

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA NO. 1392/MUM/2017 : **A.Y : 2011-12**

Nikhil J Shah HUF
20, Nagin Mahal, 82, V.N. Road,
Churchgate, Mumbai 400 020.
PAN : AAAHN3226M (Appellant)

Vs. ACIT-13(3), Mumbai
(Respondent)

SA NO. 34/MUM/2018 : **A.Y : 2011-12**
(in ITA NO. 1392/MUM/2017)

Nikhil J Shah HUF
20, Nagin Mahal, 82, V.N. Road,
Churchgate, Mumbai 400 020.
PAN : AAAHN3226M (Applicant)

Vs. ACIT-17(2), Mumbai
(Respondent)

Applicant by : **Shri Nishant Thakkar &
Ms. Jasmin Amalsadvala**

Respondent by : **Shri T.A. Khan**

Date of Hearing : **09/03/2018**

Date of Pronouncement : **09/03/2018**

ORDER

PER G.S. PANNU, AM :

When the stay application of the assessee was called out, it was brought out that the issue raised in appeal relating to partial denial of

assessee's claim of deduction u/s 10B of the Income Tax Act, 1961 (in short 'the Act') stands on an identical footing as was considered by the Tribunal on an earlier occasion in assessee's own case in relation to Assessment Year 2009-10. Thus, with the convergence of both the sides, the captioned appeal was taken up for hearing.

2. Notably, the solitary issue in this appeal arises from the action of the Assessing Officer in denying assessee's claim for deduction u/s 10B of the Act with respect to the following components of income :-

<i>Particulars</i>	<i>Amount</i>
<i>Duty Drawback</i>	<i>17,07,191</i>
<i>Excise Refund</i>	<i>63,93,411</i>
<i>Sales tax refund</i>	<i>25,39,490</i>
<i>Gain on forward contract</i>	<i>7,70,807</i>
<i>Interest on FDR</i>	<i>3,34,975</i>
<i>Total</i>	<i>1,17,45,874</i>

3. We find that the Assessing Officer as well as the CIT(A) denied the deduction u/s 10B of the Act in relation to the aforesaid incomes primarily on the ground that such incomes cannot be said to have been derived from export of goods. Similar reasoning was taken by the income-tax authorities in Assessment Year 2009-10 also in denying assessee's claim for deduction u/s 10B of the Act in relation to such-like incomes. The Tribunal in its order for Assessment Year 2009-10 in ITA No. 4404/Mum/2013 dated 08.03.2018 found that once the Assessing Officer had assessed an income as forming part of 'business income' of the undertaking, thereafter such an income could not be excluded for the purpose of computing the deduction u/s 10B

of the Act. Notably, the conclusion of the Tribunal was based on the decision of the Special Bench of the Tribunal in the case of *Maral Overseas Ltd. vs Addl. Commissioner of Income Tax, (2012) 016 ITR (Trib) 0565 (Indore)* and the judgment of the Hon'ble Delhi High Court in the case of *Riviera Home Furnishing vs Addl. Commissioner of Income Tax, ITA No. 459/2015 dated 19.11.2015*.

4. In this background, in the instant year also, we have examined the assessment order and find that while the Assessing Officer disentitles the assessee from the claim of deduction u/s 10B of the Act in relation to the aforesaid five elements of income amounting to Rs.1,17,45,874/-, yet while finalising the assessment, such incomes have been assessed as a part of 'business income' of the eligible undertaking. Once such factum emerges, the ratio of the decision of the Special Bench of the Tribunal in the case of *Maral Overseas Ltd. vs Addl. Commissioner of Income Tax (supra)* as well as the judgment of the Hon'ble Delhi High Court in the case of *Riviera Home Furnishing vs Addl. Commissioner of Income Tax (supra)* clearly comes into operation and assessee's entitlement for claim of deduction u/s 10B of the Act in relation to such incomes cannot be faulted. There is no denial to the aforesaid factual matrix by the Revenue before us and, therefore, following the aforesaid discussion, we set-aside the order of the CIT(A) and direct the Assessing Officer to include the aforesaid elements of income for the purpose of computing deduction u/s 10B of the Act as he has assessed the same as part of 'business income'.

5. Thus, the appeal of the assessee is allowed and consequently, the corresponding stay application is rendered infructuous, which is hereby dismissed.

The above decision was pronounced in the open court in the presence of both the parties at the conclusion of the hearing on 9th March, 2018.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 9th March, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai