the reasoning given by the High Court in Pandian Chemicals Ltd.'s case [1998] 233 ITR 497 with respect to those decisions to hold that they do not in any way allow the word "derived" in section 80HH to be construed in the manner contended by the appellant.

The learned counsel for the appellant then contended that having regard to the object with which section 80HH was introduced in the statute book, this court should give a liberal interpretation to the words in a manner so as to allow such object to be fulfilled. The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant. In the

circumstances of the case, we affirm the decision of the High Court and dismiss the appeal without any order as to costs."

We find that Hon'ble Apex Court has considered its own decision in the case of Cambay Electric Supply Industrial Co. Ltd. (supra) as well as the decision of Mrs. Bacha F. Guzdar (supra). And also of Raja Bahadur Kamakhya Narayan Singh (supra), wherein the definition of the word 'derived' was discussed and the same was reiterated by constitution bench of Hon'ble Apex Court in Mrs. Bacha F. Guzdar (supra).

14. We further find from the decision of Hon'ble Apex Court in the case of CIT Vs. Sterling Food (1999) 237 ITR 579(SC), wherein the issue was whether the income derived by assessee by sale of import entitlements was profit and gain derived from its industrial undertaking of processing sea food. Hon'ble Apex Court observed that the Division Bench of the High Court came to the conclusion that income which the assessee had made by selling the import entitlements was not a profit and gain which it had derived from its industrial undertaking. Further, the Division Bench of the High Court observed that to obtain benefit of section 80HH, the assessee had to establish that the profits and gains were derived from its industrial undertaking and it was not just sufficient that a commercial connection was established between the profits earned and the industrial undertaking. The Industrial undertaking itself had to be the source of profit and the business of the industrial undertaking had directly to yield that profit. The industrial undertaking had the direct source of that profit and not a means to earn any other profit. Accordingly, in import entitlements, the source referable to the profits and gains arising out of the sale proceeds of import entitlements was therefore, the scheme of the Central Government and not that of industrial undertaking. Hon'ble Apex Court finally held as under:

"Our attention was also invited to the judgment of this court in National Organic Chemical Industries Ltd. v. Collector of Central Excise [1997] 106 STC 467. The relevant portion of the judgment is contained in paragraphs 10, 11 and 12 and they read thus (page 470):

"10. The dictionaries state that the word 'derive' is usually followed by the word 'from', and it means: get or trace from a source; arise from, originate in; show the origin or formation of.

11. The use of the words 'derived from' in item 11-AA(2) suggests that the original source of the product has to be found. Thus, as a matter of plain English, when it is said that one word is derived from another, often in another language, what is meant is that the source of that word is another word, often in another language. As an illustration, the word 'democracy' is derived from the Greek word 'demos' the people, and most dictionaries will so state. That is the ordinary meaning of the words 'derived from' and there is no reason to depart from that ordinary mean- ing here.

12. Crude petroleum is refined to produce raw naphtha. Raw naphtha is further refined, or cracked to produce the said products. This is not controverted. It seems to us to make no difference that the appellants buy the raw naphtha from others. The question is to be judged regardless of this, and the question is whether the intervention of the raw naphtha would justify the finding that the said products are not 'derived from refining of crude petroleum'. The refining of crude petroleum produces various products at different stages. Raw naphtha is one such stage. The further refining, or cracking, of raw naphtha results in the said products. The source of the said products is crude petroleum. The said products must therefore, be held to have been derived from crude petroleum."

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

15. The Ld. Counsel for the assessee's argument that an industrial undertaking also to undertake activity of repairing and servicing, which in turn could complete the company's product profile so that customers are offered comprehensive services including after sale services. But we cannot buy this argument of the Ld. Counsel for the assessee as service and maintenance is not an integral part of manufacturing activity of industrial undertaking and as is clear from the opening word of section 80-IB of the Act that deduction in respect of profits and gains from certain industrial undertaking is to be allowed under the provisions of section 80-IB of the Act while computing taxable income in respect of profits derived from an industrial undertaking and not from any other activity which has no immediate or direct nexus to the essential activity of the industrial undertaking. Section 80-IB of the Act uses the opening word that where the gross total income of assessee includes any profits and gains derived from any business and the deduction under this provision be allowed in computing the total income of the assessee from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section. The Hon'ble Apex Court has also drawn a distinction between the expression 'derived from' and 'attributable to' in the case of Cambay Electric Supply Co. Ltd Vs. CIT (1978) 113 ITR 84(SC), wherein it is held that the expression 'attributable to' was wider in import than the expression 'derived from'. The expression of wider import, namely, attributable to, was used when the legislature intended to cover receipts from sources other than the actual conduct of the business. But in the present case before us, the assessee's source of income is from repairs and maintenance i.e. after sale services and it may have commercial connection between the profits earned and the industrial undertaking but industrial undertaking itself is not the source of this profit. This profit from

repair and maintenance earned by assessee is not a direct yield from industrial undertaking as the word used in section 80-IB of the Act of profits and gains derived from.

16. Another facet of the argument made by the assessee is that since the definition of manufacture in section 10AA includes repairs is one of the parameters of the expression manufacture, we have considered that the definition of manufacture has been bodily lifted into section 2(r) of the SEZ Act, 2005 w.e.f. 10.2.2006. We have gone through the provisions of section 10AA(9) and explanation (1) below section 10AA(9) of the Act and found that this explanation is for the purpose of this section only and it cannot be enlarged to other chapters of this Act. The relevant explanation (1) starts as under:

> "Explanation 1 – For the purposes of this section,-
>
> and relevant definition of 'manufacture' reads as under:
>
> (iii) 'manufacture' shall have the same meaning as assigned to it in clause ® of section 2 of the Special Economic Zones Act, 2005."

From the arguments of Ld. Counsel for assessee it is clear that the Explanation 1, above referred, is for the purpose of this section only and it cannot be used elsewhere in the Act as section 10AA is a code in itself and it gives complete exemption to the income earned by units in SEZs. The income earned from units in SEZs do not form part of total income u/s. 10AA of the Act, whereas u/s. 80-IB of the Act the deduction is to be allowed where gross total income of assessee includes any profits and gains derived from business profits of industrial undertaking while computing the total income of the assessee. We are of the view that inclusion of the definition of 'manufacture' as assigned in clause (r) of section 2 of the SEZ Act, 2005 in section 10AA of the Act, will not apply to other provisions of the Act, particularly section 80-IB of the Act in view of specific mention in Explanation (1) that these definitions are for the purposes of this section i.e. sec. 10AA of the Act. Accordingly, these arguments of Ld. Counsel for the assessee are not convincing in view of clear provisions. There is marked difference between the provisions of section 10AA of the Act that is meant for exemption of income from the total income of the Assessee, whereas section 80-IB of the Act grants deduction to the assessee from the profits and gains derived from its industrial undertaking and that also from the business of the industrial undertaking that had directly yielded that profit. Hence this facet of the argument of Ld. Counsel is rejected.

17. Another facet of argument made by Ld. Counsel that the assessee sale moulds as well as supply mould parts manufactured by it. For this Ld. Counsel stated that the assessee is basically a manufacturer only and he cited example of Voltas Air-conditioner that the

manufacturer manufactures air-conditioning machine, manufactures compressor, cooling coil, body of air-conditioner and other parts but sells complete air-conditioning machines as well as parts. He referred that in case air-conditioning machines and its compressor is replaced, the activity may be repair for customer but same is sale of manufactured parts for Voltas. We have no quarrel over the proposition and in case the assessee is selling moulds manufactured by it and spare parts of moulds also sold for doing repairs and maintenance, qua sale of moulds and spare parts of moulds assessee is entitled for deduction u/s. 80-IB of the Act. But in respect to repair of moulds, it charges two types of receipts i.e. receipt on account of sale of spare parts as well as repairs and maintenance charges, in case of sale of spare parts assessee is entitled for deduction u/s. 80-IB of the Act but in respect to repairs and maintenance charges it is not entitled for deduction in view of clear provisions of section 80-IB of the Act, because that receipt has no immediate or direct nexus with the industrial undertaking and that is not the source of profit of industrial undertaking. Reference made by Ld. Counsel for assessee of Woodword Governors India (P) Ltd. (supra) of Delhi Bench of ITAT, wherein Tribunal has allowed the claim by holding that the assessee company was also providing training to employees of its customers for the use of products sold to them and also providing after sales services and repairing of the products sold to its customers and accordingly, activities which are related activities of manufacture and sale of products are that of provision for training of the customers employees for being able to use the products and after sales service and repair. The Tribunal held that profits from these activities are indeed derived from industrial undertaking and formed part of manufacturing products. We are of the view that decision of Delhi Bench in the case of Woodword Governors India (P) Ltd. (supra) is not in term of the provisions of section 80-IB of the Act as after sale services and repairing of the products sold to its customers does not come within the purview of manufacture and also profit earned is not derived from industrial undertaking. The decision of Hon'ble Delhi High Court in the case of Honda Siel Power Products Ltd. (supra), referred by Ld. CIT-DR, is a clear authority directly on the same issue where profits from sale of imported machinery and spare parts used for providing after sale services was held not to be the profits from industrial undertakings entitled for speciation deduction u/s. 80HH and 80I of the Act. Before Hon'ble Delhi High Court, the facts were that the assessee was engaged in the manufacture and sale of portable gensets and water pumps. In the return of income for the assessment year 1995-96, filed on November 30, 1995, the assessee disclosed a business income of Rs.4,48,18,770. The assessee claimed a deduction under section 80HH of the Act at Rs. 2,56,76,813 and under section 80-I of the Act at Rs. 3,20,96,017 respectively. The assessee imported certain spare parts and components which were used in the manufacture of gensets as well as for providing after-sales service to customers. Additionally, the assessee imported gensets of a certain capacity which were not being manufactured in India

to complement its product profile and present to the customers a choice from a complete range of gensets. The Assessing Officer denied the claim of deduction under sections 80HH and 80-I of the Act in respect of the profits earned from both the sale of spare parts and components as well as the sale of imported gensets on the ground that the profits therefrom could not be considered to be income "derived" from the industrial undertaking. This was upheld by the Tribunal. Hon'ble High Court dismissing the appeal held as under:

> (i) that the Tribunal was right in law in upholding the order of the Assessing Officer reducing the profit earned on sale of spare parts and imported gensets from the income of the eligible undertaking(s) for the purpose of computing deductions under sections 80HH and 80-I.
> (ii) that sale of imported spare parts used in providing after-sales service to customers might be incidental to the business activity of the assessee but had no direct nexus with the activity of the industrial undertaking which was the manufacture of gensets. Profits from such sale were not entitled to special deduction under sections 80HH and 80-I.

We find from the above decision of Hon'ble Delhi High Court that no doubt the issue was profit from sale of imported machinery and spare parts but also charges for providing after sales services and Hon'ble Delhi High Court has negated the claim of assessee in terms of above.

18. Now we will conclude our decision in terms of the above as under:

(i) That the assessee's case of repairing and maintenance charges are not at par with the income from manufacturing for the purposes of section 80-IB of the Act even though in section 10AA of the Act the definition of 'manufacture' has been bodily lifted into section 2(r) of SEZ Act, 2005 w.e.f. 10.02.2006, reason being the Explanation (1) prescribing definitions after sub-section 9 of section 10AA clarifies that these definitions will apply for the purposes of this section only. Section 10AA of the Act being a code in itself, the definition incorporated from another Act cannot be applied to other provisions of the Act. Even otherwise, the income falling u/s. 10AA do not form part of total income whereas u/s. 80-IB of the Act only deduction from profits and gains derived from industrial undertaking is allowed and thus there is marked difference in these two provisions and definition of other section cannot be borrowed for allowance of deduction u/s. 80IB of the Act.

(ii) The assessee is earning job work charges as well as repairs and maintenance, which are included in job work charges, no doubt it is established that there is commercial connection between profits earned on account of repairs and maintenance and the industrial undertaking but for that source of profit is not directly from industrial undertaking. The business of industrial undertaking had directly to yield that profit to claim deduction u/s. 80-IB of the Act.

(iii) We have considered the case laws relied on by both the sides noted and discussed, but we find that the provision of section 80-IB of the Act is in pari materia with the provisions of section 80HH and 80I of the Act, wherein Hon'ble Apex Court in Sterling Food, Pandian Chemicals Ltd. and Cambay Electric Supply Industrial Co. Ltd. (supra) has discussed the expression in the context of these sections that the use of expression profits and gains derived from an industrial undertaking, there is distinction between the expressions 'derived from' and 'attributable to'. Hon'ble Apex Court held that only such business profits that have a direct nexus to the essential business activity of the assessee can qualify for deduction under section 80HH of the Act. Inasmuch as both sections 80HH and 80-I use the expression "profits and gains derived from an industrial undertaking", the burden is on the assessee to show that the income earned from an activity, the profits from which are claimed to qualify for deduction, has an immediate and direct nexus to the essential activity of the industrial undertaking. Hence, our answer to first question referred is that the assessee is entitled for deduction u/s. 80-IB on income earned from job work charges but excluding repairs and maintenance charges. Our answer to second question referred is that the income from repair and maintenance cannot be treated at par with the income from manufacturing for the purposes of deduction u/s. 80-IB of the Act.

iv) That the assessee in the present case has earned income from job work which comprises of repairs and maintenance, it has two limbs that the income from job work is to be allowed as deduction in terms of section 80-IB of the Act but income from repairs and maintenance cannot be equated at par with income from manufacturing and hence not eligible for deduction in terms of section 80-IB of the Act. In the present case, assessee is a manufacturing unit and has claimed deduction u/s. 80-IB of the Act on job work charges including repairs and maintenance. As stated by assessee, it failed to produce details as fire broke out in office premises of Today's Writing Products Ltd and all records of assessee placed there were destroyed. No books of account were produced except few preliminary details and break up of various expenses and accordingly, Assessing Officer completed assessment u/s. 144 of the Act by disallowing deduction claimed u/s. 80-IB of the Act job work charges including such repairs and maintenance by holding that maintenance of moulds which does not constitute manufacturing activity as it does not manufacture any article or thing and by this process no new article or thing comes into existence. In term of above that income earned from job work will qualify for deduction u/s. 80-IB of the Act but income from repairs and maintenance is not at par with income from manufacturing and will not qualify for deduction u/s. 80-IB of the Act. In view of above facts, the matter should have gone back to Assessing Officer to decide as to how much is job work charges and how much is repair and maintenance charges and then to disallow deduction from income of repairs and maintenance and to allow deduction u/s. 80-IB

of the Act for job work charges received by assessee. However, at the time of hearing, Ld. Counsel for the assessee submitted that there was a major fire broke out and as such entire record of the assessee was destroyed and it would not be possible to furnish books of account and other documents to Assessing Officer if the matter is restored to his file to decide deduction allowable to assessee u/s. 80-IB of the Act out of total receipt of Rs.96,01,410/- shown by assessee by way of repairing and maintenance in the form of job work charges. Therefore, instead of restoring the matter to Assessing Officer and with a view to finally decide the issue before us, we are of the considered view that it will be reasonable to consider 50% of the receipt as job work charges on which assessee will be entitled to get deduction u/s. 80-IB of the Act and the balance 50% is the receipt on account of repair and maintenance charges on which the assessee will not be entitled to get deduction u/s. 80-IB of the act. Therefore, the ground of appeal taken by department is allowed in part as indicated above.

19. In the result, appeal of the revenue is allowed in part.

20. Order pronounced in open court on 12.8.2011

Sd/-	Sd/-	Sd/-
(जी. डी. अग्रवाल,उपाध्यक्ष)	(बी. आर. मित्तल,न्यायीक सदस्य)	(महावीर सिंह, न्यायीक सदस्य)
(G. D. Agrawal)	(B. R. Mittal)	(Mahavir Singh)
Vice President	Judicial Member	Judicial Member

(तारीख) Dated 12th August, 2011 Pronounced by

Sd/-(BRM) Sd/-(SVM) Sd/- (MS)
JM AM JM

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषितः- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – DCIT, CC-XX, Kolkata.
2. प्रत्यर्थी/ Respondent, Rajesh Kr. Drolia, HUF, C/o, Jajodia Merchantile Pvt. Ltd., 13, Brabourne Road, Kolkata-1.
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/CIT, Kolkata
5. वभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy, आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.