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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.2715/Del/2018
Assessment Year: 2013-14

M/s. Divya Creation, Plot No. 97, NSEZ, Noida	**Vs.**	Pr. CIT, Aayakar Bhawan, A2 D-Block, Sector 24, Noida
PAN :AADFD4879K		
(Appellant)		**(Respondent)**

Appellant by	Shri Piyush Kaushik, Adv.
Respondent by	Ms. Rachna Singh, CIT(DR)

Date of hearing	12.09.2018
Date of pronouncement	20.11.2018

ORDER

PER O.P. KANT, A.M:

This appeal by the assessee is directed against order dated 29/03/2018 passed by the Ld. Commissioner of Income Tax, Noida (in short 'the Ld. CIT') holding the assessment order dated 29/12/2015 passed by the Assessing Officer for assessment year 2013-14 as erroneous and prejudicial to the interest of the Revenue. The grounds raised by the assessee in the appeal are reproduced as under:

1. *That on the facts and circumstances of the case and in the Law, the Pr. CIT has grossly erred in assuming jurisdiction u/s 263 for directing the Assessing Officer (AO') to frame the assessment order de-novo.*
2. *That the assumption of jurisdiction u/s 263 by the CIT is improper & unjustified as the AO framed the original order u/s 143(3) after conducting enquiries on the issues as alleged in the impugned order u/s 263.*
3. *That on the facts and circumstances of the case and in the Law the assessee is entitled to deduction u/s 10A at Rs. 1,85,25,293 as claimed and initiation of section 263 proceedings on the same is bad in law on the aspect of assumption of jurisdiction u/s 263 as well as on merits.*
4. *That on the facts and circumstances of the case and in the Law the provisions of section 115JC (Minimum Alternate Tax) are not applicable to assessee for the subject year and initiation of section 263 proceedings in this regard is bad in law on the aspect of assumption of jurisdiction u/s 263 as well as on merits.*
5. *That on the facts and circumstances of the case and in the Law the assessee is clearly entitled to deduction on account of commission expenses of Rs. 14, 51,442 which cannot be the subject matter of disallowance u/s 40(a)(i) and initiation of section 263 proceedings in this regard is bad in law on the aspect of assumption of jurisdiction u/s 263 as well as on merits being squarely a covered matter in assessee's own case for the preceding year.*
6. *That on the facts and circumstances of the case and in the Law the assessee is entitled to deduction u/s 10A on interest income of Rs. 66,68,296 as claimed and initiation of section 263 proceedings in this regard is bad in law on the aspect of assumption of jurisdiction u/s 263 as well as on merits.*

   That the appellant craves leave to Add to and / or Amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal."

2. Briefly stated facts of the case are that the assessee firm was engaged in the business of manufacturing and export of gold and silver jewellery. For the year under consideration, the assessee

firm filed return of income declaring total taxable income of Rs.1,87,80,244/- after claiming deduction under section 10A of the Income-tax Act (in short 'the Act'), amounting to Rs.1,85,25,293/-. The case was selected scrutiny and assessment was completed under section 143(3) of the Act at total income of Rs.1,95,10,920/- by the Assessing Officer. Subsequently, the Ld. CIT called for the records and found that the assessment order passed by the Assessing Officer was erroneous insofar as prejudicial to the interest of the Revenue. Accordingly, he issued notice under section 263 of the Act and passed order dated 29/03/2018, holding that the Assessing Officer accepted the version of the assessee without making any enquiry or verification on following issues:

(i) that while allowing deduction under section 10A of the Act amounting to Rs.1,85,25,293/-, the Assessing Officer has not verified that as per 4th proviso to subsection (1) of section 10A, no deduction was allowable from assessment year 2012-13 onwards.

(ii) that applicability of Minimum Alternative Tax (MAT) on adjusted total income as per provisions of section 115JC of the Act was not examined.

(iii) that deduction under section 10A of the Act has been wrongly allowed in respect of disallowance of commission expenses of Rs.14,51,442/-paid to non-resident without deduction of tax at source (TDS) under section 195 of the Act,

(iv) that deduction under section 10A of the Act has been wrongly allowed on interest income of Rs.66,868,296/- on

various FDRs, which is not derived from the business of export.

2.2 Aggrieved with the finding of the Ld. CIT, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. counsel of the assessee filed a paper book containing pages 1 to 103 and submitted that the Assessing Officer has made due enquiry on all the issues raised by the Ld. CIT in the impugned order. He also submitted that the Ld. CIT has not pointed out any error in the order of the Assessing Officer, and thus according to him, the Ld. CIT is not justified in holding the order of the Assessing Officer as erroneous and prejudicial to the interest of the revenue.

3.1 As far as the first issue of deduction under section 10A of the Act is concerned, the Ld. counsel submitted that the assessee was granted approval by way of letter dated 12/03/2003 by the SEZ Authorities, Noida to commence production within one year of the said date. Thereafter, the assessee vide letter dated 21/05/2003, intimated to the SEZ Authorities that it had commenced trial production. Further, vide letter dated 26/05/2003, it was intimated that the assessee commenced regular production. According to the Ld. counsel, in view of the fact that production commenced during the previous year corresponding to the assessment year on or after 1st day of April 2003, i.e. AY: 2004-05, in the case of the assessee subsection (1A) of section 10A is applicable and the current assessment year being 2013-14 being the 10th year of claim, deduction was rightly

allowed by the Assessing Officer after enquiry and verification. The Ld. counsel submitted that 4th proviso to section 10A limiting the deduction upto assessment year 2012-13 has been superseded by the non-obstante clause contained in sub-section (1A) of the Act. The Ld. counsel referred to page 37 of the paper book, wherein the Assessing Officer raised queries on justification of deduction under section 10A of the Act.

3.2 He also referred to page 40 and 43 of the paper book, according to which the assessee filed reply on this issue. The Ld. counsel also referred to page 48 of the paper book containing detail of year-wise deduction/exemption under section 10A claimed by the assessee since assessment year 2004-05 and submitted that those assessment years were not subjected to section 263/section 147 proceedings. He also referred to assessment order for assessment year 2004-05, which is available on page 61 of the paper book and submitted that deduction/exemption was allowed in the said year after due verification.

3.3 Addressing the above facts of the case of the assessee, the Ld. counsel submitted that if there is any enquiry even though inadequate, it would not cloth CIT with power to assume jurisdiction under section 263 of the Act. He further submitted that in any case, the CIT cannot remand the matter back to the AO to frame the assessment unless the CIT himself after conducting enquiries establish in clear and concrete manner as to what is the wrong in the claim of the assessee and only then, the order can be said to be erroneous and prejudicial to the interest of the Revenue. In support of the above proposition, the Ld. counsel relied on the following decisions:

1. *Decision of Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd., 332 ITR 167 (Del.);*
2. *Decision of Delhi High Court in the case of CIT Vs. International Travel House Ltd, 344 ITR 554 (Del.);*
3. *Decision of Delhi High Court in the case of Director of Income Tax Vs. Jyoti Foundation, 357 ITR 388 (Del.);*
4. *Decision of Delhi High Court in the case of Pr CIT Vs Delhi Airport Metro Express Pvt. Ltd 2017-TIOL-1814-HC-DEL-IT;*
5. *Decision of Delhi High Court in the case of ITO Vs DG Housing Projects Ltd. 343 ITR 329 (Del.);*
6. *Decision of Delhi High Court in the case of CIT Vs New Delhi Television Ltd. 2013-TIOL-776-HC- DEL-IT;*
7. *Decision of Delhi High Court in the case of Pr CIT Vs Modicare Ltd. 2017-TIOL-1946-HC-DEL,*
8. *Decision of Allahabad High Court in the case of CIT Vs Krishna Caobox (P.) Ltd 372 ITR 310 (All.);*
9. *Decision of Co-ordinate Bench of Delhi ITAT in the case of Prathma Bank Vs CIT (2016) 52 ITR (Trib.) 454 (ITAT Del.).*

3.4 On the second issue of taxability under MAT provisions, the Ld. counsel submitted that under provisions of Alternative Minimum Tax (MAT) i.e. under section 115JC, relevant for partnership firms, the adjusted total income shall be the same as computed under the normal provisions except where any assessee is claiming deduction under section 10AA and chapter VIA of the Act. Thus, according to the Ld. counsel, the said section 115JC did not apply to the assessee for the simple reason that assessee has not made any such claim of deduction under section 10AA or chapter VIA.

3.5 On the third issue of disallowance under section 40(a)(i) of Act on payment commission to non-residents, the Ld. counsel submitted that the Assessing Officer vide query letter dated 28/10/2015, which is available on page 37 of the paper book, raised a specific query with respect to payment of commission to

parties including evidence of services rendered, amount of sales, amount paid along with TDS. He submitted that assessee provided all the details in this respect vide letter dated 04/12/2015, which is available on page 68-71 of the paper book.

3.6 The Ld. counsel submitted that in preceding year, the coordinate bench of the Tribunal in its detailed decision dated 14/09/2017, in assessee's own case reported in (2017) 86 taxmen.com 276, held that there is no TDS requirement on payment of agency commission to non-resident agent and thus there can be no disallowance on this account and there cannot be any 263 proceedings on this issue.

3.7 Without prejudice to the above, the Ld. counsel further submitted that the enhanced income on account of disallowance under section 40(a)(i) will be eligible for taxability u/s 10A as held in following decisions:

1. *Decision of co-ordinate bench of ITAT in the case of DCIT Vs M/s Goldman Sachs Services Pvt. Ltd. in IT (TP)A No. 66/Bang/2014 dated 05/04/17;*
2. *Decision of Gujarat High Court in the case of ITO Vs Keval Construction 354 ITR 13 (Guj);*
3. *Decision of Bombay High Court in the case of CIT Vs Gem Plus Jewellery India Ltd 330 ITR 175;*
4. *Decision of co-ordinate bench of ITAT in the case of DCIT Vs Magarpatta Township Development & Construction Co. 32 taxmann.com 63*

3.8 In view of the above decisions cited, the Ld. counsel submitted that in present case to allow section 10A deduction by the Assessing Officer on enhanced income on account of disallowance of commission expenses, is a plausible view and therefore, same can certainly not be a subject matter of section 263 proceedings.

3.9 On the fourth issue of deduction under section 10A on interest income from FDR, the Ld. counsel submitted that vide letter dated 28/10/2015, which is available on page 38 of the paper book, the Assessing Officer has raised a specific query with respect to the details of nature of the receipt in profit and loss account. He further submitted that the assessee filed a detailed explanation on this issue before the Assessing Officer vide letter dated 23/11/2015 in the course of assessment proceedings. The Ld. counsel submitted it was duly explained to the Assessing Officer that the interest income of Rs.66,68,296/- was received from deposits with Canara Bank, Industrial Finance Branch, Noida, which were meant for availing bank credit facilities for the purpose of business only. The Ld. counsel also submitted a copy of letter from Canara bank stating that fixed deposits were pledged against letter of credit, bank guarantees and limits as on 31/03/2013. In view of the above, the Ld. counsel submitted that adequate enquiry was made by the Assessing Officer on the issue during assessment proceedings.

3.10 The Ld. counsel submitted that assessee's claim of deduction under section 10A on interest income on fixed deposit is squarely covered by the Karnataka High Court decision in the case of CIT versus Motorola India Electronics Private Limited (2014)-TIOL-87-HC-KAR in assessee's favour, wherein it is held that interest income on fixed deposit qualify for deduction under section 10A in view of the specific language of the provisions of subsection (4) of section 10A. He further submitted that assesses claim of deduction under section 10A on interest income from FDR is supported from the full bench decision dated 30/10/2017 of the Hon'ble Karnataka High Court in the case of CIT versus

M/s Hewlett Packard Global Soft Ltd 2017-TIOL-2293-HC-KAR-LB and also decision of the Hon'ble Delhi High Court in the case of Riveria Home Furnishing Vs Addl CIT 2015-TIOL-2729-HC-DEL-IT dated 19/11/2015.

3.11 He also submitted that decision in the case of Shriram Honda Power equipment (supra) relied upon by the CIT is in context with section 80HHC and not section 10A of the Act.

3.12 In view of the above decisions, the Ld. counsel submitted that assessees claim of deduction under section 10A on interest income is a plausible claim supported by way of several High Court decisions and thus it cannot be the subject matter of section 263 proceedings.

3.13 Concluding his arguments, the Ld. counsel submitted that 263 proceedings initiated by the CIT on all the four issues are manifestly incorrect and the order under section 263 deserve to be quashed.

4. On the contrary, the Ld DR submitted that for invoking section 263 of the Act in respect of the assessment order, the twin conditions of erroneous so as to prejudicial to the interest of the revenue are required to be fulfilled. She referred to Explanation-2 below section 263 of the Act inserted by the Finance Act, 2015, w.e.f. 01/06/2015, wherein it is provided that if the order is passed without making enquiries or verification which should have been made, the order passed shall be deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue. According to her now the finding of the various courts that no action under section 263 in case of inadequate enquiry, is no longer valid. She pointed out that on the issue of deduction under section 10A, the Assessing Officer has not carried out the

enquiries which he should have made. She submitted that 4th proviso below the section 10A denies deduction under the section for the assessment year 2012-13 and onwards. According to her, simple reading of the proviso makes it amply clear that this proviso is applicable over section 10A in entirety and not just subsection (1) of section 10A as contended by the assessee. On the issue of applicability of MAT provisions, the Ld. DR submitted that the assessee was liable to pay minimum alternate tax on adjusted total income at the rate of 18.5 percent and this issue was not examined or inquired by the Assessing Officer. On the third issue pertaining to commission expenses of Rs.14,51,442/- paid to non-resident without deduction of TDS, the Ld. DR submitted that Assessing Officer has allowed excess deduction as compared to allowable deduction as per Auditor's Report in form No. 56F and which requires examination. On the issue related to deduction under section 10A on interest income of Rs.66,68,296/- earned on various FDR's is concerned, the Ld. DR submitted that the Ld. CIT pointed out to the assessee that interest income earned on surplus fund parked or interest income earned on FDRs for availing credit cannot be said to be derived from business of export in view of the decision in the case of CIT versus Shriram Honda Power Equipment (supra). According to her the Assessing Officer has not looked into this aspect and allowed the excess deduction without any examination or verification, whereas he should have examined the source of interest from specific FDR and under what circumstances those FDR's were made.

4.1 She relied on the decision of the Hon'ble Delhi High Court in the case of Gee Vee Enterprises versus Additional CIT, 99 ITR 375

(Del) wherein it is held that it is not necessary for the Commissioner to make further enquiries before cancelling the assessment order of the Income-tax Officer. The Ld. DR also referred to the decision of the coordinate bench of the Tribunal in the case of NIIT Vs. CIT (Central) (2015) 60 taxmann.com 313 (Delhi) wherein it is held that an enquiry, which is just a farce or mere pretence of Inquiry cannot be said to be an enquiry at all, much less enquiry needed to reach the level of satisfaction of the Assessing Officer on the given issue.

4.2 In view of the above arguments, she submitted that assessment order dated 29/12/2015 passed by the Assessing Officer was without making proper enquiry and without examination of the above issues, which has rendered the assessment order as erroneous and prejudicial to the interest of the Revenue.

5. We have heard the rival submissions and perused the relevant material on record including the impugned order passed by the Ld. CIT. According to the Ld. CIT, the Assessing Officer has not carried out proper enquiries or not examined on the 4 issues raised by the Ld. CIT in the impugned order and thus the order of the Assessing Officer was erroneous so as to prejudicial to the interest of the revenue. In this respect we may like to refer to the Explanation -2 introduced by way of Finance Act, 2015 w.e.f 1-6-2015, which reads as under:

> ***"Explanation 2****.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—*

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

6. In view of the clear provisions as reproduced above, if the order has been passed without the enquiries which ought to have been made in the facts and circumstances of the case, the order is deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue. The decisions cited by both the parties on the issue of lack of enquiry or inadequate enquiry are for the period prior to the Explanation-2, which has been inserted w.e.f. 01/06/2015. In the instant case the order under section 263 has been passed on 29/03/2018, and thus in view of the Explanation-2, the Assessing Officer was required to carry out enquiry on the issues, which has ought to have been done in the facts and circumstances of the case.

7. In the instant case, the Ld. CIT has held that Assessing Officer has not carried out enquiries on four issues. Thus, we have to examine, whether the Assessing Officer was required to carry out enquiries in the facts and circumstances of the case on those four issues.

8. Regarding the first issue of allowing deduction under section 10A of the Act for the year under consideration, the Ld. CIT is of the view that according to the 4th proviso, no deduction is

allowed under section 10A for the assessment year beginning on 1st day of April 2012 and subsequent years. The relevant subsection 10A(1) and the proviso are reproduced as under:

> ***"Special provision in respect of newly established undertakings in free trade zone, etc.***
>
> ***10A.*** *(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee :*
>
> ***Provided*** *that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years :*
>
> ***Provided further*** *that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the undertaking began to manufacture or produce such articles or things or computer software in such free trade zone or export processing zone :*
>
> ***Provided also*** *that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software :*
>
> ***Provided also*** *that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2012 and subsequent years."*

9. The contention of the assessee is, however, that it has claimed deduction under section 10A(1A) of the Act, which starts with a non-obstante clause that notwithstanding anything contained in sub-section (1) the specified amount of deduction would be allowed to undertakings for 10 assessment years which begins manufacturing/production after 01/04/2003 in any special economic zones. The said sub-section is reproduced as under:

> *"(1A)* ***Notwithstanding anything contained in sub-section (1),*** *the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be,—*
>
> *(i) hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two consecutive assessment years, and thereafter;*
>
> *(ii) for the next three consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Allowance Reserve Account") to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (1B):"*
>
> *(Emphasis supplied externally)*

10. On perusal of the above provisions, it is evident that deduction under section 10A(1A) is allowable notwithstanding anything contained in subsection (1) of section 10A of the Act.

The fourth proviso being relevant to subsection (1), it was not applicable in case of the deductions eligible under subsection 1A of section 10A of the Act. The observation of the Ld. CIT that assessee is not entitled for deduction under section 10A for the year under consideration in view of the 4th proviso to subsection (1), is incorrect appreciation of law. In view of the clear provisions, the Assessing Officer was not required to examine applicability of 4th proviso to subsection (1) of section 10A of the Act. Accordingly, the contention of the Ld. CIT that no enquiry has been conducted by the Assessing Officer on the applicability of the 4th proviso, is hereby rejected.

11. On the second issue of applicability of MAT provisions on adjusted income is concerned, the adjusted income defined in section 115 JC is reproduced as under:

> ***"Special provisions for payment of tax by certain persons other than a company.***
> ***115JC.*** *(1)*
> *.....*
> *(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—*
> *(i) deductions claimed, if any, under any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes";*
> *(ii) deduction claimed, if any, under section 10AA; and*
> *(iii) deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed."*

12. It is evident from the above that if the deduction is claimed under chapter VIA or under section 10AA or under section 35D

then the adjusted total income would be total income before claim of those deductions and if the regular income tax payable is less than the MAT payable on such adjusted total income, the assessee would be liable to pay MAT. But, in the instant case, the deduction has been claimed by the assessee under section 10A of the Act and not under the sections specified above for computing adjusted total income, thus, the provisions of section 115JC are clearly not applicable. In view of the clear and unambiguous provisions of the law, the Ld. Assessing Officer was not required to enquired upon the applicability of section 115JC in the case of the assessee and thus accordingly, we reject the contention of the Ld. CIT that the Assessing Officer has not made any enquiry on this issue.

13. On the third issue of allowing deduction in respect of the commission expenses disallowed by the Assessing Officer, the Ld. CIT has observed that copy of the order of the Tribunal of the earlier year was not readily available or was not filed by the counsel of the assessee and therefore the issue required examination by the Assessing Officer. In our opinion, the Ld. CIT could have verified the order of the Tribunal and then decided whether the examination was required in the case. We have seen the order of the Tribunal in ITA No. 5603 of 2014 for assessment year 2010-11, which is available on page 90-96 of the paper book. In the said order the Tribunal examined the applicability of deduction of tax at source on payment to agents for export commission and held that assessee was not liable to deduct tax under the provisions of section 195 on account of foreign agency commission paid outside India for promotion of export sales outside India. In view of the above facts and circumstances, the

contention of the Ld. CIT that the Assessing Officer has wrongly allowed deduction in respect of commission expenses, is rejected. Regarding the 4th issue of deduction on interest income from FDR, the Ld. CIT has held that interest income earned on surplus fund parked or interest earned on FDRs for availing credit is not income derived from business of the export in view of the decision of Hon'ble Delhi High Court in the case of CIT versus Shriram Honda Power Equipment (supra). The Ld. counsel has submitted that said decision in the case of Shriram Honda Power Equipment (supra) was in relation to deduction of interest income under section 80HHC of the Act and not in relation to section 10A of the Act. The Ld. counsel in this respect has relied on the decision of the full bench of the Karnataka High Court in the case of CIT Vs Hewlett Packard Global Soft Ltd (supra), wherein the following question of law was raised:

> *"(i)……*
> *(ii) Whether the Assessing Officer was correct in holding that the interest income cannot be held to be derived from eligible business of the assessee (software development) for the purpose of claiming deduction under Section 10A of the Income Tax Act, 1961?"*

14. The Hon'ble High Court considered the decisions in the case of Pandian Chemicals Ltd. versus CIT (2003) 262 ITR 278 (SC) with reference to section 80HH, Liberty India versus CIT (2009) 317 ITR 218 (SC) with reference to section 8IB, CIT versus Sterling Food (1999) 237 ITR 579 (SC) with reference to section 80HH. The Hon'ble High Court distinguished the above decisions in view of the decision of the Hon'ble Delhi High Court in the case of Riviera Home Furnishing Vs. Addl. CIT (2016) 65 Taxmann.com

287 (Delhi), wherein the deduction for interest received on fixed deposits receipt, which were under lien with bank for facilitating letter of credit and bank guarantee facilities etc and held that such interest received on FDR would qualify for deduction under section 10 B of the Act.

15. The Hon'ble High Court observed that the interest income arises in ordinary course of export business of the undertaking even though not as a result of that export, would qualify for hundred percent deduction. The relevant portion of the decision of the Hon'ble High Court is reproduced as under:

> *"35. The Scheme of Deductions under Chapter VIA in Sections 80-HH, 80-HHC, 80-IB, etc from the 'Gross Total Income of the Undertaking', which may arise from different specified activities in these provisions and other incomes may exclude interest income from the ambit of Deductions under these provisions, but exemption under Section 10-A and 10-B of the Act encompasses the entire income derived from the business of export of such eligible Undertakings including interest income derived from the temporary parking of funds by such Undertakings in Banks or even Staff loans. The dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category of assessees entitled to the incentive in the form of 100% Deduction under Section 10-A or 10-B of the Act, rather than it being a special character of income entitled to Deduction from Gross Total Income under Chapter VIA under Section 80-HH, etc. The computation of income entitled to exemption under Section 10-A or 10-B of the Act is done at the prior stage of computation of Income from Profits and Gains of Business as per Sections 28 to 44 under Part-D of Chapter IV before 'Gross Total Income' as defined under Section 80-B(5) is computed and after which the consideration of various Deductions under Chapter VI-A in Section 80HH etc. comes into picture. Therefore analogy of Chapter VI Deductions cannot be telescoped or imported in Section 10-A or 10- B of the Act. The words 'derived by an Undertaking' in Section 10-A or 10-B are different from 'derived from' employed in Section 80-HH etc. Therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction under Section 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the*

Undertaking even though not as a direct result of export but from the Bank Deposits etc., and is therefore eligible for 100% deduction."

16. The Hon'ble High Court finally concluded as under:

"37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also interest earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks or advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking http://www.itatonline.org Full Bench Order Dated 30-10-2017 in ITA No.812/2007 The Commissioner of Income Tax & Anr. Vs. M/s. Hewlett Packard Global Soft Ltd. 53/54 engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act."

17. Respectfully, following the above decision we find that that interest income in the case of the assessee earned on FDR's with the bank is also eligible for deduction under section 10A of the Act. We also find that Assessing Officer asked for the details of the said interest income and assessee has duly filed reply giving detail of the said income. In such facts and circumstances, we are of the opinion that the Assessing Officer has correctly applied the law after carrying out the enquiries, which he ought to have done. Accordingly, we reject the contention of the Ld. CIT that the Assessing Officer has wrongly allowed the deduction on interest income earned on various FDR.

18. In view of the aforesaid discussion, we are of the opinion that finding of the Ld. CIT that the Assessing Officer ought to have done enquiries on the four issues is not correct and thus action of the Ld. CIT for holding the order of the Assessing Officer

as erroneous insofar as prejudicial to the interest of the Revenue, cannot be sustained. Accordingly, we cancel the order of the Ld. CIT(A) passed under section 263 of the Act.

19. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 20th November, 2018.

Sd/-	**Sd/-**
AMIT SHUKLA	**O.P. KANT**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20th November, 2018.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi