Test for treating Export Incentives/State Incentive as being "derived from" the business of an undertaking or not [Sec 28 of ITA'61 – Sec 26 of ITA'25]

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As per Sections 28(iiid) and (iiie) any profit on the transfer of the Duty Drawback and on transfer of DEPB Schemes, etc., shall be chargeable to income tax under the head "Profits and gains of business or profession". The question is whether income from DEPB / Duty Drawback/RoDTEP/MEIS/SEIS or other such Schemes are incentives which flow from the schemes or are they a part of profits "derived from" the business eligible under Section 80-IB or any other such scheme. Similarly, whether electricity or interest subvention or transportation subsidies provided by The State Government would be considered as "derived from" the said business or not.

In these cases it has to be seen whether the income has a direct nexus / close connection with the business of the assessee or not. The words used are "derived from" and not "attributable to". The words "attributable to" in the given clause have been given a wider connotation as opposed to the words "derived from" which have been interpreted to be confined to "first degree sources". The words "derived from" will be given a restrictive interpretation.

Hence it was held by The Hon'ble Apex Court in the case of KAMINENI HEALTH SERVICES (P) LTD Vs DY. C. I. T. CIRCLE 2(1) HYDERABAD [2023-VIL-503-ITAT-HYD].

That the profit from DEPB and Duty Drawback claims, the assessee shall not be entitled to the deductions under Section 80-IB as such income cannot be said to be an income "derived from" industrial undertaking and even otherwise as per Section 28(iiid) and (iiie), such an income is chargeable to tax. However, as far as electricity or interest subvention or transportation subsidies provided by The State Government are concerned and where they impact the manufacture directly, they would continue to be considered as "derived from" the said business.

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