

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1578/H/2019 Assessment Year: 2016-17		
Tanvi Foods (India) Ltd. (Hyderabad.  PAN - AACCT 6543J (Appellant)	Vs.	Income-tax Officer, Ward - 2(4), Hyderabad.  (Respondent)
Assessee by:	Shri Kiran for Shri S. Rama Rao	
Revenue by:	Shri Rohit Mujumdar	
Date of hearing:	05/04/2021	
Date of pronouncement:	10/06/2021	

**ORDER**

**PER L.P. Sahu, AM:**

This appeal filed by the assessee for AY 2016-17 is directed against the CIT(A) - 2, Hyderabad's order, dated 26/08/2019 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act" on the following grounds of appeal:

*"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous both on facts and in law.*

*2) The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing the claim of deduction u/ s 80lB (11A) of the I.T. Act inspite of*

*explaining in detail that the appellant is processing sweet corn which is vegetable.*

*3) The learned Commissioner of Income Tax (Appeals) ought to have allowed the claim of deduction u/s 80IB (11A) of Rs.82,72,150/- as it satisfied all the requirements of Scc.80IB(11A) of the I.T. Act.*

*4) The learned Commissioner of Income Tax (Appeals) ought to have seen that the Assessing Officer relied on the order of the appellate commissioner instead of considering the claim u/ s 80IB (11 A) on merits.*

*5) Any other ground or grounds that may be urged at the time of hearing.”*

2. Brief facts of the case are that the assessee, engaged in the business of purchase and sale of sweet corn besides preparation and sale of frozen food items like sweet corn samosa, spring rolls etc., filed its return of income for AY 2016-17 on 17/10/2016 declaring total income of Rs. 82,90,150/- and by claiming deduction of Rs. 82,72,150/- u/s 80IB(11A), the income declared by the appellant was at Nil. Further, the assessee company declared deemed total income u/s.115JB at Rs.1,67,07,493. In this case a survey ii] s.133A was conducted on 30-12-2015. at Registered office at D.No.7-2-4/D, Old Canteen Building, IDA, Sanath Nagar, The case was selected for scrutiny and the A.O. completed assessment u/s 143(3) of the IT Act on 21.12.2018 by making addition of Rs. 82,72,150/-. While doing so, he disallowed the deduction claimed u/s.

80IB(11A) of the Act, holding that sweet corn is not termed as vegetable.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the assessment order.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. Before us, the ld. AR reiterated the submissions as made before the authorities below. Further, he stated that the corn is vegetable and is eligible for deduction u/s 80IB(11A) .

6. The ld. CIT-DR, on the other hand, strongly supported the orders of lower authorities.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find that similar arose before the coordinate bench of this Tribunal in assessee's own case for AYs 2013-14, 2014-15 & 2015-16 in ITA Nos. 650 to 652/Hyd/2018 vide order dated 12/05/2021 wherein the coordinate bench decided the issue as under:

*"14. As regards the assessee's claim of deduction u/s 80IB (11A) of the Act, we find that there is no claim of assessee under the section in AY 2013-14. In AY 2014-15 and 2015-16, the filed a revised*

*return of wherein deduction u/s 80IB(11A) amounting to Rs. 25,74,270/- in AY 2014-15 and Rs. 71,99,010/- was claimed stating that the company is engaged in the business of processing, preservation and packaging of vegetables. The audit report in Form No. 10CCB signed by C.A. was also filed. In this connection, vide this office letter dated 13-12-16, a letter was addressed the assessee's auditor, which is reproduced, by AO in his order at para No. 4, which is extracted as under:*

*"During the assessment proceedings In the above mentioned case for the A. Y.2014-15, it is noticed that the company made a fresh claim of deduction u/s 80IB. The Audit report in Form No. 10CCB was prepared and uploaded by you on 30-03-2016 which was revised on 18-08-2016.*

*In this connection, your attention Is drawn to the fact that a survey u/s.133A was conducted In this case on 30-12-2015 and during the survey proceedings, it was noticed that the assessee did not maintain any books of account for the A. Yrs.2013-14 to 2015-16 and for the period 01-04-2015 to 30-12-2015, in support of purchases and sales made in respect of sweet corn which constituted 90% of assessee's business turnover. Further, no bills/vouchers were maintained in support of expenditure claimed under Various heads in the P&L account for the said period.*

*In the post survey proceedings, the director of the company Sri A.Sri Nagaveer, in his statement also confirmed the fact that no books of account were maintained. In this back ground, you are requested to explain as to how the audit report in form No.10CCB for claiming deduction u/s 80IB was issued especially when no books of account were maintained by the assessee. Your explanation should reach this within a week from the date of receipt of this letter".*

4.1. In response to the letter issued, the Chartered Accountant submitted a letter dated 16-12-16 wherein certain information was given on nature of business activity of the company and the deduction claimed u/s.80IB(11A). The relevant excerpts regarding deduction u/s.80IB are reproduced as under:

*"M/s. Tanvi Foods (India) pvt. Ltd has produced accounts in tally Including Trail Balance, Balance Sheet, P&L, sales and other ledgers. It has also produced Income tax returns filed, audit reports, note on business activity & business process and other relevant documents. .*

*Based on the verification of above documents and information produced before us, we have considered that M/s . Tanvi Foods (India) Pvt. Ltd. is eligible for deduction u/s. 80IB(11A) and issued form 10CCB.*

14.2 The AO denied assessee's claim of deduction u/s 80IB in the revised return by observing as under:

4.2. From the above, it is clear that the Chartered Accountant has given audit certificate in form No.10CCB relying on the accounts maintained in tally package only. In this connection, it is reiterated that during the, assessment proceedings and also in post survey proceedings, it was clearly brought out and proved beyond doubt that the assessee did not maintain any proper books of account like bills, vouchers etc. The said fact was already admitted by the director in his statement recorded, the relevant excerpt are reproduced in Para ;3.1 supra. In the absence of any such supporting evidences, the accounts maintained in any package'ibecome invalid and irrelevant and such accounts cannot be relied upon as-the same do not reflect true profits of the assessee's business.

*4.3. Mere entry of some figures in accounts package do not make the accounts legitimate unless the same are supported by documentary evidences. The' accounts which are not supported by documentary evidences cannot hold any water and the flnanclal statements prepared based on such accounts are baseless and untenable. under these circumstances, the books of account in the instant case were rejected and profits were estimated.*

*4.4. Therefore, the audit certificate issued by the Chartered Accountant simply basing on the figures maintained in tally package without any supporting documentary evidences, is nothing but a piece of paper which do not have any weight in the eyes of law. Accordingly, the assessee's fresh claim in the form of revised return claiming deduction uls 80IB is not maintainable and deserves to be rejected summarily."*

*14.3 On appeal, the CIT(A) confirmed the action of the AO.*

*14.4 Before us, the ld. AR of the assessee filed written submissions in this regard, which are as under:*

*"2. The appellant submits that the company was incorporated on 30.3.2007. Till May 2009 it carried on the activity mostly manually without using much of the machines.*

*3. During the financial year 2009-10, the company ordered for supply of processing unit on a turn key basis from Raghu Marketing Agencies. Accordingly, Raghu Marketing Agencies supplied the following machinery used in the various stages of procuring, processing and packing of Sweet Corn. A copy of the invoice raised by the said concern for supply of machinery is submitted for perusal. The invoice itself is known as "Turn Key supply of Corn processing Unit". The invoice raised for Rs.1,10,31,954j- include the following machinery.*

*(1) The first stage of the activity is purchase of fresh corn directly from the farmers and local markets.*

*The assessee needs weighing machines and purchased eight weighing machines for weighing of corn cob purchased.*

*(2) The second stage is removal of husk and corn silk and peeling of cobs to corn kernels.*

*For this purpose the assessee purchased three working tables of 2500 kg/hour (page No.2 of annexures) and were used for removal of husk.*

*(3) The next stage is cleaning of raw kernels.*

*For this purpose the assessee purchased three numbers of Air bubbled cleaning machines of the capacity of 2500 kg/hour (page No.2 of annexures).*

*(4) The next stage is boiling of raw kernels.*

*The assessee purchased 2 Nos. of Boiler Chambers of the capacity of 2500 Kg/hour (page No.2 of annexures).*

*(5) The next stage in the process is temperature dropping of boiled kernels.*

*For this purpose the assessee purchased 4 Nos. of Spray Driers of the capacity of 2500 kg/Hr (page No.2 of annexures) ..*

*(6) The next stage is packing of processed kernels.*

*The packing is undertaken with machine stitching by the employees. Seven stitching machines (page No.2 of annexures) of suitable capacity were purchased.*

*Further, packing machines were purchased on 17.3.2010 from Echo Cosmos. Later, in the year*

*2013-14 packing sealer machines, cover designer, cover design cylinders were all acquired which form part of the plant and machinery of the appellant to improve the packing.*

*(7) The preservation is made in Deep freeze (blast freezing) in the Blast room arranged vide invoice dated 5.6.2009 with puff panels in an area of 1950 sq Mtrs.*

*In addition, the Blast Room equipment of the capacity of 35TR consisting of three units (page No.3 of annexures) were provided.*

*(8) The .next stage of preservation is storage of processed kernels in Cold rooms.*

*For this purpose the Cold room puff panels of an area of 3350 sq. mtrs were purchased vide invoice dated 5.6.2009 and provided alongwith Cold room equipment of the capacity of 15TR in three units(page N03 of annexures).*

*(9) At the time of transport, the processed com is required to be carried in air conditioned carriers and the assessee owns two Air-conditioned carriers during the financial year 2012-13. Later during the FY 2013-14, 2014-15 & 2015-16, more vehicles were purchased (pages No.54 to 75 of annexures.*

*The availability of above equipment clearly indicate that the appellant has all the necessary equipment for procurement, processing, packing and preservation of sweet corn.*

*'5. During the previous year relevant for the assessment year 2013-14 the appellant incurred expenditure Rs.57,16,485/- ( page No.38 of the paper book as per details of other expenses under Note-"U") towards storage freezer charges. The charges were paid at out stations where the sweet corn is preserved and sold, Similarly for the period*



*ended 31.3.2014 and 31.3.2015, the following amounts were paid towards storage and freezer charges.*

*a) Asst. year 2014-15 \_ Rs.57,81,232/- ( page No.85 of the paper book as per details of other expenses under Note-"V")*

*b) Asst. year 2015-16 ( page No.128 of the paper book as per details of other expenses under Note-"W")*

*6. It can be seen from the above that the appellant possessed the required machinery for procurement, processing, cleaning, boiling and packing the material at the place of production. It has its own deep freezers and blast rooms at the place of production. At the places of sale ( i.e., at various outstations) it hired freezing chambers and paid rent as mentioned above. The above facts would indicate that the appellant is in the activity of purchase, processing, preservation and packing of sweet corn which is a vegetable product. Therefore, it is entitled for deduction u/s 80IB(11A) of the LT. Act."*

*14.5 During the course of hearing, the Id. AR of the assessee strongly submitted that the business of the assessee is eligible for deduction u/s 80IB(11A) of the Act because assessee is engaged in the business of corn processing & packaging. In this regard, the assessee has invested on plant & machinery, which are evident from the Schedule of fixed assets and has incurred expenditure under the head 'storage' debited into P&L Account and he also strongly reiterated the submissions made before the CIT(A) that the corn is covered as a vegetable. In this regard he referred the submissions made before the CIT(A) dated 11/09/2017, 24/11/2017, 5/12/2017, 25/12/2017 & 26/12/2017, which are placed in the paper book and relied on the case laws quoted in the written submissions before the CIT(A). Further,*

*he also relied on the paper book at page No. 155 & 156 regarding sweet corn, which is a vegetable, which is as under:*

*Sweet Corn is a vegetable?*

*“Dictionary meaning of Vegetable:*

*A plant or part of a plant used as food, such as a cabbage, potato, turnip, or bean.*

*Corn can be considered either a grain or a vegetable, based on when it is harvested. The maturity level of corn at harvest affects both its use at meals and its nutritional value. Corn that is harvested when fully mature and dry is considered a grain. It can be milled into cornmeal and used in such foods as corn tortillas and cornbread. Popcorn is also harvested when mature, and is considered to be a whole grain.*

*On the other hand, fresh corn (e.g., corn on the cob, frozen corn kernels) is harvested when it is soft and has kernels full of liquid. Fresh corn is considered a starchy vegetable. Its nutrient content differs from dry corn, and it is eaten in different ways -- often on the cob, as a side dish, or mixed with other vegetables.*

*A grain is defined as the harvested dry seeds or fruit of a cereal grass, or the term can refer to the cereal grasses collectively. Field corn that is harvested when the seeds are dry would thus be considered a grain. Sweet corn when harvested before maturity is usually considered a vegetable.*

*Wikipedia*

*Sweet corn (Zea mays convar. saccharata var. rufiosa; also called sugar corn and pole corn) is a variety of maize with a high sugar content. Sweet corn is the result of a naturally occurring recessive mutation in the genes which control conversion of*

*sugar to starch inside the ENO of the com kernel. Unlike field com varieties, which are harvested when the kernels are dry and mature (dent stage), sweet corn is picked when immature (milk stage) and prepared and eaten as a vegetable, rather than a grain. Since the process of maturation involves converting sugar to starch, sweet corn stores poorly and must be eaten Fresh, canned, or frozen, before the kernels become tough and starchy.*

*Income Tax Act*

*APVAT ACT*

*According to the AP Vat Act also Sweet Corn considered as a Vegetable.*

*Entry 18 of Schedule I of the APV AT Act, 2005 is "Vegetables & fruits other than those cured frozen, preserved, processed, dried, dehydrated or canned."*

*According to the Entry 18 of schedule I of the APVAT Act, vegetables are exempted from \ 'A! To conclude weather Sweet Corn in vegetable or not we applied for advance ruling from the AI V AT department.*

*Mis Sri Sai Agencies, Proprietor - A.Sri Nagaveer, was applied for advance ruling from Commercial tax department for taxability and classification of Sweet corn. He is Mancl~II1; Director of Mis Tanvi Foods Pvt Ltd*

*Question:*

*Whether the Sweet Corn I Maize I Corn is exempted or fall under Schedule IV of the I\ PVA 1 Act? ;*

*AP Vat Act:*

*Under AP VAT Act 2005, Schedule IV of the AP Vat Act contains taxable goods @4/5%, whereas*

*Schedule I of the AP Vat Act is containing tax exempted goods.*

*In the above said advance ruling it is concluded that:*

*Fresh Sweet Corn is exempted under Entry 18 of Schedule I of the APVAT Act, 2005. SCHEDULE -1 (See Section 7) List of Goods exempt from Tax under Section 7:*

*18. Vegetables & fruits other than those cured, frozen, preserved, processed, dried, dehydrated or canned.*

*From the above it is clearly evident that sweet corn is a vegetable.”*

14.6 On the other hand, the ld. DR relied on the orders of revenue authorities and submitted that the CIT(A) has coterminous powers with that of AO as provided in the Income Tax Act. He submitted that he can enhance the income as determined by the AO or reduce. He submitted that during the course of assessment proceedings, AO has wrongly taken the 10% of the profit on the entire receipts of the assessee. He submitted that the assessee in the P&L account no corresponding expenditure in regard to other income has been debited by the assessee. It shows that the assessee has not incurred any expenditure towards earning of the other income as shown by the assessee. In view of the above submissions, the ld. DR submitted that the CIT(A) has rightly enhanced the income of the assessee. Further, he submitted that the assessee has not complied for getting deduction as per section 80IB(11A) of the Act. He therefore submitted that the CIT(A) is justified in enhancing the income of the assessee, which may be upheld.

14.7 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The provisions of section 80IB(11A) read as under:

*“80IB(11A) The amount of deduction in a case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of food grains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001*

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

14.8 Whether the business of the assessee falls under this section for claiming the deduction U/s 80IB (11A) or not, therefore, it has to be decided first that the corn is vegetable or a fruit or it does not fall under any of these categories. In this regard we are concurred with the submissions made by the ld. AR (supra) which is extract from paper book page no. 155 & 156. So far as our considered opinion “Although corn falls into the grain category, it also fits into the definition of a starchy vegetable. “The definition of a vegetable is ‘a usually herbaceous plant grown for an edible part that is usually eaten as part of a meal,’” Gorin says. Yep, corn definitely fits the bill. Plus, the 2015-2020 U.S. Dietary Guidelines for Americans also lists corn as both a vegetable and a grain, she adds. So the

*double-identity is actually legit. Since corn is higher in carbohydrates and calories than vegetables like leafy greens and cruciferous veggies (think broccoli), it's typically considered a starchy vegetable. (Other examples of starchy veggies include potatoes and squash.) As part of a meal, corn and other starchy vegetables are more energizing than their non-starchy counterparts. The assessee has all the necessary equipment for procurement, processing, packing and preservation of sweet corn." In both the situation i.e. be it a fruit or vegetable the assessee is indeed eligible for the impugned Section 80IB (11A) deduction.*

14.9 *When the bench asked the Id. AR of the assessee that whether any plant and machinery has been installed for the processing , preservation and packaging of fruits or vegetables as envisaged U/s 80IB (11A) of the Income Tax Act. 1961, he drew our attention to the balance sheet under the head fixed assets, shown investment on plant & machinery under the block of Aeets. He also filed details of the additions to the plant & machinery. The assessee has maintained workshop also, which means it cannot be denied that there was no plant & machinery for the processing , preservation and packaging of fruits or vegetables. Therefore, the assessee is entitled for claim of deduction u/s 80IB(11A) on the profit estimated by the AO @ 10% on the revenue from operations as per Note No. "O" of the financial statements. Hence, we set aside the order of the CIT(A) in this regard and direct the AO to allow the assessee's claim of deduction u/s 80IB(11A). In the result, the ground raised by the assessee on this issue is allowed."*

7.1 As the issue under consideration is materially identical to that of assessee's case cited supra, following the decision therein, we hold that the assessee is eligible for deduction on the profit derived from

processing, preservatives and packing of fruits and vegetables as contemplated in section 80(B(11A) of the IT Act. However, on perusal of computation of income placed in paper book at page No. 2, the entire net profit has been taken, whereas, on examination of financial statements, the assessee has shown gross receipts in Trading and Profit & Loss Account, as under:

Notes forming part of Financial Statements as at 31/03/2016

Note	Particulars	For the year ended 31 <sup>st</sup> , March, 2016	For the year ended 31 <sup>st</sup> March, 2015
22	Note: Revenue from operations: Sale of products -Processed corn kernels -Diary and other Misc. -Corn Samosa -Corn Spring Roll	466,538,188 9,973,798 3,552,303 1,597,851	338,821,067 338,041 3,328,339 1,226,641
		481,662,140	343,714,088
23	Note: Other income: -Corp. office Sub-let income -Income through hiring of vehicles -Other income -Discount received	210,000 8,142,645 392,350 491,088	- - 51,464 -

7.2 In view of the above, in our considered opinion, some of the income/receipts shown are, prima-facie, not eligible for deduction. Therefore, we remit the issue to the file of the AO with a direction to recalculate the eligible profit for deduction as per section 80IB(11A) and the assessee is directed to provide all necessary details before the AO in support of its claim of deduction and cooperate in completing the correct profit element for eligible for deduction u/s 80IB(11A) .

Accordingly, the grounds raised by the assessee are partly allowed.

8. In the result appeal of the assessee is partly allowed in above terms.

Pronounced in the open court on 10<sup>th</sup> June, 2021.

Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER

Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER

Hyderabad, dated 10<sup>th</sup> June, 2021

*kv*

Copy to

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2	<i>ITO, Ward - 2(4), Signature Towers, Kondapur, Hyderabad - 84</i>
3	<i>CIT(A) - 2, Hyderabad.</i>
4	<i>Pr. CIT - 2, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>