

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "D" KOLKATA**

Before **Shri N.V. Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.1250/Kol/2014**  
Assessment Year :2009-10

Intercraft Engineering Pvt. Ltd., 16A, Shakespeare Sarani, Kolkata – 700 071 <b>[PAN No.AABCI 6767 L]</b>	<b>V/s.</b>	Commissioner of Income Tax, Kolkata-III, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से /By Appellant	Shri D.S.Damle, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Sandeep Chaube, CIT-DR
सुनवाई की तारीख/Date of Hearing	16-12-2015
घोषणा की तारीख/Date of Pronouncement	05-02-2016

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is arising out of order of Commissioner of Income Tax, Kolkata-III in appeal No. CIT-III/DC(Ha)-3/Kol/281/u/s263/2013-14/7264-66 dated 27.03.2014. Assessment was framed by ITO, Ward-8(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 28.12.2011 for assessment year 2009-10. Assessee raised the following grounds:-

*"1.0 Deduction under section 10AA of the Income tax Act, 1961*

*1.1 The learned Commissioner of Income Tax erred in assessing the quantum of deduction under section 10AA in his order under section 263 passed on March 26, 2014.*

- 1.2 *He erred in stating that the appellant was entitled for a deduction of Rs.8,05,512/- under section 10AA of the Income Tax Act, 1961.*
- 1.3 *He erred in law by interpreting that the amended provisions of sub-section (7) of section 10AA were made applicable from assessment year 2010-11 and hence it was not applicable for assessment year 2009-10. He erred in appreciating that a proviso to the sub-section (7) was also inserted by the Finance Act, 2010, w.e.f. April 01, 2010 which state that the provisions of sub-section (7) [as amended .....] shall have effect for the assessment year beginning on April 01,2006 and subsequent assessment years..*
- 1.4 *The appellant submits that the order passed by the learned commissioner of Income Tax under section 263 of the Income Tax Act, 1961 is erroneous and therefore ought to be quashed."*

2. The only issue raised by assessee in its appeal is that Ld. CIT erred in treating the order of the Assessing Officer prejudicial to the interest of revenue on account of excessive deduction provided to the assessee u/s 10AA of the Act for an amount of Rs. 13,82,723.00.

2.1 The facts of the present case are that assessee is a Private limited Company and engaged in the business of manufacturing of electrical and lighting products etc. The assessee has its units situated in Special Economic Zone (SEZ for short) and Domestic Tariff Area (DTA). Assessee's SEZ unit is located at 152, NSEZ, Phase-2, Noida-201305. The necessary details of the turnover of assessee are given below:-

1. Total turnover of assessee (including SEZ & DTA Units)	Rs.14,38,79,959/-
2. Net profit of the assessee (including SEZ & DTA unit)	Rs. 64,13,322/-
3. Total turnover of the SEZ unit	Rs. 5,29,63,726/-
4. Export turnover of the SEZ unit	Rs. 5,20,30,426/-
5. Total profit SEZ	Rs. 22,27,285/-

The assessee claimed the deduction u/s 10AA of the Act in respect of the export profit from SEZ unit by considering the total turnover of SEZ unit and export turnover of SEZ unit. The deduction under section 10AA of the Act was

duly certified by a qualified chartered accountant in form 56F as prescribed. The working of deduction under section 10AA of the Act is reproduced below:-

$$\text{Total profit of SEZ} \times \frac{\text{export turnover of SEZ}}{\text{Total turnover of SEZ}} = \text{Rs.21,88,235/-}$$

The AO in his assessment order u/s 143(3) of the Act has accepted the claim of the assessee under section 10AA in respect of its unit located at SEZ, Noida. However Ld. CIT found the order of AO is erroneous in so far as it is prejudicial to the interest of Revenue by observing that the assessee has claimed the excessive deduction u/s 10AA of the Act and worked out the deduction as under:-

$$\text{Total profit of SEZ} \times \frac{\text{export turnover of SEZ}}{\text{Total turnover of SEZ}} = \text{Rs.8,05,512/-}$$

As per the calculation of Ld. CIT the assessee has claimed the excessive deduction u/s 10AA of the Act by an amount of Rs.13,82,723/- (Rs.21,88,235/- - Rs 8,05,512/-). Accordingly the Ld. CIT exercised his power u/s 263 of the Act by issuing a show cause notice. In response to show cause notice the assessee submitted that as per the provisions of section 10AA of the Act, the deduction shall be worked after considering the export turnover and total turnover viz a viz profit of the SEZ undertaking only.

However, the Ld. CIT has disregarded the claim of assessee by observing as under that :

- 1) The AO has failed to interpret the provisions of section 10AA of the Act.
- 2) The Ld. CIT also opined that the amended provisions of section 10AA of the Act are not applicable to the assessee for the current year.

Therefore the Ld. CIT held that the order passed by AO is erroneous in so far as it is prejudicial to the interest of revenue. Hence, matter was restored back

to the file of AO for fresh adjudication after necessary verification of the facts and reasonable opportunity to assessee.

Being aggrieved by this order of Ld. CIT assessee preferred an appeal before us u/s. 263 of the Act.

Shri D.S.Damle Ld. Authorized Representative appearing on behalf of assessee and Shri Sandeep Chaube Ld. Departmental Representative appearing on behalf of Revenue.

3. We have heard rival submissions of both the parties and perused the materials available on record. Ld. AR submitted paper book which is containing pages from 1 to 13. Before us the Id. AR submitted that the total turnover/ export turnover and profit arising from the undertaking located at SEZ shall alone be considered for the working of the deduction under section 10AA(7) of the Act. The total turnover of the assessee shall not be taken into account while working out the deduction under section 10AA of the Act. The assessee also submitted that the provisions of section 10AA are also applicable to the assessee for the year under consideration as amended provisions are effective from the assessment year 2006-07 and onwards. The CBDT has also clarified in its circular no. 01 of 2011 dated 6.4.2011 that the amended provisions are effective from assessment years 2006-07. At the end, Id. AR prayed that the order is not erroneous in so far as prejudicial to the interest of Revenue.

4. On the other hand the Id. DR vehemently supported the view of the Id. CIT.

5. From the aforesaid discussion we find that the Id. CIT treated the order of the AO erroneous in so far as it is prejudicial to the interest of revenue. It is because that the assessee has claimed excessive deduction under section 10AA of the Act by an amount of Rs. 13,82,723.00 and AO has not verified

this fact at the time of assessment under section 143(3) of the Act. Therefore the Id. CIT held the order erroneous in so far prejudicial to the interest of Revenue. Now to arrive at the correct conclusion of the case, we deem it necessary to reproduce the relevant provisions of section 263 of the Act.

*(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, my, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment....”*

The sum and substance of the above reproduced section 263(1) can be summarized in the following points:-:

- 1) The commissioner may call for an examine the record of any proceeding under the Act;
- 2) If he considers that the order passed by the AO is
  - (i) Erroneous; and
  - (ii) Is prejudicial to the interest of Revenue;
- 3) He has to give an opportunity of hearing in this respect to the assessee; and
- 4) He has to make or cause to make such enquiry as he deems necessary;
- 5) He may pass such order thereon as the circumstances of the case justify including,
  - (i) An order enhancing or,
  - (ii) Modifying the assessment or
  - (iii) Cancelling the assessment and directing a fresh assessment.

Now in the light of above words, we have to examine as to whether the order of the Id. CIT is a valid order in the light of the above stated points/ provisions

of section 263 of the Act. In the case in hand, let us understand the relevant provisions of section 10AA(7) of the Act which reads as under :

*(7) For the purpose of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on [by the undertaking]*

*[Provided that the provisions of this sub-section [as amended by section 6 of the Finance (No.2) Act, 2009 (33 of 2009)] shall have effect for the assessment year beginning on the 1<sup>st</sup> day of April, 2006 and subsequent assessment years.]*

6. From the above we infer that the total turnover/ export turnover and profit arising from the undertaking located at SEZ shall alone be considered for the working of the deduction under section 10AA(7) of the Act. The total turnover of the assessee shall not be taken into account while working out the deduction under section 10AA of the Act. For the applicability of the amended section 10AA of the Act to the instant assessee for the year under consideration, we reproduce the relevant portion of the CBDT circular 01 of 2011 as under :

*6. Computation of exempted profits in the case of units in Special Economic Zones (SEZs)*

*6.1 Section 10AA was inserted in the Income-tax Act by the Special Economic Zone Act, 2005 with effect from 10.2.2006. Through the Finance (No.2) Act, 2009, section 10AA(7) of the Income-tax Act, 1961 was amended and the words "by the undertaking" were substituted for "by the assessee" with effect from assessment year 2010-11 and subsequent assessment years. This was done as the existing formula was perceived to be discriminatory in so far as those assessees are concerned who have multiple units in both the SEZ and the domestic tariff area (DTA) vis-à-vis those assessees who were having units in only the SEZ. With a view to removing the anomaly, the provisions of subsection (7) of section 10AA of the Income-tax Act were amended.*

*6.2 Applicability - In order to make the amendment effective for earlier years, a proviso to subsection (7) has been inserted to provide that the provision of sub-section (7), as amended by Finance (No. 2) Act, 2009,*

*is applicable to the assessment year 2006-07 and subsequent assessment years*

From the aforesaid discussion it is amply clear that the assessee has correctly claimed the deduction under section 10AA of the Act. Therefore the order of the AO is not erroneous and prejudicial to the interest of the Revenue. Accordingly the order of the Id. CIT cannot be held to be sustainable in law and the same is accordingly set aside.

**7. In the result, assessee's appeal is allowed.**

Order pronounced in the open court 05/02/2016

Sd/-  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 05/02/2016 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Intercraft Engineering Pvt. Ltd. 16A, Shakespeare Sarani, Kol-71
2. प्रत्यर्थी/Respondent-CIT-III, Aayakar Bhawan,P-7, Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,  
/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।