

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4595/MUM/2013
Assessment Year: 2009-10**

ACIT-6(3),
Room No. 522, 5th Floor,
AayakarBhavan, M.K. Road
Mumbai-400020.

Vs.

M/s Mediions Exports Pvt.
Ltd.,101, Shiv Industrial
Estate, KBB Marg,
Chinchpokli(E), Mumbai-
400012.

Revenue by : Shri Suman Kumar, DR
Assessee by : Shri Sanjeev Lalan,AR

Date of Hearing : 05/07/2017
Date of pronouncement: 25/09/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-12, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under: -

1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in allowing the deduction of Rs.33,42,178/- u/s 10AA of the Income Tax Act, 1961 without appreciating the fact that there is no manufacturing activities in the year under consideration.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in relying upon the decision of Ld. CIT(A) for AY 2007-08 without appreciating the fact that the department has not accepted the decision of the Ld. CIT(A) for AY 2007-08 on merit, however, due to lower tax effect the appeal was not filed.
3. On the facts and circumstance of the case and in law the Ld. CIT(A) erred in not appreciating the intent of insertion Section 268A(2)(a) w.e.f. 01.04.1999 which clarifies that if appeal is not filed by the revenue owing to low tax effect for any AY on any issue, it cannot be contended that income tax authority has acquiesced in the decision on the disputed issue.
4. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

3. Briefly stated, the facts of the case are that the assessee has claimed deduction u/s 10A at Rs.33,42,178/-. The Assessing Officer (AO) has rejected the above claim of the assessee because of the following reasons:

1. For achieving the export turnover of Rs.1,95,95,685/- on account of export of 'X' ray machines & other medical equipments, the assessee has deployed plant & machinery of Rs.1,33,102/-, taken the help of 1 skilled worker and 2 semi-skilled worker, apart from the services of the Director of the company.
2. For manufacturing or producing articles, the material submitted during the course of assessment proceedings does not indicate any manufacturing or production activity as is mandatory for claiming Deduction u/s. 10A.

3. The assessee claimed to have manufactured 'X' ray machine and medical equipments for which it needs very advanced technology and professional & skilled personnel.
4. The assessee has not claimed any such expenditure for the purpose of quality control in respect of the articles produced by it. Further, it has no such machinery to have an intern quality control in respect of the products manufactured by it.
5. From the purchase details of the assessee, it is seen that it has been making purchases from its sister concern i.e. M/s. Meditronics Manufacturing Co. Pvt. Ltd., M/s. Medico Imaging Co. etc. are mostly engaged in the business of manufacturing of medical equipments.
6. Even electricity consumption for carrying out such activity is very nominal when compared to the turnover of the assessee. The cost of electricity consumed at SEZ unit is only Rs.13,4861-.
7. Even in A. Y. 2007-08, the deduction u/s. 10A was not allowed

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has followed the order of her predecessor-in-office for the AY 2008-09 and allowed the claim of deduction of Rs.33,42,178/- made u/s 10AA of the Act.

5. Before us, the Ld. DR submits that the assessee has not manufactured or produced articles or things during the previous year relevant to the assessment year 2009-10. He supports the order of the AO.

6. On the other hand, the Ld. counsel of the assessee supports the order passed by the Ld. CIT(A). He relies on the decision in the case of *CIT*

vs. AAR ESS Exim (P.) Ltd. (2015) 56 taxmann.com 222 (Del), *CIT vs. Lavlesh Jain* (2011) 16 taxmann.com 366 (Del).

7. We have heard the rival submissions and perused the relevant materials on record. We find that the AO has disallowed the claim of deduction made by the assessee u/s 10A on the ground that (i) the equipments do not prove that it is for the purpose of manufacturing activity, (ii) it has been making purchases from its sister concern i.e. M/s Meditronics Manufacturing Co. Pvt. Ltd., M/s Medico Imaging Co. etc. who are mostly engaged in the business of manufacturing medical equipments, (iii) the assessee is having two electricity meters and it has consumed power amounting to Rs.13,486/- only, (iv) the assessee has a turnover of Rs.1,95,95,685/- on account of export of 'X' ray machines and other medical equipments whereas it has deployed plant and machinery of Rs.4,04,506/- with the help of one skilled worker and two semi skilled worker apart from the service of the Director of the Company.

The above findings of the assessee have no bearing on the instant issue as will be clear from the decisions mentioned below.

In the case of *AAR ESS Exim (P.) Ltd. (supra)*, the Hon'ble Delhi High Court has held that where assessee undertook detailed engineering drawings while outsourced production work and thereafter goods produced were re-inspected and assembled before they were exported, assessee's claim for exemption under section 10B to be allowed.

In the case of *Lavlesh Jain (supra)* the Hon'ble Delhi High Court has held that where assessee having received pure gold from a non-resident,

converted same into jewellery and thereupon exported it to said non-resident, activity undertaken by assessee amounted to 'manufacture or production' which qualified for deduction under section 10A/10B.

In view of the above position of law the disallowance made by the AO on the basis of reasons delineated hereinbefore is not a correct one. The disallowance made by the AO is based on conjectures and surmises.

Thus we uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 25/09/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER
Mumbai;
Dated: 25/09/2017
Rahul Sharma, Sr. P.S.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

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