

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCHES: "B" NEW DELHI ]**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER  
AND SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**I. T. Appeal No. 3442/Del/2014  
Assessment Year : 2010-11.**

Deputy Commissioner  
of Income Tax,  
Circle : 11 (1),  
New Delhi.

Vs.

M/s. Fabstract Clothing India Pvt. Ltd.,  
M - 169, Second Floor,  
Greater Kailash, Part - II,  
New Delhi - 110 048.

**PAN : AAACF 3387 J**

**(Appellant)**

**(Respondent)**

Assessee by : Shri Ved Jain, C. A.;

Department by : Shri Anshu Prakash, Sr. D. R.;

Date of Hearing : 31.08.2017

Date of Pronouncement : 12.09.2017

**ORDER.**

**PER I. C. SUDHIR, J. M. :**

This is an appeal filed by the Revenue against the order passed by the learned CIT (Appeals) dated 11<sup>th</sup> March, 2014. In this appeal the Revenue has challenged the action of the learned CIT (Appeals) in allowing deduction under Section 10B of the Act, to the assessee.

2. The brief facts relating to the present appeal are that the assessee is a company engaged in the business of manufacturing and exports of readymade garments and it is registered 100% EOU. It filed its return of the income claiming deduction under Section 10B of the Income Tax Act. The Assessing Officer during the course of the assessment proceedings raised the issue that it has received a letter from Assistant Development Commissioner, Special Economic Zone, informing that assessee is not engaged in manufacturing. The assessee submitted a detailed reply along with evidences that it is engaged in manufacturing activities. In support thereof the assessee also filed evidences in the form of various returns submitted to various authorities and the inspection carried out by the authorities. The assessee also wrote a letter to the Assistant Development Commissioner raising the issue. The learned Assessing Officer not being satisfied with the reply of the assessee, disallowed the claim of the assessee.

2.1 Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the learned CIT (Appeals). The assessee reiterated its submission and submitted all the evidences which were submitted to the Assessing Officer. The learned CIT (Appeals) after going through all the facts and evidences accepted the claim of the assessee and directed the Assessing Officer to allow deduction under Section 10B of the Act.

2.2 Aggrieved by the order of the learned CIT (Appeals), the Revenue is in appeal before us. It was contended by the learned Senior DR that

CIT (Appeals) was not justified in allowing the benefit of deduction under Section 10B of the Act when the assessee has failed to fulfill the conditions prescribed therein.

2.3 In reply the learned AR submitted that the Assessing Officer was not justified in holding that assessee is not engaged in manufacturing. He invited our attention to the profit and loss account to point out that the various expenses debited therein clearly shows that assessee is engaged in manufacturing. He invited our attention to schedule of fixed assets at paper book Page 37 to point out that the assessee was having machinery of 1,10,83,645/-. It was further explained that assessee has been already in manufacturing and export of readymade garment in domestic tariff area (DTA). It has applied for conversion into 100% EOU on 19<sup>th</sup> June, 2006. It received a letter of approval on 7<sup>th</sup> September, 2007. As per section 10B of the Income Tax Act, existing unit which subsequently get converted into a 100% EOU are eligible for deduction under Section 10B of the Act. It was further submitted that the learned Assessing Officer without making any verification and ignoring the evidences brought on record by the assessee had denied the deduction. The learned CIT (Appeals) has thoroughly examined the issue and has recorded categorical finding on each and every aspect as is evident from its order.

2.4 We have considered the submission made by the parties and perused the order passed by the authorities below. On going through the order of the Assessing Officer we note that he has disallowed

the deduction merely on the basis of the letter received from Assistant Development Commissioner without making any verification despite the assessee bringing substantial material to support its contention that it is engaged in manufacturing of readymade garments. The learned CIT (Appeals) on the other hand has examined each and every aspect of the issue as is evident from the order passed by him. It may be relevant to quote the finding of the learned CIT (Appeals), which reads as under :-

“ I have considered the facts of the case, submissions of the AR and documents filed on record by the AR of the appellant company. The assessing officer while passing the impugned order has disallowed the deduction claimed by the appellant under Section 10B of the Act stating that the appellant has not commenced the production during the year under Consideration. I find that the assessee company was incorporated in the year 1999 and has been engaged in the business of manufacturing and export of garments since then, at its premises C-57, Hosiery Complex, Phase-II, Extention. Noida. The appellant is a regular income tax assessee and its case have been assessed under section 143(3) for the assessment years 2005-06, 2006-07 & 2007-08. The AR of the Assessee has placed various documents on record which reveal that the assessee was engaged in the activity of manufacturing of garments since its inception till the year under consideration. A perusal of documents reveal that the company was allotted Import Export Code on 19.07.1999

by Foreign Trade Development Officer, New Delhi, it was registered with Apparel Export Promotion Council on 20.08.1999, it was registered with Directorate of Industries Govt. of Uttar Pradesh on 30.03.2002 with registration number 20/78/1616/PMT/SSI/12, in the said certificate the date of commencement of production is specifically mentioned as 01.02.2002, it was registered unit UP VAT on 09.05.2000 and was allotted TIN No. 09566000577, IT was registered with Employees State Insurance Corporation on 15.03.2002, the assessee has submitted various such registrations which are required by an industrial entity for set-up and operation. The AR has also brought forward various documents like orders passed by state sales tax department, excise department, bank accounts, books of accounts, audited balance sheets and profit and loss account for the year under consideration. A perusal of the Fixed Asset Schedule attached with the balance sheet reveals that the assessee has substantial investment in machinery and other business assets. The most important document is the audited balance sheet and profit and loss account for the year under consideration which specifically highlights the figures of purchase / sale, debtors / creditors, stock, fixed assets, depreciation, employee cost, administrative cost, banking transactions etc. which establishes it conclusively that the appellant was engaged in manufacturing activity during the year under consideration. The said figures have not been doubted by the Assessing Officer during the course of proceedings before him. Further the case of the assessee has been scrutinized for the assessment years 2005-06, 2006-07 &

2007-08 wherein the purchase and sales made by the appellant have been duly dealt with and accepted. Thus the finding of the Assessing Officer that the appellant has not done production during the year under consideration in bad on the facts of the case and consequently disallowance of deduction under Section 10B is bad in law and against the facts of the case.

The assessing officer has disallowed the deduction under Section 10B of the Act in this case. On going through the assessment order and after perusing the details filed by the AR of the appellant, I find that the appellant has not violated any condition which debars it from claiming deduction under section 10B of the Act. The assessee has specifically fulfilled all conditions required to claim deduction under section 10B of the Act. It is important to state here that the appellant is a 100% export oriented unit and has claimed the exemption under section 10B of the Act accordingly and the Assessing Officer has not brought any facts on record to negate the said claim by bringing forward any evidence to establish that the appellant is not an 100% export oriented undertaking.

The assessee applied for the conversion of its DTA Unit into an 100% EOU on 10.06.2006 and the same was approved by the letter of the Development Commissioner, Noida on 07.09.2007. The assessee was eligible to claim deduction under section 10B w.e.f. 07.09.2007 and it has claimed the same accordingly. In this respect the assessee has produced before me circular

No.1/2005 dated 06.01.2005 and Circular No. 1/2009 dated 27.03.2009 wherein it has been held by the CBDT that any assessee which converts into an 100% EOU from a DTA unit shall be entitled to claim the exemption under section 10B till the assessment year 2010-11. In this case, the Assessing Officer received a letter from the Asst. Development commissioner, Noida Special Economy Zone stating that the assessee was issued a letter of Permission to operate on 07.09.2007 and has now applied for debonding and has not commenced production till the date. The Assessing Officer merely relying on the said letter held in the assessment order that the appellant has not commenced production and disallowed the exemption claimed by the appellant under section 10B of the Act. The Assessing Officer has grossly ignored the plethora of evidences brought on record by the appellant during the course of hearing before him which clearly evidence that the manufacturing activity was carried on by the assessee during the year. The assessee has enclosed in the paper book a detailed reply filed by it to the Asstt. Development Commissioner, Noida Special Economy Zone, wherein it has specifically reveal that there would have been some issue with respect to the assessee being a bonded warehouse, which in the present case is not a matter to be discussed and considered for allowing exemption under section 10B of the Act.

Exemption under section 10B is allowed as a deduction of such profits and gains which are derived by a hundred per cent export-

oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee. The assessee in the present case has fulfilled all the conditions for claiming the exemption under section 10B of the act and Assessing Officer has not brought any evidence on record to negate the same. Thus, the action of the Assessing Officer in disallowing the exemption claimed under section 10B of the Act is against the statutory provisions in this respect and against the facts of the case. The Assessing Officer is directed to allow the deduction claimed under section 10B of the act and compute the income for the year under consideration accordingly. ”

2.5 Having gone through the above findings of the learned CIT (Appeals), we find that the learned Senior DR could not point out any error in the above findings recorded by the learned CIT (Appeals). From the facts on record it is evident that the assessee company has been engaged in the business of exporting and manufacturing of garment at C-57, Hosiery Complex, Phase-II Extension, Noida. The balance sheet and the profit and loss account of the year under consideration clearly demonstrate that the assessee has been engaged in manufacturing of garments. The Assessing Officer has accepted these results as he has only denied the deduction. He has not tinkered with the results and the

books of accounts. It is also a fact that in terms of the circular issued by the Central Board of Direct Taxes dated 6<sup>th</sup> January, 2005 and 27<sup>th</sup> March, 2009, it has been clarified that any assessee which converts into an 100% EOU from a DTA unit shall be entitled to claim the deduction under Section 10B till assessment year 2010-11. We further note that the assessee has written a letter to the Assistant Development Commissioner pointing out the error in the said letter. A copy of this letter along with necessary evidences was filed with the Assessing Officer as well. The Assessing Officer ignoring all these evidences in an arbitrary manner and without bringing any further adverse material and without rebutting any of the evidences submitted by the assessee in support of its contention has denied the exemption. It is also important to note that in the preceding assessment year the Assessing Officer has allowed deduction under Section 10B in the assessment order passed under Section 143(3). Thus, the fact that the assessee was engaged in manufacturing of garments can't be disputed. From a query from the Bench the learned Senior DR could not give us any reason to reject the version of the assessee and the evidences in support thereof. Accordingly, we are of the view that learned CIT (Appeals) was justified in allowing the deduction under Section 10B of the Act and we uphold his order.

3. In the result, the appeal of the Revenue, is dismissed.

4. The order is pronounced in the Open Court on : 12<sup>th</sup> September, 2017.

**Sd/-**  
**( L. P. SAHU )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**( I. C. SUDHIR )**  
**JUDICIAL MEMBER**

Dated : the 12<sup>th</sup> September, 2017.  
\*MEHTA\*

Copy of the Order forwarded to:-

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

BY ORDER

ASSISTANT REGISTRAR

	<b>Date</b>
Draft dictated on	12.09.2017
Draft placed before author	12.09.2017
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	

I. T. Appeal No. 3442/Del/2014  
*Assessment Year : 2010-11.*