

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 454/JP/2019
निर्धारण वर्ष/Assessment Year :2013-14

M/s Amrapali Exports G-40, SEZ, Phase-II, Sitapura Industrial Area, Jaipur	बनाम Vs.	DCIT, Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKFA0905E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Bafna (CA)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 16/12/2020
उद्घोषणा की तारीख/Date of Pronouncement: 05/01/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 23.01.2019 wherein the assessee has taken the following grounds of appeal:-

- "1. The Ld. CIT(A) has erred on facts and in law in upholding the validity of the order passed u/s 147 of IT. Act, 1961.
2. The Ld. CIT(A) has erred on facts and in law in upholding the rejection of books of accounts u/s 145(3) of IT Act, 1961.
3. The Ld. CIT(A) has erred on facts and in law in upholding the action of AO in treating the purchases of Rs. 7,54,587/- made from M/s Arihant Exports as bogus by not considering the various evidences filed by the assessee. He has further erred in confirming

the addition of Rs. 1,88,647/- by disallowing 25% of alleged unverifiable purchases of Rs. 1,88,647/- u/s 69C of IT Act, 1961.

4. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 15,092/-, being 2% of Rs. 7,54,587/- on account of alleged commission paid for obtaining the accommodation entry.

5. The Ld. CIT(A) has erred on facts and in law in not accepting the contention of assessee to recomputed the deduction u/s 10AA after considering the trading addition of Rs. 2,03,739/- ignoring the CBDT Circular No. 37/2016 dt. 02/11/2016."

2. Briefly stated, the facts of the case are that the assessee firm is engaged in the business of manufacturing and export of gold, silver and base material jewellery plain & studded with precious & semi precious stones. It has set up its manufacturing and export unit/factory in Special Economic Zone at Sitapura Industrial Area, Jaipur and has started commercial production from 21.04.2008 and has claimed deduction u/s 10AA of the Act. The assessee originally filed its return of income on 20.09.2013 at 90,220/- after claiming deduction u/s 10AA at Rs. 7,21,35,825/-. The assessment was completed u/s 143(3) on 27.01.2016 wherein the returned income was accepted by the Assessing Officer. Subsequently, basis the information obtained from Investigation wing, Mumbai that the assessee has obtained bogus entries in the form of bogus purchases amounting to Rs. 7,54,587/- from M/s Arihant Exports, Surat, notice u/s 148 was issued on 28.02.2017. In response to such notice, the assessee filed its return of income on 10.03.2017 declaring the income at Rs 90,220/- after claiming deduction u/s 10AA at Rs. 7,21,35,825/-. The reassessment order u/s 143(3) read with 147 was passed by the Assessing Officer on 13.12.2017 wherein the assessee was found eligible for deduction u/s 10AA to the extent of Rs. 7,21,35,825/- as originally

assessed u/s 143(3) of the Act. However, books of accounts were rejected u/s 145(3) and a sum of Rs. 1,88,647/- was added back to the total income of the assessee, being unexplained expenditure for the reason that the assessee was found indulging in obtaining accommodation entry of purchase of goods from bogus concern which was operated by Shri Rajendra Jain without any physical deliveries and such purchases amounting to Rs 7,54,587/- were treated as non genuine and 25% of such purchases were brought to tax as unexplained expenditure besides addition of Rs. 15,092/-, being 2% of Rs. 7,54,587/- on account of alleged commission paid for obtaining the accommodation entry. On appeal, the said findings have been sustained by the Id. CIT(A) and against the said finding, the assessee is now in appeal before us.

3. During the course of hearing, the Id. AR submitted that the matter is covered in favour of the assessee by the decision of the **Tribunal in assessee's own case in ITA No. 190 & 191/JP/2019** for A.Ys 2009-10 & 2014-15 dated 04.11.2019 and our reference was drawn to the relevant findings of the Tribunal which are contained at paras 9 to 12 of its order which read as under.

"9. We have heard the rival contentions and perused the materials available on record. The limited issue under consideration is whether the Assessing Officer is required to recompute the deduction u/s 10AA after considering the addition of Rs. 2,80,500/- so made by him and in that sense, the addition so made is revenue neutral. In this regard, we refer to the CBDT No. 37/2016 dated 2.11.2016 which reads as under:-

"Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits

and gains of a business activity, the Assessing Officer may make certain disallowances, such a disallowances pertaining to Sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter- VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80- IB of the Act. This view was taken by the Courts in the following cases:

- Income-tax Officer-Ward 5(1) v. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court*
- Commissioner of Income-tax IV, Nagpur v. Sunil Vishwambharnath Tiwari IT Appeal no. 2 of 2011, September 11, 2015, Bombay High Court*

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- *Principal CIT, Kanpur v. Surya Merchants Ltd. IT Appeal no. 248 of 2015, May 03, 2016, Allahabad High Court*

The above views have been attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a) (ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI- A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn/not pressed upon. The above may be brought to the notice of all concerned."

10. Though the aforesaid circular has been issued by the CBDT in the context of Chapter VI-A of the Act, the deduction u/s 10AA is equally profit- link deduction though the fall under Chapter III of the Act and the legal position which has been accepted by the CBDT in the aforesaid circular will equally applies to the deductions claimed section 10AA of the

Act. In the said circular, the CBDT has accepted the judgment of the various High Courts wherein it has been held that if the expenditure disallowed is related to business activity against which deduction has been claimed, the deduction needs to be allowed on enhanced profit worked out taking into consideration the disallowances so made by the Assessing officer.

11. The Co-ordinate Bench in case of ITO vs. Anthelio Business Technologies Pvt. Ltd. 78 taxmann.com 203 (Mumbai) in context of deduction under section 10B relying on the aforesaid CBDT Circular has taken a similar view and it would be relevant to refer to the findings of the Co-ordinate Bench which read as under:-

“7. We have heard the rival contentions and also perused the material available on record including the afore-stated CBDT circular. We have observed that the assessee is registered as a 100% export oriented unit under the Software Technology Park of India Scheme and the assessee is engaged in the business of provision of information technology enabled services and other back office support services. It is also an undisputed and admitted position between both the parties that the assessee is entitled for deduction u/s. 10B of the Act and the profits of the assessee are exempt from payment of taxes u/s. 10B of the Act. We have observed that the assessee has undertaken total turnover of Rs. 32,76,00,596/- which is also export turnover of the assessee and the assessee has claimed deduction u/s. 10B of the Act of Rs. 7,60,34,821/-. Additions have been proposed u/s. 40(a)(i) of the Act at Rs. 1,49,73,455/- by the AO vide draft assessment order, the details of which are as under:-

Sl. No.	Name of the party	Amount (Rs)
1	Mark R Luciw	22,10,258/-
2	Garry O Neil	1,04,57,012/-
3	Bruce Sugaarman	21,70,629/-
4	John Blyzinkyl	1,35,556/-
	TOTAL	1,49,73,455/-

The above expenses were incurred by the assessee towards 'sales and marketing expenses' from which the assessee has not deducted tax at source. Additions were proposed by the A.O. of Rs. 1,49,73,455/- in his draft assessment order which was restricted by the ld. DRP vide order dated 29th November, 2014 to an amount of

Rs. 1,35,556/-. With respect to the payments of Rs. 1,48,37,899/-, the DRP directed to delete the same as the assessee has submitted the notarized copies of passports, which as per DRP proved that three individuals at s. no 1 to 3 in above chart did not visit India during the relevant year. Hence, the DRP directed that said payments will not be subject to withholding tax u/s. 195 of the Act and accordingly these payment cannot be disallowed u/s. 40(a)(i) of the Act.. The DRP held that these payments to the tune of Rs. 1,48,73,455/- are to be allowed, while, with respect to the 4th person Mr. John Blyzinskyj, the payment of Rs. 1,35,556/- without deduction of tax at source had remained unsubstantiated and the ld. DRP confirmed the addition of Rs. 135,556/- by issuing directions u/s. 144C(5) of the Act, which additions were confirmed by the AO in his assessment order dated 17.12.2014 passed u/s. 143(3) of the Act r.w.s. 144C(13) of the Act in pursuance of directions of DRP.. We have observed that the CBDT has issued Circular No. No. 37/2016 dated 2nd November, 2016, which is reproduced below:—

"SECTION 80-IB, READ WITH SECTIONS 32, 40(a)(ia), 40A(3) & 43B, OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS - CHAPTER VIA DEDUCTIONS ON ENHANCED PROFITS

CIRCULAR NO. 37/2016 [F.NO. 279/MISC./140/2015/ITJ], DATED 2-11-2016

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

- 2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:*

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- *Income-tax Officer - Ward 5(1) v. Keval Construction* [\[2013\] 33 taxmann.com 277 \(Guj.\)](#)
- *Commissioner of Income-tax-IV, Nagpur v. Sunil Vishwambharnath Tiwari* [\[2016\] 63 taxmann.com 241 \(Bom.\)](#)
- *Principal CIT, Kanpur v. Surya Merchants Ltd.* [\[2016\] 72 taxmann.com 16 \(All.\)](#).

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

3. *In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.*
4. *Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn/not pressed upon. The above may be brought to the notice of all concerned."*

The sum, substance and spirit of the afore-stated circular is that the Revenue does not want to continue the litigation with respect to disallowance made by the Revenue u/s. 32, 40(a)(ia), 40A(3), 43B etc. of the Act, which ultimately led to increase in profits which are otherwise eligible for profit linked deduction under Chapter VI-A of the Act. The Board has accepted that the disallowance made u/s. 32, 40(a)(ia), 40A(3), 43B etc. of the Act and other disallowance out of specific expenditure related to the business activity may be made by Revenue which led to enhancement of profits against which Chapter -VIA profit linked deductions has been claimed and it is accepted that enhanced profit linked deduction under Chapter VI-A is admissible on the profits so enhanced by the said disallowance made by the Revenue. We find that the Revenue's appeal and the assessee's cross objection are duly covered by the CBDT circular although Section 10B of the Act is not placed under Chapter VI-A of the Act rather the same is placed under Chapter-III of the Act but the deductions u/s. 10B of the Act are profit linked deductions and hence there is no reason why the same should not be allowed keeping in view the spirit of afore-stated CBDT circular as the deduction u/s. 10 B of the Act is also profit linked deduction. Similarly, it is stated in the circular

about disallowance u/s. 40(a)(i) of the Act which is succeeded by the word 'etc' wherein the circular has stated as under:

"In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act."

The use of the word 'etc.' clearly denotes that it will apply to similarly placed disallowances and disallowance u/s. 40(a)(i) of the Act is also disallowance due to non-deduction of withholding tax as is contemplated by Section 40(a)(ia) of the Act. Hence the CBDT circular will be applicable to deductions u/s. 10B of the Act as well to disallowance u/s. 40(a)(ia) of the Act as well. Hence the appeal of the Revenue is not sustainable/maintainable in view of afore-stated CBDT circular dated 02-11-2016 and we dismiss the appeal filed by the Revenue, while the C.O. filed by the assessee is allowed as the additions of Rs. 1,35,556/- made by the AO are w.r.t. disallowance u/s. 40(1)(ia) of the Act. In any case this issue is also covered by decision of Hon'ble jurisdictional Bombay High Court in favour of the assessee in Gem Plus Jewellery India Ltd.'s case (supra) as disallowance u/s. 40(a)(i) of the Act is a statutory disallowance and the hence enhanced profits due to disallowance shall be considered for deduction u/s. 10B of the Act. We order accordingly."

12. In the instant case, it is not in dispute that the assessee is eligible for claim of deduction u/s 10AA of the Act. It is also not in dispute that the assessee has only one business undertaking which is engaged in the business of manufacturing and export of gold, silver and base material jewellery plain & studded with precious & semi precious stones situated at Sitapura Industrial Area, Jaipur and the total turnover of the business is equivalent to the total turnover of the undertaking as well as the export turnover. The expenditure to the extent of 25% of purchases where are held as non-genuine and disallowed by the Assessing officer relates to the same business activity of manufacture and export in respect of which assessee is held eligible for deduction under section 10AA of the Act. The deduction under section 10AA therefore needs to be allowed on the enhanced profits after taking into consideration the disallowance of Rs 2,80,500 in light of accepted legal position by the CBDT and following the consistent position taken by the Co-ordinate Benches. The Assessing

Officer is therefore directed to recompute the deduction u/s 10AA taking into consideration the addition of Rs. 2,80,500/-. In the result, the Ground No. 5 of the assessee's appeal is allowed."

4. Per contra, the Id. DR submitted that the addition have been made u/s 69C which is a deeming provision and the same cannot be considered for benefit u/s 10AA which is restricted to the profit and gains derived from export. It was further submitted that the Circular No. 37/2016 dated 21.01.2016 referred by the AR is in the context of deduction on enhanced profits under chapter VIA whereas in the present case, the assessee has claimed deduction u/s 10AA which falls under chapter II of the Act.

5. After hearing both the parties and going through the material available on record, we find that the matter has been examined at length by the Coordinate Bench in assessee's own case for A.Y 2009-10 and 2014-15 wherein similar contentions were advanced by the Id DR and considering the same, the AO was directed to recompute the deduction u/s 10AA taking into consideration the additions so made by him. Considering the fact that there are no changes in the facts and circumstances of the present case, following the decision taken by the Coordinate Bench in assessee's own case for A.Ys 2009-10 & 2014-15, the Assessing Officer is hereby directed to recompute the deduction u/s 10AA taking into consideration the addition of Rs. 2,03,739/- made by him. In the result, the ground No. 5 of the assessee's appeal is allowed.

6. In view of the above, rest all grounds taken by assessee have become academic in nature and the same are thus dismissed as infructuous.

7. In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 05/01/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/01/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Amrapali Exports, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-02, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 454/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar