

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

**BEFORE SHRI G. S. PANNU, AM &  
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 2946/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2011-12)

ACIT 31(3) C-13, Room No. 409, 4 <sup>th</sup> floor, Pratyashakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051	<b>बनाम/ Vs.</b>	Unique Gem & Jewellery Unit-A, E-2, Business Park, Ground Floor, Model Ind, Colony, Off Arey Road, Goregaon (E), Mumbai-400063
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACFU3067H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Suman Kumar
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Ram Krishna R. Lingsur

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	26/02/2018
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28/02/2018

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 42, Mumbai dated 29.01.16 for AY 2011-12 on the grounds mentioned herein below:-

*1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not erred in allowing the appeal of the assessee and granting relief of Rs. 12,33,27,693/- on account of deduction u/s. 10B of the L.T. Act, 1961 ignoring the fact that the conversion of gold into mountings outsources by the assessee cannot be 'manufacturing' for the purpose of section 10B of the Income tax Act, 1961*

*2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has not erred in concurring with the decision of the Hon'ble ITAT in the case of the assessee for the A.Y. 2010-11 that the mounting of diamonds on jewellery alleged to be done on the premises of the firm constituted 'manufacturing' for the purposes of Section 10B of the Income tax Act, 1961, which finding is contrary to the factual observations made by the CIT(A) on the response to the queries mentioned paras 1), 2) & 3) on pages 16,17,& 18 of the appellate order.*

*3) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has not erred in not appreciating the fact that there were adverse findings during the survey action u/s 133A of the Act at the premises of the assessee; no plant and machinery was found, no evidence of any designs for manufacture was*

*found and meagre amount of labour charges were paid as against huge turnover.*

*4) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A)'s reliance on the decision of the Hon'ble ITAT in the case of the assessee for the AN, 201 0-11 is not erroneous for the reason that the said order of the Hon'ble ITAT has been further contested by filing an appeal u/s. 260A of the Act before Hon'ble High Court.*

*5) The appellant craves leaves to amend or alter any ground or add a new ground.*

*The appellant prays that the order of the CIT(A) on the grounds be set aside and matter may be decided according to law. The appellant craves leave to amend or alter any ground or add new ground which may be necessary.*

2. The brief facts of the case are that the assessee is a Partnership Firm engaged in the business of Import & Export of Diamonds and Jewellery. The assessee filed its return of income on 06.09.2011 declaring a total income of Rs.17,60,949/-. The assessee has claimed that it has manufactured and exported gold

jewellery studded with diamonds and has claimed deduction of Rs.12,33,27,693/- u/s 10B of the Act. The assessee has claimed that it imports cut and polished diamonds and thereafter studs them in cast gold jewellery and re-exports the same. In the assessment proceedings the AO disallowed the claim of deduction.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties allowed the appeal of the assessee by holding that assessee is eligible for deduction u/s 10B of the I.T. Act.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

**Ground No. 1 to 4**

3. These grounds raised by the revenue relates to challenging the order of Ld. CIT(A) in granting relief to the assessee on account of deduction u/s 10B of the I.T. Act, therefore we thought it fit to dispose of these grounds by this common order.

4. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in its detailed order. The operative portion of the order of Ld. CIT(A) is contained in page no. 15 to 19 of its order and the same is reproduced below:-

*The facts of the case, the written submissions and the copies of the orders of ITAT for A.Y. 2010-11 are all duly considered. Since all the grounds of appeal are connected to the disallowance of deduction u/s IOB of the Act, the same are decided together as under:-*

*The assessee is a 100% EOU approved by the Office of the Development Commissioner SEEPZ SEZ for the manufacture and export of plain/studded hand made jewellery. The assessee is registered with the Customs & Central Excise Department and is subject to their Audit. The assessee has claimed that it has maintained the necessary import documents and registers including Bond Register, DPCC Register etc The*

*assessee has claimed that its manufacturing activity consists of importing cut and polished solitaire diamonds and purchasing 24 karat gold bars from local market, which are then converted and processed into 14 karat gold studded with diamond. It is claimed that the imported diamonds have the classification of HS CODE 71023910 and the gold bars is HS CODE 71131910 and the diamond studded gold jewellery is HS CODE 71131930 which proves that there is manufacture. It is claimed that the AO has not given proper appreciation to these facts and has merely gone by secondary aspects to deny the claim of the assessee u/s 10B of the Act. The assessee claimed that it is manufacturing handmade jewellery and does not require elaborate machinery. The work is done by hand tools and it is also accepted by the SEEPZ SEZ. As regards the claim of the AO regarding non-availability of the jewellery designs during the course of survey the assessee has submitted that it had submitted the designs to the AO vide its letters dated 17.12.2012 and 12.03.2014. It was explained that the assessing officer was provided with the detailed stock summary of diamond and gold and two of the labour persons were produced before the AO on 13.12.2012 as mentioned in the assessee's letter to the AO dated 17.12.2012. It was also mentioned that at the time of*

*survey the assessee had no export order to fulfill and that was the reason why the manufacturing activity was not visible to the survey team. The assessee had also provided the address of the labour engaged during the assessment proceedings and had produced a few persons for verification also.*

*The assessee has also explained that the diamonds are released to its custody from the Custom Warehouse under escort and at the time of re-export the matching of the imported diamond It was mentioned that the Customs & Central Excise had also conducted their Statutory Audit for the period upto 31.03-2011 and had verified the relevant import & export details and the manufacturing activity. The assessee also relies upon the decision of the Supreme Court in ITO vs Arihant Tiles & Marbles Pvt Ltd (2010)320 ITR 79 (SC) wherein it was held as under:-*

*"Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely that the activity undertaken by the respondents herein is not a manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job workers and the activity undertaken by them has been recognised by various*

*Government Authorities as manufacture. To say that the activity will not amount to manufacture or production under section 80-IA will have disastrous consequences, particularly, in view of the fact that the assessee in all the cases would plead that they were not liable to pay excise duty, sales tax etc. because the activity did not constitute manufacture "*

*The assessee has claimed that similar decisions have been given in many other Court cases and the assessee has been treated as a manufacturer for the immediately preceding assessment year 20 10-1 1 by the ITAT also in ITA no. 18251Mum12014 dated 14.10.2015. The facts of the case of the assessee for A.Y. 2010-11 & 2011-12 are identical.*

*During the appellate proceedings, certain queries were put to the assessee in addition to the facts noted by the AO and these queries and the response of the assessee is as under :-*

*(1) The assessee claims that it manufactures diamond studs and pendants. The assessee claimed that it had imported cut and polished diamonds and it had locally bought 24 carat Gold to make the studs and pendants. It is a scientific fact that any diamond or stone jewellery cannot be made from 24K gold which is soft metal and the gold needs to be hardened by adding*

*impurities to bring it down to purity level of to 8K to 14k. As per general knowledge the raw gold is melted and copper and silver are added to get it down to 14 carat gold purity which incidentally is the maximum purity level gold needed to hold the diamonds. Further the process involves Lacquer and Moulds of Plaster of Paris and the jewellery needs material for soldering the joints. The work also involves heating of the jewellery to get shine and luxuriance, besides polishing, cleaning, checking and packaging of the jewellery. It is seen that these mandatory processes for jewellery making have been claimed to have been complied with without billing any expenses of Lacquer, Plaster of Paris, Heating Oil/coal, polish, soldering material or packing materials. In the assessee's Profit & Loss Account, there are no purchases of copper or silver mentioned at all. The assessee has only billed Labour charges of Rs. 1,87,835/- as compared to its sale of Rs. 131,56,28,419/-/-. This is unusual. The assessee claimed that the gold melting work is got done on job work basis and the labour costs include the expenditure for consumable like copper and silver, which are used in minute quantities. It was also argued that similar argument made by the Revenue before the ITAT Mumbai in the appeal for A.Y. 2010-11 had not been accepted by the ITAT.*

*(2) The A.O. has argued that the work of studding the diamond into gold studs is not manufacturing at all. The assessee was granted a Licence to manufacture and export plain or studded jewellery by the Ministry of Commerce & Industry for its unit at Goregaon, Mumbai vide its letter dated 15.12.2008. As per this approval letter, it is mentioned that for the Project of the assessee it requires Imported Capital Goods of Rs. 60,00,000/- (US \$ 1,50,376/-) to commence the project. However in the Schedule of Fixed Assets there are no items of machinery and the total cost of the Fixed Assets is declared at Rs. 6,61,247/- only with major share going to Office Gala of Rs. 5,59,180/- and the rest comprise office equipment, weighing Scale and air Conditioner etc. There are no tools or machines or melting/casting ovens etc. There is no machine for determining the purity level of the jewellery also. There is no Hallmark expense claimed and no Diamond's purity and carat certificate for the so called jewellery exported. These are otherwise standard items of trade. To this the assessee has replied that the work of the assessee does not require heavy plant and machinery and only hand tools suffice. The assessee explained that the gold mounting after conversion is checked on sample basis from approved agencies and at the time of export also the gold jewellery and its purity is*

*checked by Customs authorities. The assessee claimed that its purchase of raw gold within India is undisputed and its import of cut and polished diamonds also are verified by the Customs authorities. Thereafter when the assessee exports the studded jewellery, the Customs Authorities verify the re-export of diamond therein. The assessee has also relied on the definition of manufacture in section 2(29A) of the Act which define manufacture as a change in a non-living object, article or thing resulting in transformation of the object, article or thing into a new and distinct object, article or thing having a different name, character or use etc. The assessee claims that when raw gold and diamonds are used to make jewellery, manufacture takes place. The assessee has also filed the sample copies of its Bond Register and DPCC register which are verified the- customs authorities, in support of its claim.*

*(3) At the time of Survey u/s 133A on 8/9.11.2012, the Statement of Sh. Sanjeev Purshottam Walia, Partner in the assessee Firm, was recorded. This Statement mentions the steps followed by the assessee but there is no evidence to back up such claim. Sb. Walia had claimed that raw Gold is issued to local manufacturer for casting into jewellery. It can be seen from the Profit & Loss Account that there are no such expenses claimed by the assessee on job work or otherwise.*

*Further at the time of sending the raw gold, the diamonds are not given to the job workers. (Actually this is so because the diamonds are in bonded warehouse). The Partner has inter-alia claimed that the local manufacturer makes the studs/pendants keeping a provision for the diamonds. For this the Partner claimed that the local manufacturer is given the height & width of the diamond. In response to Q. No. 6 to 18 Sh. Walia claimed that the diamonds are issued to the labourers for fitting in 'gold casting' as per their order and design. However the survey record show that no designs were located or produced by the assessee. To this the assessee has explained that this is an accepted practice and the designs are available. The designs were claimed to have been received by emails and the same were produced before the AO during the assessment proceedings also. Further it was argued that when the raw gold has been converted into diamonds studded jewellery the process of manufacture is complete. The final proof is that the jewellery was exported after affixing the diamonds after a thorough verification by the customs department. The assessee also contended that a similar argument was rejected by the ITAT in its own case for A.y.2010-11.*

*The assessee has also produced the copy of the order of the ITAT in its own case for A.Y. 2010-11 wherein it*

*was held that the import of diamonds, purchase of gold and the export of jewellery which is monitored by the Customs & Central Excise Authority and is verifiable from the Bond & DPCC registers which are also subject to Audit by the relevant authorities, supports the case of the assessee. It was also mentioned that none of these documents has been disbelieved by the Revenue. The hAT has also accepted that no heavy machinery or plant is required for the manufacture of the jewellery. The hAT has also noted that the assessing officer has not rejected the books of accounts of the assessee. The ITAT also discussed the case laws relating to the definition of manufacturing and held that the assessee is eligible for deduction u/s 10B of the Act.*

*In view of the above discussion and also keeping in view the fact that all the arguments of the Revenue have already been negated by the ITAT in A.Y. 2010-11, it is held that the assessee is eligible to claim deduction u/s 10B for A.Y. 2011-12 also., Moreso when the assessment order for AY 2011-12 is totally based on the assessment order for AY 2010-11. As a result, all the grounds of the appeal of the assessee are allowed.*

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and Hon'ble ITAT as mentioned above in assessee's own case, we find that the identical issue has already been decided by the Hon'ble ITAT in assessee's own case for AY 2010-11 in ITA No. 1825/Mum/14 wherein it was held that the assessee is eligible to claim deduction u/s 10B. Even before us, the Ld. DR could not demonstrate any difference in factual position from that of AY 2010-11. The Ld. CIT(A) has also based its finding on the orders of Hon'ble ITAT in assessee's own case for AY 2010-11, therefore respectfully following the decision of the coordinate bench and in order to maintain judicial consistency which is applicable mutatis mutandis in this case, we dismiss these grounds. Resultantly, these grounds raised by the revenue stands **dismissed.**

**Ground No.5.**

5. This ground is general in nature, thus requires no specific adjudication.

6. In the net result, the appeal filed by the revenue stands **dismissed.**

*Order pronounced in the open court on 28<sup>th</sup> Feb. 2018*

<i>Sd/-</i> (G. S. Pannu) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 28.02.2018
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**  
(Dy./Asstt.Registrar)  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**