

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai  
Before Shri B.R. Baskaran (AM) & Shri Pawan Singh (JM)

I.T.A. No. 529/Mum/2015  
(Assessment Year 2008-09)

ITO 9(2)(3) Room No. 601A 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Core Jewellery Pvt. Ltd. Unit No. GJ-4 SDF-VII, SEEPZ Andheri East Mumbai-400 096.
(Appellant)		(Respondent)

PAN No.AABCC1946P

Assessee by	Shri Biharilal
Department by	Shri C.W. Angolkar
Date of Hearing	10.11.2016
Date of Pronouncement	10.11.2016

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 20.10.2014 passed by the learned CIT(A)-16, Mumbai and it relates to A.Y.2008-09. The Revenue is challenging the decision of the learned CIT(A) in deleting the penalty of ₹ 1.08 crores levied by the Assessing Officer u/s. 271(1)(c) of the Act.

2. We heard the parties and perused the record. The Assessing Officer has levied penalty on rejection of claim for deduction u/s. 10A of the Act on foreign contract gain. It is pertinent to note that the disallowance made by the Assessing Officer has been confirmed by both the learned CIT(A) and the ITAT. In the appeal filed by the assessee challenging the penalty levied by the Assessing Officer, the learned CIT(A) deleted the same accepting the contentions of the assessee that the disallowance of claim for deduction u/s.

10A on foreign exchange forward gain is debatable in nature. Aggrieved by the said decision the Revenue has filed this appeal before us.

3. On careful perusal of the record, we noticed that the learned CIT(A) has deleted the penalty with following observations :-

“Decision

*After careful perusal of the assessment order and the written submission filed by learned AR of the appellant it has observed that the penalty proceedings has been initiated by the Assessing Officer on account of the addition made by the AO on account of forward contract gains and sundry balances written back and disallowance of deduction u/s 10A on these amounts. The additions were confirmed by the CIT(A) in Appeal No. CIT(A)-16/ITO-8(1)(2)/IT-236/2010-11 vide order dated 22/09/2011. The order of the CIT(A) has been confirmed by the Hon'ble ITAT in ITA No. 8366 vide order dated 27.02.2013 to the extent that the disallowance of deduction u/s 10A has been confirmed to the extent of earning on foreign exchange fluctuation but the appeal has been allowed in respect of sundry balances written back' and it has been held that the appellant company is eligible for deduction u/s IOA on this amount. The order of the CIT(A) and ITAT has been placed on record.*

*Now the only issue which needs adjudication is that whether penalty u/s 271(1)(c) is leviable on The additions made by the AO which has been confirmed by the CIT(A) and the ITAT to the extent of foreign exchange fluctuation because the ITAT has allowed the deduction u/s 10A on the sundry balances written back.*

*It has been stated by the A/R of the appellant that merely because certain claim or deduction is disallowed in the assessment order it does not automatically lead to a conclusion that appellant has concealed its income or furnished in accurate 'particulars in respect of such income, more particularly when appellant furnished all details/explanations in respect of such claim and more over there is a debate or 'dispute on such issues. Reliance in support of the same has been placed on the following decisions:-*

- 1. CIT vs. Reliance Petroproducts (P) Ltd. 322 ITR 158 (SC)*
- 2. CIT vs. Ajaib Singh & Co. 253 ITR 630 (P&H)*
- 3. Zycus Infotech (P) Ltd. vs. ITO 17 SOT 310 (Mum)*
- 4. ACIT vs. DSL Software Ltd. 147 TTJ 67 (Del)*
- 5. ACIT vs. Jaya Chakravarty 33 CCH 108 (Del)*
- 6. DCIT vs. Genesys International Corp. Ltd. 21 ITR 581 (Mum)*

7. *UNI Design Jewellery (P) Ltd., vs. DCIT 6 ITR 10 (Mum)*

*The A/R of the appellant has relied on the following decisions in support of his contention that since the claim of deduction made u/s. 10A is a debatable claim, it cannot be said that the appellant company has concealed any income or furnished inaccurate particulars of income for evasion of tax. The ITAT's decision in the case of the appellant was delivered on 18.01.2010 which was much later than the filing of return of income and similarly the decision of the supreme court in the case of Liberty India reported in 317 ITR 218 also came much later than the date of filing of return. Hence the deduction u/s 10A was claimed under the bonafide belief that appellant was entitled to the same. It has also been stated that the claim has not been held to be false by the AO and the only reason given by the AO for disallowance of deduction is that assessee earned forward contract gain which has no nexus with the activity specifically eligible for claiming deduction u/s 10A on the export profit.*

1. *CIT vs. Harshvardhan Chemicals (St Mineral Ltd. 259 ITR 212 (Raj)*
2. *CIT vs. Nalwa Sons Investment Ltd. 327 ITR 543 (Del)*
3. *CIT vs. Indersons Leather (P) Ltd. 328 ITR 167 (P&H)*
4. *Karan Raghav Exports P. Ltd. vs. CIT 349 ITR 112 (Del)*
5. *CIT vs. EICON International (1<sup>3</sup>) Ltd. 166 Taxman 12 (Del)*
6. *CIT vs. Lotus Trans Travels (P) Ltd. 177 Taxman 37 (Del)*
7. *CIT vs. H.M.A. Udyog (P) Ltd. 211 CTR 543 (Del)*
8. *CIT vs. Arisudana Spinning Mills Ltd. 326 ITR 429 (P&H)*
9. *Geeta Prints (P) Ltd. vs. ACIT 247 CTR 620 (Guj.)*

*Keeping in view the facts and law discussed supra, the findings of the Assessing Officer that the appellant concealed income by making inadmissible claim and also furnished inaccurate particulars is factually wrong because it is only after the order of the ITAT dated 18.01.2010 for A.Y. 2004-05 the appellant company came to know that it was not entitled to deduction u/s 10A on the forward contract income. Moreover, the AO has failed to record any finding in the assessment or penalty order the forward contract income was false or manipulated to get deduction of income. The AO was of the opinion that the forward contract business is of different type and the profits earned in this business are not derived from the actual exports of article and things in convertible foreign exchange. The forward contract income is not eligible for deduction u/s 10A because there is no realization of foreign exchange consequent to forward contract in Indian rupees by hedging on its export invoices. The findings of the AO give support to the contention of the A/R of the appellant that the issue of deduction u/s 10A is debatable. Hence the AO is directed to delete the penalty imposed u/s 271(1)(c) and the grounds of appeal is treated as allowed.”*

4. We noticed that the learned CIT(A) has followed the decision rendered by Hon'ble Supreme Court in the case of Reliance Petro products (P) Ltd. (322 ITR 158) to decide the issue in favour of the assessee. The Hon'ble Supreme Court in the above said case has held that a claim made by the assessee, which is not sustainable in law, would not give rise to a case of furnishing inaccurate particulars of income. In the instant case, the assessee has claimed deduction u/s. 10A of the Act in respect of foreign exchange gain which was rejected by the Assessing Officer and the appellate authorities. Hence, the decision rendered by Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. (supra) shall apply to the facts of the present case and accordingly we uphold the order passed by the learned CIT(A).

5. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 10.11.2016

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 10/11/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS