

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SH. KUL BHARAT, JM & SH. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 871/JP/2016
निर्धारण वर्ष/Assessment Years : 2010-11

The Assistant Commissioner of Income-tax Central Circle-1, Jaipur	बनाम Vs.	M/s Green Fire Exports, H-1, SEZ Phase 1 st , Sitapura, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAIEFG9837H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 872/JP/2016
निर्धारण वर्ष/Assessment Years : 2011-12

The Assistant Commissioner of Income-tax Central Circle-1, Jaipur	बनाम Vs.	M/s Green Fire Exports, H-1, SEZ Phase 1 st , Sitapura, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAIEFG9837H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R.Sharma
राजस्व की ओर से / Revenue by : Shri D.S.Kothari(CIT)

सुनवाई की तारीख / Date of Hearing : 27/04/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/04/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.:

These are two appeals filed by the Revenue against two separate orders passed by Id. CIT(A)-4, Jaipur of even date 22/07/2016 for

A.Y. 2010-11 & 2011-12 respectively. Since common issues are involved, both the appeals were heard together and disposed off by this common order. The grounds of appeal taken by the revenue are as under:-

ITA No. 871/JP/2016:-

"1. *Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 11,42,53,528/- made by AO on account of disallowance of deduction u/s 10AA of the Income Tax*

ITA No. 872/JP/2016:-

"1. *Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 2,05,25,672/- made by A.O on account of disallowance of deduction u/s 10AA of the Income-Tax Act.*

2. At the outset, the Id. AR submitted that the ground raised in both the appeals filed by the Revenue is covered in favour of the assessee by the decision of Coordinate Benches in assessee's own case for A.Y 2007-08, 2008-09 and 2009-10 respectively. It was further submitted that even AO has passed similar orders following earlier year assessment orders and as such, there is no change in the facts and circumstances of the case. It was, accordingly, submitted that the earlier orders passed by the Coordinate Benches may kindly be followed.

3. The Id. DR is heard who has relied on the order of the lower authorities.
4. We have heard the rival contentions and perused the material available on record. It is noted that Id. CIT(A) has granted the necessary relief to the assessee by following the earlier orders passed by the Coordinate Benches whether the matter has been decided in favour of the assessee.
5. The relevant finding of the Coordinate Bench in ITA No. 431/JP/2012 for AY 2009-10 dated 17.07.2015 is as under:

"We have heard rival contentions and perused the material on record. The Coordinate Bench in ITA No. 426/JP/2010 for A.Y 2007-08 and in ITA No. 477/JP/2011 for A.Y 2008-09 had considered the issue of reconstruction and deduction claimed under section 10AA. The Id. CIT(A) has followed the ITAT order and allowed the assessee's appeal holding that the issue is identical to assessment years 2007-08 and 08-09. Regarding rejection of books of accounts under section 145(3) of the IT Act and applying GP rate of 25% and estimating the profit under section 80IA(10) read with section 10AA(9), the AO had compared the GP and NP rate of M/s Green Fire and assessee for A.Y. 2007-08. The Id. AO has not brought on record that M/s Green Fire has exported the same items to the same parties. Further, it is informed by the assessee that business of M/s Green Fire Exports is exclusively manufacturing of ornaments studded with precious and semi precious stones and diamonds. Whereas M/s Green Fire was engaged in trading of diamond and manufacturing of studded diamond items and claimed that both the business are separate and cannot be compared. The assessee's assertion was that in diamond business, the margin of profit remains very low as compared to precious/semi precious stones and that the assessee firm manufactured fancy items having very good demand in international market and the margin of profit was also higher on it. The GP and NP was also dependent on dollar rate with rupee. It is also fact that SEZ Unit is controlled by the Customs Authorities and there is a

check on the under invoicing or over invoicing. The Id. AO had not also brought on record that items exported by the two concerns are same and there are no details of parties to whom the goods were exported. The department had not filed any appeal on similar issue before us in A.Y 2007-08 and 2008-09. Therefore, we confirm the order of Id. CIT(A)."

6. Undisputedly, there is no change in the facts and circumstances of the case or in the legal position. No contrary authority has been brought to our notice. In light of the same, respectively following the orders passed by the Coordinate Benches in Assessee's own case in ITA No. 426/JP/10 order dated 18-3-2011 for AY 2007-08, ITA No. 477/JP/11 order dated 20/01/2012 for AY 2008-09 and ITA No. 431/JP/12 order dated 17/07/2015 for AY 2009-10, we confirm the order passed by the Id CIT(A) for the both the years under consideration. In the result, ground taken by the Revenue for the both the years is dismissed.

In the result, both the appeals of Revenue are dismissed.

Sd/-
(कुल भारत)
(Kul Bharat)

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)

Jaipur

Dated:- 28/04 /2017

*Ganesh

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

1. अपीलार्थी / The Appellant- The Assistant Commissioner of Income-tax
2. प्रत्यर्थी / The Respondent- M/s Green Fire Exports
3. आयकर आयुक्त / CIT –TDS, Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6. गार्ड फाईल / Guard File (ITA No.871 & 872 /JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar