

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 5716/Del/2014  
Asstt. Year: 2010-11

DCIT, Circle 13 (1) New Delhi	Vs.	OM Nanotech Pvt. Ltd. 60-UA, Jawahar Nagar New Delhi - 110007 PAN AACCB4275B
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri S.R. Senapati, Sr. DR
Assessee by :	Shri Ajay Baheti, CA
Date of Hearing	26/06/2018
Date of pronouncement	24/09/2018

**ORDER**

**PER AMIT SHUKLA:**

The aforesaid appeal has been filed by the revenue against impugned order dated 23.7.2014, passed by CIT(Appeal) XVI Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2010-11. The revenue in the grounds of appeal has challenged the deletion of disallowance of exemption u/s 10AA in respect of trading in the nature of re-export of imported goods of Rs. 7,25,68,307/-.

2. The facts in brief are that assessee is a SEZ unit located in Noida Special Economic Zone (NSEZ) which was approved vide letter dated 13th July, 2006. The assessee has put up a manufacturing plant of manufacture memory modules, etc.; and financial year 2007-08 was the first year of the operation of the company. It is also registered as a trading unit under the SEZ. The trading activities of the assessee comprised of import for the purpose of re-export. The assessee had declared profit at Rs. 15,50,11,806/- before any adjustment and after claiming exemption u/s 10AA amounting to Rs. 14,81,52,422/-, the assessee has shown total income at Rs. 1,71,69,860/-. Ld. AO on the perusal of the profit and loss account noted that assessee has reflected export sales and import under the head export sales trading unit as purchase trading unit at Rs. 1,02,22,63,068/- and Rs. 1,01,94,08,918/- respectively. In response to the show cause notice as to why the profit from the trading activity may not be disallowed for the purpose of computation of deduction u/s 10AA, assessee filed detailed reply and note which has been reproduced from pages 2 to 7 of the assessment order. Ld. AO rejected the assessee's contention that the trading is also covered by the SEZ Act wherein it has been defined "services" include trading for the purpose of re-export and hence it would be entitled for deduction/ exemption u/s 10AA, the AO held that only those income which is directly derived from the manufacturing activities of eligible undertaking is entitled for deduction u/s 10AA. In support he relied to the decision of Hon'ble Supreme court in the case of CIT vs. Sterling Foods (199) 237 ITR 579; and CIT vs. Pandian Chemicals Ltd. 262 ITR 278 (SC). Thereafter he denied the deduction u/s 10AA to the extent of Rs. 7,55,84,115/- as per the computation given at page 8 of the assessment order.

3. Before the Ld. CIT(A), assessee submitted that the word “services” has not been defined u/s 10AA and therefore, definition of the word “services” will have to be seen from SEZ Act which was also include tradable services as may be prescribed by the Central Government. Rule 76 of SEZ Rules defines “services” to include trading and by way of explanation it has been clarified that for the purpose of second schedule of the Act the said trading shall mean import for the purpose of re-export. Further, section 51 of the SEZ Act explicitly provides that the provision of SEZ Act and the rules shall have the overriding effect over other laws. Various notification and circulars including the relevant rules and provisions of the SEZ Act / rules was referred and relied upon which has been dealt and incorporated in the appellate order in detail alongwith the various judgments relied upon by the assessee. Ld. CIT(A) after considering the entire provisions referring to its earlier decisions for the assessment year 2008-09 has allowed the deduction.

4. After considering the rival submissions and on perusal of the relevant facts and material placed on record as well as the findings given in the impugned order, it is seen that AO has denied the claim of deduction on the ground that trading activities are not covered within the scope of activities u/s 10AA and only income which are exempted that are derived directly from the manufacturing activities of the eligible undertaking. Section 10AA not only applies to manufacturing activities as well as providing of services which is evident from clause I of sub section 4 of section 10AA which reads as under :-

- (i) *“It has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 2006 in any Special Economic Zone.”*

4.1. The words “services” has not been defined in section 10AA and therefore, such a definition has to be imported from SEZ Act wherein section 2(z) defines services in the following manner :-

*“Section 2(z) : “services” means such tradable services which, -*

- (i) Are covered under the General Agreement on Trade in services annexed as IB to the Agreement establishing the World Trade Organisation conducted at Marrakes on the 15<sup>th</sup> day of April, 1994;*
- (ii) May be prescribed by the Central Government for the purposes of this Act ; and*
- (iii) Earn foreign exchange;”*

4.2. An amendment in Rule 76 of the SEZ Rules read with *Explanation* thereto provides that the expression trading for the purpose of second schedule of the Act shall mean import for the purpose of re-export. Ministry of Commerce and Industry vide instruction No. 4/2006 has clarified this doubt in the following manner:

*“.....it has been decided that while units in the Special Economic Zone who hold approval to do trading activities will be allowed to carry out all forms of trading activity, the benefits under section 10AA will exclude trading other than trading in the nature of re-export of imported goods. Appropriate amendments in this regard are being issued.”*

4.3. Similarly Circular No. 17 of 29.5.2006 issued by the Export Promotion Council for EOU’s and SEZ Unit has clarified this issue in the following manner :-

*“In the meantime, sourcing from domestic area may be permitted by units in the SEZs which are allowed to do trading subject to this circular being cited on prescription of an undertaking by the concerned unit that no Income - tax benefit will be availed by the*

*Unit for trading except in the nature of re-export of imported goods.”*

4.4 Section 51 of SEZ Act clearly provides that the provisions of this Act shall have the overriding effect. Thus, the definition as given under SEZ Act for the term “services” has to be taken for the purpose of the Income Tax Act also which includes trading in the nature of import for the purpose of re-exports. Hence, such services ostensibly fall within the ambit and scope of section 10AA. Assessee is engaged in the business of manufacturing and trading of memory modules, flash drives, IC chips etc. and it has claimed deduction u/s 10AA in respect of trading in the nature of re-export of imported goods and entire exports of the trading unit are undisputedly from SEZ unit; and therefore, assessee is eligible for deduction u/s 10AA. Accordingly, we do not find any infirmity in the order of the Ld. CIT (A) and the same is affirmed.

5. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the Open Court on 24<sup>th</sup> September, 2018.

sd/-

sd/-

**(L.P. SAHU)**

**(AMIT SHUKLA)**

**ACCOUNTANT MEMBER**

**JUDICIAL MEMBER**

Dated: 24/09/2018

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi