IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA

[Before Shri P.M. Jagtap, AM & Shri N.V. Vasudevan, JM]

I.T.A. No. 2194/Kol/2014
Assessment Year: 2008-09

ITO, Ward-11(4), Kolkata……Appellant
P-7, Chowringhee Square
6th Floor
Kolkata – 700069.

M/s. Senco Gold Impex Pvt Ltd.……Respondent
7 & 8, C.I.T. Road
Kolkata - 700014
[PAN: AABCV1202B]

Appearances by:
Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.
Shri Sharad Mohata, FCA appearing on behalf of the Assessee.

Date of concluding the hearing : September 04, 2017
Date of pronouncing the order : October 25, 2017

ORDER

Per P.M. Jagtap, AM

This appeal is preferred by the revenue against the order of Learned CIT (Appeals) – XII, Kolkata dated 23.09.2014.

2. In ground no 1, the revenue has challenged the action of the Ld. CIT (A) in deleting the disallowance of Rs. 79,69,851/- made by the AO on account of assessee's claim for deduction under section 10AA of the Income Tax Act, 1961.

3. The assessee in the present is a company which is 100% subsidiary of M/s. Senco Gold Ltd. It is engaged in the business manufacturing of gold articles. The return of income for the year under consideration was originally filed by it on 20.09.2008 declaring a loss of Rs. 32,74,363/-. Thereafter a revised return was filed by the

assessee on 30.09.2009 declaring a loss of Rs. 1,07,92,696/-. During the year under consideration, the assessee company had set up an SEZ Unit at Manikanchan SEZ, Salt Lake City, Kolkata and the profit of the said unit amounting to Rs. 79,69,851/- was claimed as deduction under section 10AA of the Act. During the course of assessment proceedings, the claim of the assessee for deduction under section 10AA was examined by the AO and on such examination he held that the assessee was not entitled for the said deduction on the following grounds:

> *i. As evident from the details furnished by the assessee, all the karigars were located outside SEZ Unit and the assessee has no findings to show that the said karigars had taken permission from the Customs Authority to work within the SEZ Unit.*
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> *ii. Invoices for purchase of 24 carat gold used by the assessee were issued by the bank of Nova Scotia to the address located outside the SEZ Unit and the said purchase invoices were not stamped by the Customs Authority for its entries into SEZ Unit.*

On the basis of the above two grounds, the AO held that no manufacturing activity was carried on by the assessee company in its SEZ Unit during the year under consideration and it was not entitled to claim deduction under section 10AA. He accordingly disallowed the claim of the assessee for such deduction amounting to Rs. 79,69,852/- in the assessment completed under section 143(3) of the act vide order dated 06.12.2010.

5. Against the order passed by the AO under section 143(3), an appeal was preferred by the assessee before the Ld. CIT (A) challenging inter alia, the disallowance made by the AO on account of its claim for deduction under section 10AA. During the course of

appellate proceedings before the Ld. CIT (A), the following submissions were made by the assessee company in support of its claim for deduction under section 10AA:

i. The company has two divisions, i.e. H.O. division which is a NON-SEZ or a Domestic Tariff Area (DTA) division located at 7 & 8 CIT Road, Kolkata 700014 and the other is the SEZ division located at Manikanchan SEZ, Salt Lake, Kolkata. The company has maintained separate books of accounts for the SEZ and the DDTA divisions and prepared separate profit & loss accounts for the same which has been duly audited by their statutory auditors and have been submitted to the AO during the assessment proceedings. From the audited financial statements of the SEZ Unit it can be ascertained that manufacturing activities has been carried out by the SEZ Unit during the financial year 2007-08, the unit has debited expenses like Karigar Making Charges of Rs. 1,62,455/-. Processing Melting & Converting Rs. 6812/-. Packing Materials Rs. 5152/-. Electricity Expenses Rs. 78064/-. Factory Expenses Rs. 1,64,274/-. Security Expenses Rs. 93035/- & Telephone Expenses Rs. 49860/-. All these expenses clearly indicate that manufacturing activity have been carried out in the said unit. The AO has not doubted these expenses. All the purchases consisted of raw gold bars and same ornaments in semi finished stage which has been further processed and finished at the SEZ Unit with the help of the contractual artisans and the plant & machinery installed in the said unit and subsequently exported to the overseas customers.

ii. That having a separate accountant for the SEZ unit is no criteria/ground to establish that no manufacturing activity was carried out in the said SEZ unit during the year.

iii. That all the artisans have been engaged by the company under contractual basis to manufacture/finish jewellery products within the SEZ premises. All these karigars may be living or staying outside the SEZ unit but they have worked in the SEZ unit to manufacture the said jewellery which was subsequently exported. Manikanchan SEZ does not have residential facility and hence all the artisans who work in complex live outside the complex. Therefore the contention of the AO that because the karigars stay outside the SEZ they are not involved in the manufacturing is totally baseless and illogical.

iv. The AO himself has stated that the SEZ unit purchases 24 carat gold bars and exported gold jewellery which are also evident from purchase & sales invoices produced before him during the assessment proceedings. The Gold bars have entered the SEZ premises and have been duly stamped by the Customs Authorities. Only in case of purchases from Bank of Nova Scotia such stamping is not done because they are authorised canalizing agents to import gold and supply to the SEZ/DTA units by the Govt. of India. Similarly all the export invoices are also stamped by the Customs Authorities present at the Manikanchan SEZ. We are enclosing herewith a few sample purchase and sales invoices for your ready reference vide enclosures nos: 3, it is a matter of common knowledge that 24 ct gold bars cannot to be converted into gold/studded jewellery without the help of Karigars and machines which together form a comprehensive manufacture activity.

v. An Annual Performance Report (APR) is required to be submitted to the Development Commissioner of SEZ unit, who is a central govt. appointed officer in compliance to the SEZ policy and rules. The assessee company had also submitted Annual Performance Report for the financial year 2007-08 to the Development Commissioner which was accepted by him. This further proves that the SEZ unit of company had carried out manufacturing activity during the said year which was duly accepted by the customs authority and Development Commissioner.

6. The above submissions made by the assessee along with the documents furnished in support were forwarded by the Ld. CIT (A) to the AO calling for remand report. The remand report submitted by the Assessing Officer was confronted by the Ld. CIT (A) to the assessee and after taking into consideration, the same rejoinder filed by the assessee as well as other material on record, the Ld. CIT (A) directed the AO to allow the claim of the assessee for deduction under section 10AA mainly for the following reasons given in his impugned order:

"*On verification of the material placed on record. I find that the finding of the Assessing Officer is based on conjectures and surmises. He has not made any independent enquiry either during assessment proceedings of*

during remand proceedings to verify the veracity of the claim of the appellant that contract employees were engaged for manufacture of gold ornaments from gold bars and semi-finished ornaments at the SEZ unit. He has not doubted the correctness of the various expenses debited in the profit and loss claimed to have been related to the manufacturing activities, at the SEZ unit. The Assessing Officer has not rejected the books of account by pointing out specific defects in the books of account nor disturb the trading results for arriving at the finding that the entire manufacturing activities were being carried out in the non-SEZ unit only. The appellant has, on the other hand, produced evidence to show that there are purchase bills bearing stamp of the custom authorities. It has also shown to have incurred expenses on karigar making charges, processing & melting & converting, packing material, electricity expenses, factory expenses, security expenses and telephone expenses etc. Having regard to the facts and circumstances of the case, and in the absence of any material placed on record to the contrary, the Assessing Officer was not justified in holding that the appellant company has not carried out any manufacturing activities at the SEZ unit during the relevant financial year. In Marghabhai Kishabhai Patel & Co. v CIT (1977) 108 ITR 54 (Guj), it has been held that unless the transaction is proved as sham or not bona fide. It is not open to the tax authorities to disregard the figures of transactions shown in the assessee's books of account. Therefore, in my view, the appellant company fulfilled the conditions laid down for claim of deduction under section 10AA of the Act, the action of the Assessing Officer in rejecting the claim is not justified. The Assessing Officer is directed to allow the claim of deduction under section 10AA as made in the return of income and allow appropriate relief to the appellant accordingly. This ground of appeal is allowed accordingly.

7. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned DR has submitted the claim of the assessee for deduction under section 10AA in respect of profit of SEZ unit was disallowed by the AO on specific grounds and even during the course of remand proceedings, the assessee failed to meet the objections of the Assessing Officer by showing that karigars had actually worked in the SEZ unit of the assessee during the year under consideration and the

24 carat gold used by it for manufacturing in the said unit had actually entered into SEZ unit. He has contended that the Ld. CIT (A) however overlooked these vital aspects and allowed the claim of the assessese for deduction under section 10AA on the irrelevant grounds by putting the entire onus on the Assessing Officer. He has contended that the onus in this regard was on the assessee to prove its claim for deduction under section 10AA on evidence and having failed to discharge the same satisfactory, the Ld. CIT (A) was not justified in deleting the disallowance made by the AO on account of assessee's claim for deduction under section 10AA. The Ld. Counsel for the assessee, on the other hand, has submitted that the entire purchase of 24 carat gold was made by the assessee from bank of Nova Scotia and the said bank being an approved canalising agent, no stamping of customs authority was required on the relevant invoices to prove the entry of 24 carat gold in SEZ. He has also submitted that the assessee even has a sufficient evidence to show that the karigars had actually worked in its SEZ unit during the year under consideration to manufacture gold articles from the 24 carat gold by using the machinery installed in the SEZ unit. On being asked by the bench, he has submitted that the assessee can produce such evidence to meet the objections raised by the AO and to support and substantiate its claim for deduction under section 10AA if the matter is again sent back to the Assessing Officer for fresh consideration. Keeping in view all the facts of the case, we consider it fair and proper and in the interest of justice to sent back this matter to the file of the AO for fresh consideration. Even the learned DR has not made any material objection in this regard. The impugned order of the Ld. CIT (A) on this

issue is therefore set aside and the matter is restored to the file of the AO for deciding the same afresh in accordance with law after giving one more opportunity to the assessee to support and substantiate its claim for deduction under section 10AA. Ground no 1 of the revenue's appeal is accordingly treated as allowed for statistical purposes.

8. In ground no 2, the revenue has challenged the action of the Ld. CIT (A) in deleting the addition of Rs. 22,54,476/- made by the AO on account of making charges of 22 carat gold ornaments.

9. From the perusal of the details of closing stock furnished by the assessee, it was noticed by the AO that the assessee has not included making charges paid @ Rs. 70 per gm while valuing the 22 carat semi-finished gold articles. In this regard, it was explained by the assessee that the market rate of 22 carat gold ornaments in semi-finished stage is always fixed at your gold rate and the cost of making charges is not included in arriving at the valuation of stock of such items. This explanation of the assessee was not found acceptable by the AO and he revalued the closing stock of 22 carat gold ornaments in progress by including the making charges at Rs. 70/- per gm which resulted in the addition of Rs. 22,54,476/- to the total income of the assessese.

10. The addition of Rs. 22,54,476/- made by the AO on account of alleged under valuation of closing stock of 22 carat gold ornaments in semi-finished stage was challenged by the assessee in the appeal filed before the Ld. CIT (A). It was submitted on behalf of the assessee before the Ld. CIT (A) that there were two vital aspects which had

been ignored by the Assessing Officer while valuing the 22 carat gold ornaments in progress. It was submitted that the semi finished or in process jewellery is treated as good as raw gold in the market because it does not have any proper shape, size, design etc. It was submitted that the jewellery therefore is valued at the raw gold price without adding making charges and this practice is prevalent in the entire jewellery industry.

11. The Ld. CIT (A) find merit in the submissions of the assessee and deleted the addition made by the AO on account of the alleged under valuation of 22 carat gold ornaments in progress for the following reasons given in paragraph 5.3.4 of his impugned order:

> "*I have carefully considered the facts of the case, the finding of the Assessing Officer as well as the submissions put forth on behalf of the appellant. Valuation of closing stock of cost or at market value whichever is less is a generally accepted and established rule of commercial practice. In Chainrup Sampatram v CIT (1953) 24 ITR (SC), the Hon'ble Apex Court has held that 'as the entry for stock which appears in trading account is merely intended to cancel the charges for the goods purchased which have not been sold. It should necessarily represent the cost of the goods. It it is more or less than the cost, then the effect is to state the profit on the goods which actually have been said of the incorrect figure. From the rigid doctrine one exception is very generally recognized on prudential grounds and is now fully sanctioned by custom, viz. The adoption of market value of the date of making up accounts, if that value is less than cost, it is of course an anticipation of the loss that may be made on these goods in the following year, and may even have the effect, if prices the again, of attributing to the following year's result a greater amount of profit than the difference between the actual sale price and the actual cost price of the goods in question. While anticipated loss is thus taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show increased profit before its actual realization. This is the theory underlying the rule that closing stock is to be valued at cost or market price whichever is the lower, and it is now generally accepted as an*

established rule of commercial practice and accountancy'. In Sanjeev Woolen Mills v CIT (2005) 149 Taxman 431/279 ITR 434 (SC), the Hon'ble Court held that 'permissibility of valuation of stock at market value would be only if market value of stock is lower than cost of stock; where market value of stock had been taken into consideration while arriving at chargeable income although market value of stock was more than the cost value of stock, rejection of accounts maintained by assessee for valuation of closing stock by Assessing Officer was in accordance with law. The Apex Court in the case of CIT v Dynavision Ltd. (2012) 26 taxmann.com 40/210 Taxman 239 (SC); has held that 'where assessee had consistently been following method of valuation of closing stock which was cost or market price whichever was lower', any addition on account of undervaluation of closing stock was unjustified more so when Assessing Officer revalued closing stock without making any adjustment to opening stock. In the appellant's case, the Assessing Officer has not rejected the books of account. He has only found the method of valuation closing stock to be faulty inasmuch the making charges were not added to the cost of 22 carat gold. On the other hand, the contention of the appellant is that it has been consistently following the same method of valuation of closing stock and that there has not been change in the said method during the year inasmuch the semi-finished or unfinished jewellery being as good as Raw Gold has been valued of cost of raw gold. Further, even if the method as adopted by the Assessing Officer is followed by difference as per the correct working would be only to the extent of Rs. 1.9 lacs only as against 22 lacs added by the Assessing Officer as pointed out by the appellant. Having regard to the facts and circumstances and the principle of law laid down by the Apex Court in the cases cited supra. I am of the view that the Assessing Officer was not justified in making the impugned addition on account of under valuation of closing stock in respect of 22 carat gold. The addition of Rs. 22,54,476/- made on this account is hereby deleted. This ground of appeal is allow."

12. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted on behalf of the assessee before the authorities below as well as before us, the market value of 22 carat gold ornaments gets increased only when they are finally ready and it remains as good as raw gold at the semi-finished stage because of the various reasons

explained by the assessee. It, therefore, follows that the market value of 22 carat gold ornaments at semi-finished stage remains equivalent to raw gold price and since the valuation of the same was done by the assessee without including making charges as per the method of cost or market whichever is lower that was being consistently followed, we find ourselves that the Ld. CIT (A) that there was no under valuation of stock of 22 carat gold ornaments in process by the assessee as alleged by the AO. The addition made by the AO on this issue, therefore, was not sustainable and we find no infirmity in the impugned order of the Ld. CIT (A) in deleting the same. Ground no 2 of the revenue's appeal is accordingly dismissed.

13. As regards the issue involved in ground no 3 of the revenue's appeal relating to the deletion by the Ld. CIT (A) of the disallowance of Rs. 7,52,639/- made by the AO on account of assessee's claim for depreciation on the machinery installed in SEZ unit, the learned representatives of both the sides have agreed that this issue is consequential to the issue involved in ground no 1 in as much as if the assessee is found to have carried on the manufacture activity in its SEZ unit making it eligible for deduction under section 10AA, the depreciation on machinery installed in the said unit is liable to be allowed as a corollary. Since the issue involved in ground no 1 has been sent back by us to the Assessing Officer for deciding the same afresh, we also send back the issue involved in ground no 3 to the Assessing Officer for deciding the same afresh depending on his ultimate decision on the issue involved in ground no 1. Ground no 3 of

the revenue's appeal is accordingly treated is allowed for statistical purposes.

14. In the result, the appeal of the revenue is treated as partly allowed for statistical purposes.

Order Pronounced in the Open Court on 25th October, 2017.

Sd/-	Sd/-
(N.V. Vasudevan)	(P.M. Jagtap)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 25/10/2017
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. Senco Gold Impex Pvt. Ltd., 7 & 8 CIT Road, Kol-14.
2. ITO, Ward – 11(4), P-7, Chowringhee Square, 6th Floor, Kolkata – 700069
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata