IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 4042/DEL/2013 (A.Y 2009-10)
(THROUGH VIDEO CONFERENCING)

DCIT Central Circle-19 New Delhi **(APPELLANT)**	Vs	Daawat Foods Ltd. (Previously Daawat Foods P. Ltd.) Unit No. 134, 1st Floor, Rectangle I, Saket District Centre, New Delhi AACCD3698N **(RESPONDENT)**

ITA No. 4159/DEL/2013 (A.Y 2009-10)

Daawat Foods Ltd. (Previously Daawat Foods P. Ltd.) Unit No. 134, 1st Floor, Rectangle I, Saket District Centre, New Delhi AACCD3698N **(APPELLANT)**	Vs	DCIT Central Circle-19 New Delhi **(RESPONDENT)**

Appellant/Respondent by	**Ms. Nidhi Srivastava, CIT, DR,**
Respondent/Appellant by	**Sh. Ajay Vohra, Sr. Adv, Sh. Rohit Jain, Adv & Ms. Deepashree Rao, CA**

Date of Hearing	**02.06.2021**
Date of Pronouncement	**07.06.2021**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and Revenue against the order dated 28/03/2103 passed by CIT(A)- XXXIII, New Delhi for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

ITA No. 4042/DEL/2013 (Revenue's appeal)

"1. On the facts and in the circumstance of the case the CIT(A) has erred in deleting the addition of Rs 4904354/- made by the Assessing Officer under section 69 of the income tax act, 1961.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the 50% of the total addition of Rs 14413318/- made by the A.O by applying he G.P. rate on the undisclosed sales.

3. On the facts and in the circumstances of the case, the CIT(A) has erred in directing the Assessing Officer to allow deduction under section 80IB(11A) of the Income tax Act,1961.

4. On the facts and in the circumstances of the case, the CIT(A) has erred in holding that the assessee is engaged in the integrated business of transportation handling and storage of food grains and conditions contained in section80IB(11A) are fulfilled and, therefore, entitled to the deduction under section 80IB(11 A) of the Act.

5. On the facts and in the circumstances of the case, the CIT(A) has failed to appreciate the bare facts of the case that the plant & machinery put to use prior to 01.04.2001 in Bahalgarh Unit, constituted more than 20% due to which condition for deduction was not fulfilled.

6. The Oder of the CIT(A) is erroneous and is not tenable on facts and in law.

ITA No. 4159/DEL/2013 (Assessee's appeal)

1. *That search conducted under Section 132 is illegal, bad in law and without jurisdiction and assessment made U/s 143(3) is also illegal, bad in law and without jurisdiction.*

2. *That the impugned assessment order passed under section 143(3) is illegal, bad in law and barred by time limitation.*

3. *That reference to special audit under section 142(2A) is illegal and bad in law and the report submitted by the special auditor is illegal, bad in law and without jurisdiction.*

4. *That the special auditor has erred on facts and in law in scrutinizing and auditing those issues which are not part of the terms of reference and has exceeded his jurisdiction in making observations about those issues in the audit report submitted.*

5. *That in view of the facts and circumstances of the case and in law the A.O. has erred in completing the assessment U/s 143(3) at Rs.*

23,42,49,777/- as against returned income of Rs. 1,35,27,247/- (after disallowing deduction under chapter VIA) when there is no seized material pertaining to this year. The additions made are unjust, unlawful, bad in law, without jurisdiction and are also highly excessive.

On Disallowance of Payment in Contravention of Section 40A(3)

6. *That, in view of the facts and circumstances of the case and in law, the A.O. and subsequently CIT(A) has erred in law and on facts in holding that the assessee has made cash payments to various concern which are to be disallowed U/s 40A(3) of the Act.*
7. *That, in view of the facts and circumstances of the case, the A.O. and subsequently CIT(A) has failed to appreciate that payment of Rs. 6,71,641/- is made out of commercial expediency.*

Addition U/s 14A r/w Rule 8D

8. *That in view of the facts and circumstances of the case and in law the A.O./CIT(A) has erred in making disallowance to the tune of Rs. 5,10,020/- u/s 14A read with Rule 8D of the Act. The disallowance made is unjust, unlawful and is also highly excessive.*
9. *That CIT(A), in view of the facts and circumstances of the case, has erred in law and on facts in not appreciating that assessing officer has failed to record the satisfaction with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of total income under the Act before making disallowance U/s 14A r/w rule 8D of the Act.*

Disallowance of expenses on account of Non-Deduction and Short-Deduction of TDS

10. *That CIT(A), in view of the facts and circumstances of the case, has erred in law and on facts in only allowing the part relief in respect of disallowance made U/s 40(a)(ia) by the AO. The CIT(A) should have deleted the entire addition/disallowance on this account.*
11. *Without prejudice to the above, the CIT(A), in view of the facts and circumstances of the case, has erred in law and on facts in holding that where TDS has been deducted at lesser rate the disallowance U/s 40(a)(ia) of the Act is required to be made. The CIT(A) has failed to appreciate that no disallowance U/s 40(a)(ia) of the Act is required to be made where TDS has been deducted at lesser rate.*

12. *That CIT(A), in view of the facts and circumstances of the case, has erred in law and on facts in upholding the addition/disallowance U/s 40(a)(ia) on account of freight charges paid to various/different truck owner. The CIT(A) has also failed to appreciate that provision of Section 194C are not applicable to such payment and no TDS is required to be made on such payment.*

13. *That CIT(A) has failed to appreciate that the provision of Section 40(a)(ia) are not applicable in respect of disallowances made by the AO and disallowance are unjust, unlawful and without any legal basis.*

Addition of Rs. 8.45,658/- on account of expenditure on increase in authorized share capital being of capital nature.

14. *That, in view of the facts and circumstances of the case and in law the A.O. has erred in law and on facts in holding that the amount of Rs. 8,45,658/- spent towards increase in authorized capital is capital expenditure in nature and not a revenue expenditure and CIT(A) has erred in law and on facts in upholding the same.*

Addition on account of alleged undisclosed sales/Difference in stock valuation

15. *That in view of the facts and circumstances of the case and in law the A.O./CIT(A) has erred in law and on facts in confirming an addition on account of alleged undisclosed sales/different in stock valuation to the extent of Rs. 72,06,659/-. The said action is illegal, bad in law, contrary to facts on record.*

16. *Without prejudice to the Ground No. 15 that in view of the facts and circumstances of the case and in law the addition made is highly excessive.*

17. *That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the addition made.*

18. *That the addition/disallowance made is based on mere surmises and conjunctures and the same cannot be justified by any material on record and is highly excessive.*

19. *That the interest U/s 234B and 234C has been wrongly and illegally charged as there is no delay in filling of return and there is no default of payment of Advance tax as the receipt / income is liable to TDS and it could not have anticipated such additions. In any case the interest charged has been wrongly worked out and is excessive.*

20. *That all the above grounds are independent to each other and mutually*

exclusive."

3. Original return of income was field on 30/09/2009 declaring total income of Rs.1,35,27,247/-. A search u/s 132 was carried out in Daawat Group of cases including the assessee company on 10/02/2009. Statutory notice u/s 143(2) was issued on 2/8/2010. The Assessing Officer vide its order dated 24/12/2010 called for special audit u/s 142 (2A) for Assessment Year 2009-10 which was submitted on 22/6/2011 by the special auditor through their report. The Assessing Officer passed assessment order dated 19/08/2011 thereby assessed total income at Rs. 23,42,49,777/- after making additions.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. First we are taking up appeal of the assessee whereby the Ld. AR submitted that Ground No. 1 to 5 and Ground No. 14 are not pressed. Hence, Ground No. 1 to 5 and 14 are dismissed.

6. As regards Ground No. 6 & 7 of the assessee's appeal relating to disallowance under Section 40A(3) at Rs. 6,31,641/-, the Ld. AR submitted that the Assessing Officer made addition to the extent of Rs. 5,58,296/- under Section 40A(3) of the Act in respect of freight payments made to transporters and truck operator inter-alia for purchase of paddy. The Ld. AR submitted that this issue is decided against the assessee in its own case for A.Y. 2008-09 in ITA No. 4158/Del/2013 order dated 19.01.2021, wherein the Tribunal relying upon the order passed in the case of L T Foods Ltd., group company of the assessee upheld the disallowance under Section 40A(3) to the extent of Freight payments made to transporters and truck operator. In relation to disallowance for Rs. 66,333/- , being depreciation on capital expenditure of Rs. 5,35,468, the Ld. AR submitted that such amount was paid to various parties for

acquiring fixed assets in the assessment year 2008-09 and the Assessing Officer did not consider the same. The Ld. AR submitted that this aspect is covered in favour of the assessee in assessee's own case for A.Y. 2008-09 in ITA No. 4158/Del/2013.

7. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that disallowance under Section 40A(3) at Rs. 6,31,641/- and more particularly the aspect of addition to the extent of Rs. 5,58,296/- under Section 40A(3) of the Act in respect of freight payments made to transporters and truck operator inter-alia for purchase of paddy, is already covered against the assessee in assessee's own case in A.Y. 2008-09 in ITA No. 4158/Del/2013 order dated 19.01.2021, wherein the Tribunal relying upon the order passed in the case of L T Foods Ltd., group company of the assessee upheld the disallowance under Section 40A(3) to the extent of Freight payments made to transporters and truck operator. The Tribunal in L T Foods held as under:

"13. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the addition in this case was made on the basis of the very same seized material that was considered by the Ld. DRP in assessee's own case for the assessment years 2008-09 and 2009-10 by order dated 4/9/2012. It is also an admitted fact that the Ld. DRP directed the Assessing Officer not to make the addition on this issue. Such a finding has become final and as on the date it is not get disturbed. Further, the Revenue does not dispute the fact that the four individuals declared such income and surrendered the same while duly paying the taxes thereon. If at all those four individuals were not liable to pay such amount, the Revenue should not have accepted the same in their hands. Having accepted the contention of those four individuals and collecting the tax in their

hands, it is not open for the revenue now to such individuals were not liable to pay tax, but it is the company and company alone that is liable to pay tax. Revenue cannot approbate and reprobate and shift its stands.

14. While accepting the stand taken by the assessee that since the tax was collected in the hands of the four individuals who are the promoters of the company and this fact was taken notice by the Ld. DRP while passing the order dated 4/9/2012 in assessee's own case for the assessment years 2008-09 and 2009-10 and to direct the Assessing Officer not to make any addition on this issue, we hold that the impugned addition cannot be sustained. We, accordingly, dismiss this ground. Grounds No. 5 and 6 are general in nature and do not require any adjudication."

In the present assessment year i.e. 2009-10 also there is no distinguishing facts brought out by the assessee. Thus, this addition to the extent of Rs. 5,58,296/- is sustained. As regards to disallowance for Rs. 66,333/- , being depreciation on capital expenditure of Rs. 5,35,468, this aspect is covered in favour of the assessee in assessee's own case for A.Y. 2008-09 in ITA No. 4158/Del/2013. As relates to other payments disallowed u/s 40A(3) towards Rs. 47,012/- the similar addition is deleted in earlier assessment year 2008-09 by the Tribunal in ITA No. 4158/Del/2013. The facts are identical in the present assessment year as well as no new facts were brought on record by the Revenue, therefore, this element is allowed. Hence, Ground Nos. 6 to 7 are partly allowed.

9. As regards Ground No. 8 & 9 of assessee's appeal relating to disallowance of Rs. 5,10,020/- u/s 14A read with Rule 8D, the Ld. AR submitted that during the previous year relevant to the assessment year under consideration, received income amounting to Rs. 5,10,200/- as share of its profit in partnership firm namely M/s Agro Industries, Amritsar. The said income was claimed as exempt under Section 10 of the Act in the return of income. The Ld. AR submitted that the Assessing Officer erred in making disallowance under Section 14A of the Act without recording his satisfaction for

denying the claim made by the Assessee. The Assessing Officer erred in considering exempt income earned as share in profit from partnership firm for the purpose of disallowance under Section 14A of the Act. The Ld. AR further submitted that investments, in any case, was made out of own funds and not borrowed funds and therefore, there was no warrant to make any disallowance out of interest expenditure. Thus, the Assessing Officer erroneously applied Rule 8D. The Ld. AR relied upon the following decisions:

a) Godrej & Boyce Manufacturing Co. Ltd. vs. DCIT 394 ITR 449 (SC)

b) Maxopp Investment Ltd. vs. CIT 91 taxmann.com 154 (SC)

c) L T Foods (ITA No. 4164/Del/2013 order dated 30.09.2020 which is a group concern of the assessee)

The Ld. AR further submitted that under Rule 8D (2)(iii), what is disallowable is an amount equal to ½ percentage of the average value of investment, the income from which does not or shall not form part of the total income. In view of the aforesaid, ½ percentage of the average value of investments made only in Raghunath Agro Industries claimed as exempt under Section 10(34) of the Act was to be taken into consideration for the purpose of clause (iii), as against total investments appearing in balance sheet for the relevant year. Thus, strictly in terms of Section 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules, 1962, the actual amount of disallowance amounts to Rs. 23,634/- as tabulated hereunder:

Investment in dividend yielding investments	31.03.2008	31.03.2009
Raghunath Agro Industries	Rs. 4,397,778	Rs. 4,907,798
Average Value of investment	Rs. 46,524,788	
½% of Average Value of Investment	Rs. 23,264	

Thus, in view of the above, the Ld. AR submitted that the disallowance, if at all can be restricted to Rs. 23,264 only.

10. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

11. We have heard both the parties and perused all the relevant material available on record. In the present case, the satisfaction is recorded while invoking Rule 8D of the Income Tax Rules, 1962. But the Assessing Officer considered exempt income earned as share in profit from partnership firm for the purpose of disallowance under Section 14A of the Act. The investments was made out of own funds and not borrowed funds and therefore, the assessee has not made any disallowance out of interest expenditure. The Ld. AR's contentions that under Rule 8D (2)(iii), what is disallowable is an amount equal to ½ percentage of the average value of investment, the income from which does not or shall not form part of the total income, is right. Therefore, as per the chart given by the Ld. AR, at the time of hearing, we direct the Assessing Officer to verify the same and thereafter restrict the disallowance to Rs. 23,264/- only if the contentions of the assessee are found correct, otherwise proceed according to the provisions of Income Tax Act and Rules. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 8 and 9 are partly allowed for statistical purpose.

12. Ground No. 10 to 13 relating to disallowance of expenses on account of non deduction and short deduction of TDS u/s 40(a)(ia), the Ld. AR submitted that the issue relating to non deduction of TDS is decided against the assessee in its own case for A.Y. 2008-09 in ITA No. 4158/Del/2013 vide order dated 19.01.2021 wherein the Tribunal has relied upon the decision of Hon'ble Supreme Court in case of Shree Choudhary Transport Company vs. ITO 272 Taxman 472. As relates to Short-deduction of TDS, the Ld. AR submitted that the issue is covered in assessee's own case by the Tribunal in A.Y. 2008-09 in ITA No. 4158/Del/2013 vide order dated 19.01.20121 wherein it is held that no disallowance under Section 40(a)(ia) is sustainable in cases of short-deduction of TDS. This view is also decided by the Tribunal in case of LT Foods

Ltd., a group company in ITA No. 4164/Del/2013 for A.Y. 2007-08 in favour of the assessee therein.

13. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

14. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the issue relating to non deduction of TDS is decided against the assessee in its own case for A.Y. 2008-09 in ITA No. 4158/Del/2013 vide order dated 19.01.2021 wherein the Tribunal while relying upon the decision of Hon'ble Supreme Court in case of Shree Choudhary Transport Company vs. ITO 272 Taxman 472, held that the amendment made to provisions of Section 40(a)(ia) of the Act vide Finance Act, 2014 do not have retrospective application and thus, confirmed the disallowance made by the Assessing Officer under Section 40(a)(ia) of the Act. Thus, issue of non-deduction of TDS is decided against the assessee in this year as well as the facts are identical in the present assessment year. As regards to short-deduction of TDS, the Ld. AR submitted that the issue is covered in assessee's own case by the Tribunal in A.Y. 2008-09 in ITA No. 4158/Del/2013 vide order dated 19.01.20121 wherein it is held that no disallowance under Section 40(a)(ia) is sustainable in cases of short-deduction of TDS. Thus, the issue relating to disallowance on account of short deduction of TDS is allowed. Hence, Ground No. 10 to 13 are partly allowed.

15. As regards Ground No. 15 to 17 relating to addition on account of alleged undisclosed sales/difference in stock valuations to the extent of Rs. 72,06,659/-, the Ld. AR referred Page 15 para 10 of the Assessing Officer's order and further submitted that books of accounts were accepted and stock is tallying with the balance sheet. There is no evidence for undisclosed sale which was pointed out by the Assessing Officer or by the CIT(A) in their respective orders. The Ld. AR further submitted that the addition made by the Assessing Officer is based on incorrect appreciation of facts. The Ld. AR

submitted that there is no difference in quantity of stock found during the course of search vis-a-vis recorded in books of account. The alleged discrepancy occurred on account of different methods of valuation adopted by the search team and the assessee. The Ld. AR submitted that after search operation, a detailed reconciliation statement along with explanation for alleged difference in stock was filed with the tax authorities as under:

Description of Item	Qty. As per books (in MT)	Physical Qty. On inspection [Based on qty.per bag as per Books]		Difference (in MT)
		No. Of Bags#	Weight (in MT) @ Avg. Weight/bag	
Paddy-Basmati	24,183.8760	4,32,528	24,154.3918	29.4842
Paddy-Non Basmati	4836.7270	84,972	4,958.6769	(121.9499)
Rice	1458.92	36,060	1458.92	-
TOTAL				92.46

#Physical quantity of stock computed by search team by presuming each bag weighted 55kgs, as against actual average weight per bag (i.e. Qty of stock/no. Of bags)

The aforesaid reconciliation was also provided to the special auditor and no adverse comment has been recorded in the special audit report. The Ld. AR pointed out that there was minor difference of 92.46 Metric Tons (MT) in the quantity of stock of paddy at the time of physical verification by search team. However, no difference was found in the quantity of rice. The Ld. AR submitted that the reason for alleged difference in stock noted by search team was on account of erroneous presumption drawn by the search team. The Ld. AR explained the reasons for difference in stock as under:

a) In its books of accounts, the assessee maintained stock in MT only and not in bags, as quantity in each bag is likely to vary. However, at the time

of search, stock was counted in bags only and then converted into M on assumption basis and not on the basis of actual weight. Thus, the stock estimated varied from actual stock as per books of accounts.

b) The search authorities adopted an erroneous basis that each bag weighs 55 kgs. For all varieties of stock, which was fallacious. However, as submitted by the assessee in reconciliation statement, quantity in bags should be converted into MT's on average quantity per bag based on Purchase Register (i.e. Total quantity purchased/Total bags purchased).

c) The work in progress was not included while taking physical inventory.

d) No discrepancy was revealed in sales or purchase of the company during the course of search. The quantity converted and estimated from bags is calculated on estimate basis, thus some difference will still exist and has no reflection on correctness or completeness of the books of accounts maintained in the regular course of business.

The Ld. AR submitted that the assessee has been consistently following the well accepted principle of valuation of inventory at cost or net realizable value (NRV) whichever is lower, as propounded by the ICAI vide Accounting Standard - 2 on 'Valuation of Inventory'. The assessee determines the cost of raw material on FIFO basis and cost of finished goods is ascertained on the basis of absorption costing. As a result of different methods of valuation adopted by the search team and the assessee, paddy and rice as on 31.03.2009 was valued at Rs. 21,663.34 per MT & Rs. 37,446.54 per MT respectively by the assessee as against Rs. 18,052 per MT & 31,227 per MT adopted by the search team. The Ld. AR further submitted that the addition made by the Assessing Officer is totally based on guess work, surmises and conjectures and thus, are liable to be deleted. The Ld. AR also relied upon the decision in case of J. J Enterprises vs. CIT 254 ITR 216.

16. The Ld. DR relied upon the assessment order and the order of the CIT(A). As regards Ground No. 15 to 17, the Ld. DR submitted that the Assessing

Officer has taken cognizance of all the aspects and properly made additions as regards undisclosed sales/difference in stock valuation.

17. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that books of accounts were accepted and stock is tallying with the balance sheet. At the time of search, stock was counted in bags and then converted into MT, but the assessee is maintaining the stock in MT and not in bags. Thus, the Assessing Officer has taken the stock on the assumption basis and not on the basis of actual weight. The work in progress was also not included while taking physical inventory as per the records. The Vice President Operations of the assessee also objected the estimation of weight adopted by the search team which is on record in his statement dated 11.02.2009. Thus, there was no discrepancy revealed in sales or purchase of the company during the course of search as per the books of accounts and stock. In fact, the stock registers, reveals that the opening stock and closing stock completely tallied with the stock and closing stock as certified in the tax audit report. Even sales tax department has accepted the sales made by the assessee during the year under consideration and no adverse inference has been drawn on this account. The books of accounts have also been statutorily audited with no adverse comments by the auditors. The assessee is following consistent method of valuation of stock which is in accordance with the well accepted principle of accounting propounded by the ICAI, and also has been approved/accepted for the purpose of the computing the taxable income by various Courts and Tribunals from time to time. In this context, the decisions of the Apex Court in case of Chainrup Sampatram vs. CIT 24 ITR 481 and CIT vs. British Paints India Ltd. 188 ITR 44 (SC) along with United Commercial Bank vs. CIT 240 ITR 355 (SC) relied by the Ld. AR are applicable in the present case. Further, there is no evidence for undisclosed sale which was pointed out by the Assessing Officer or by the CIT(A) in their respective orders. Thus, the addition made by the Assessing Officer which was confirmed by the CIT(A) does not sustain. Ground No. 15 to 17 are allowed.

18. Now we are taking up Revenue's appeal. As regards Department's appeal, Ground No. 1 relating to deletion of addition u/s 69, the Ld. DR relied upon the Assessment Order.

19. The Ld. AR submitted that the CIT(A) rightly deleted the addition u/s 69 and relied upon the order of the CIT(A) as the said addition is already made u/s 40A(3) of the Act by the Assessing Officer.

20. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that this issue is wrongly raised by the Revenue as the addition of Rs. 49,04,354 was already been made as addition under Section 40A(3) of the Act by the Assessing Officer and the Ground Nos. 6 to 7 of the Assessee's appeal are already discussed hereinabove paras. Hence, we dismiss Ground No. 1 of the Revenue's appeal.

21. As regards to Ground 2 of the Revenue's appeal relating to addition on account of alleged undisclosed sales/difference in stock valuation, this issue is connected to Ground Nos. 15 to 17 of the assessee's appeal which is answered in favour of the assessee in above mentioned para. Hence, Ground 2 of Revenue's appeal is dismissed.

22. As regards Ground No. 3 to 5 of the Revenue's appeal, relating to deduction u/s 80IB (11A), the Ld. DR submitted that the assessee has integrated business and is claiming old machinery and its depreciation in earlier year which needs to be verified by the Assessing Officer. The Ld. DR relied upon the decision of the Hon'ble Supreme Court in case of Commissioner of Customs vs. Dilip Kumar (2008) 9 SCC (1) (FB). The Ld. DR further submitted that the assessee is mostly involved in billing and thus cannot claim depreciation. As regards Ground No. 5 of the Revenue's appeal, the Ld. DR submitted that the plant and machinery put to use prior to 1/04/2001 in

Bahalgarh Unit constituted more than 20% due to which condition for deduction was not fulfilled by the assessee. The Ld. DR relied upon the assessment order.

23. The Ld. AR submitted that this issue is covered in favour of the assessee by the Tribunal in case of L T Foods Ltd. for A.Y. 2007-08 in ITA No. 4046/Del/2013 wherein the Tribunal on identical facts allowed deduction claimed under Section 80IB (11A) of the Act. The Ld. AR further relied upon the order of the CIT(A).

24. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Section 80IB (11A) of the Act mandates that the undertaking of the assessee should be engaged in an 'integrated business' and the assessee has demonstrated before us that the combining or co-ordinating of the three elements i.e. handling, storage and transportation of food grains is harmonious interrelated as whole activity and thus eligible for deduction under Section 80IB(11A) of the Act. The decision in case of Dilip Kumar (Supra) held that exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue. In the present assessee's case, the assessee has demonstrated that the assessee fulfilled the parameters of the exemptions. Besides this, in case of Group company of assessee i.e. L T Foods Ltd. for A.Y. 2007-08 in ITA No. 4046/Del/2013, the Tribunal on identical facts allowed deduction claimed under Section 80IB (11A) of the Act. The Tribunal held as under:

"53. As we have stated above, we will have to test the expression "handling", occurring in section 80IB(11A) of the Act on the touchstone of the

object sought to be achieved through such incentive, namely, achieving the enhanced food security by way of greater efficiency in the grain management system by minimizing the post-harvest food grain losses. It is an undeniable fact that traditionally pounding was the way in which the paddy was converted to the form of rice by separating the husk and brawn. It is also common knowledge that in that process there used to be quantitative and qualitative losses, caused by the breaking of the grains etc. By de-husking the paddy and converting it into rice, no new article is brought into existence which is qualitatively different from the inputs, but is the simple process of de-husking the paddy to obtain the rice. This conversion meets the objective of minimizing the post-harvest losses which would lead to the greater efficiency of the food grain management system and consequently to the enhanced food security. In Commissioner of Customs (Import) vs. Dilip Kumar and Company & Ors. CA No. 3327 of 2007 (SC), the Hon'ble Supreme Court held that while interpreting the taxing statutes, the applicability of the section has to be seen in strict sense, and once the section is found to be applicable, then it has to be constructed liberally. Since undoubtedly the provisions of section 80IB(11A) of the Act are applicable to the activities of the assessee like clearing, steaming, soaking, drying, polishing and grinding it can also be not denied that de-husking the paddy would significantly enhance the life of the food grain, thereby reduces the loss of food grain and contributes to the preservation of food grains. In such an event, we are unable to understand how this particular process does not fit in the expression "handling". For these reasons, we are of the considered opinion that the de-husking of the paddy to convert it into rice is also an integral part of reducing the post-harvest food grain loss.

.....

63. We, accordingly find that the assessee cannot be denied the deduction under section 80IB(11A) of the Act either in respect of the activities conducted by the assessee to meet the demand of the section, namely, deriving income from the integrated business of handling, storage and transportation of food grains or for non-compliance with the conditions

depleted under Section 80IB(2) of the Act. We do not find anything illegality are regularity either in the reasoning or the conclusions reached by the Ld. CIT(A) on this aspect, and while confirming the same find the grounds number 1 to 3 of Revenue's appeal devoid of merits and reliable to be dismissed."

Thus, the CIT(A) has rightly allowed the claim of deduction under Section 80IB(11A) of the Act. It is pertinent to note that all the conditions which have been stipulated in the statute have been fulfilled i.e. all the three activities of handling, storing and transportation have been undertaken on an integrated basis by the assessee. Thus, Ground No. 3 to 5 of Revenue's appeal are dismissed.

25. In result, the appeal of the assessee is partly allowed and the appeal for the Revenue is dismissed.

Order pronounced in the Open Court on this 07th Day of June, 2021.

Sd/-	**Sd/-**
(R. K. PANDA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 07/06/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI