INCOME TAX APPELLATE TRIBUNAL, MUMBAI- BENCH "D"

BEFORE SH. BR BASKARAN, ACCOUNTANT MEMBER

AND SH PAWAN SINGH, JUDICIAL MEMBER

ITA No. 3241/M/2016 for Assessment Year 2008 – 09

DCIT, Central circle-(6) (4) Room No. 1952, 19 floor, Air India Building, Nariman Point, Mumbai, 21	Versus	M/s Diamond 'R'US 1110, Prasad Chambers M.P. Marg Opera house, Mumbai- 400004 PAN- AAAFD4507H

Appellant	Respondent
Appellant represented by	Shri B.S. Bist (DR)
Respondent represented by	Shri Anuj Kishandwala(AR)

Date of hearing : 25/07/2016

Date of Pronouncement: /07/2016

ORDER

PER PAWAN SINGH, JUDICIAL MEMBER

1. The present appeal is filed by Revenue against the order of Commissioner of Income Tax Appeals, 54 dated 16 February 2016 for AY 2008 – 09. The Revenue has raised following grounds of appeal:

(1) Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax Appeal was justified in allowing the appeal of the assessee, as ld CIT(A) has failed to appreciate that the word "service" neither for the purpose of the entire Income Tax Act, nor for the restricted purpose of allowing relief under section 10AA, is defined in the Income Tax Act 1961 or in section 10AA and hence the AO has interpreted the word "services" as per the meaning attributable to it, as per common parlance, and has correctly disallowed the relief.

(2) Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) was justified in allowing the appeal of the assessee, as the Learned CIT(A) has failed to appreciate the intention of the legislature of allowing deduction under section 10AA in respect of two activities in SEZ, namely manufacturer providing of services, which includes trading of the nature of import for the purpose of export and is legislature in section 10 AA of the Income Tax Act, has specifically is said the meaning of the word "manufacture" should be borrowed from the SEZ Act and imported the meaning of the Income Tax Act, whereas in case of the words "services" or "trading" of the nature taste by the assessee. The legislature had deliberately chosen not to specifically say so and, therefore, the decision of CIT(A), in borrowing the meaning of the words "trading" or "service" from the SEZ Act is not in accordance with the intention of the legislature and spirit of the Act, and hence not acceptable.

(3) Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) was justified in allowing the appeal of the assessee, without appreciating that the intention of the legislature not to accord the benefit of deduction

under section 10 AA to the trading activity of the type practiced by the assessee, by specifically choosing not to include a clause, facilitating the borrowing of the meaning of the words "trading" or "service" from the SEZ Act.

(4) Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax Appeals were justified in allowing the appeal of the assessee, without appreciating that the three words "manufacturing" and "providing of services" used in section 10 AA should be interpreted in continuity and coherently to put into effect the sprit and intention of legislature in bringing in the deduction under section 10 AA, in the Income Tax Act 1961.

(5) Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax Appeals were justified in allowing the appeal of the assessee, without appreciating that reliance on decision of ITAT, Jaipur bench in case of DCIT versus Goenka Diamonds and Jewellers Ltd(ITA No. 509/JP/2011 dated 31 January 2012 has not been accepted by the Department and appeal under section 260 A has been authorised by the CCIT, Jaipur and also in the case of Gitanjali Exports Corporation Ltd(ITA No 69478& and 6948/M/2011) is not accepted by the Department and appeal under section 260 A has been authorised by the CIT Central. I, Mumbai.

(6) Whether on the facts and in the circumstances of the case and in law the Learned Commissioner of income tax appeal was justified, in allowing the appeal of the assessee, without appreciating that as per the Hon'ble Rajasthan High Court decision in case of Kota Co-operative Marketing Society Versus CIT (207 ITR 608) (Raj), the court had held that exemption clause in the text statue should be construed strictly and cannot be extended beyond the clear language used in the section.

2. Brief facts of the case are that assessee filed return of income for relevant assessment year on 27 September 2008, declaring total loss at Rs. 16,75,766/-. In the return of income the assessee claimed deduction under section 10 AA of the Act for a sum of Rs. 3,46,37,392/-. The assessment under section 143 (3) was completed on 30 December 2010, determining the total income of the assessee at Rs. 1,69,32,860/-. Subsequently, Commissioner of Income Tax, Central circle, III, Mumbai, vide his order under section 263 dated 26th March 2013, directed the AO to verify the issue viz;

> *"(a) whether the assessee is carrying out any manufacturing activities at its SEZ unit in Sachin Surat.*
> *(b) whether the assessee is rendering any other services at its SEZ unit which may qualify for deduction under section 10 AA."*

Thus in accordance with the direction of Commissioner of income tax, the AO examined both the issue and completed assessment under section 143(3) rws 263 of the act dated 24th March 2014, and the assessee was denied deduction under section 10 AA of the Act of Rs.3,46,37,392/-. Aggrieved by the order of AO assessee preferred appeal before the Commissioner of Income Tax appeal, wherein the appeal of the assessee was allowed in the impugned order dated 16, Feb 2016. Thus, the Revenue has filed the present appeal before us.

3. We have heard the Ld AR of parties and considered the record. At the outset it was submitted before us by ld AR of the assessee that similar issues came up in the Assessment Year 2007–08, wherein the assessment order was revised by the

Commissioner of Income Tax Appeal and the deduction under section 10 AA was denied to the assessee. However, the First Appellate Authority granted relief to the assessee in its order dated 29th March 2012. Against the order of Learned Commissioner of Income Tax Appeal, the Revenue filed appeal and the assessee filed cross objections before ITAT Mumbai, wherein the appeal of Revenue was dismissed vide order date 31.10.2015 in ITA No.2793/M/2012 and the cross objections of assessee was declared infractuous. The assessee was allowed deduction under section 10 AA of the Act. The Ld AR of the assessee placed on record copy of order in ITANo. 2793/M/2012 and CO No. 276/M/2014 dated 30.10.2015. Learned DR for Revenue not disputed the fact placed before us.

4. From the order placed before us. We find that similar issue came up n assessee's own case in AY-2007–08. The coordinate bench of this tribunal passed the following order:

> *" We noted that Learned CIT(appeals) has taken into consideration the aspect and observation of the AO, the deduction under section 10AA is not allowable for the reason that assessee has not carried out any manufacturing activity but has done trading of goods only, for this purpose. Ld AO has placed reliance on the order of honourable Delhi High Court. Ld CIT (A) has taken into consideration these observations of the AO and thereafter, he found that Government of India has issued a Circular No. 17 of 29 May 2006, which was issued by Exports Promotion Council for EOU's and SEZ unit(Ministry of Commerce and Industry, Government of India). The contents of the circular have also been incorporated in the finding of ld Commissioner of Income Tax Appeal, which a also been reproduced somewhere above in this order. Therefore, we are not repeating the contents of that circular issued by the Ministry of Commerce and Industry, Government of India under section 51(1) of the SEZ Act, it has been clearly provided that the provision of this Act, has overriding effect in case of contradiction between the SEZ Act, the provision of SEZ Act will have overriding effect over the provisions contained in any other Act, Learned CIT(A) has taken into consideration this circular issued by Government of India and the provisions of section 51 of the SEZ Act and found that trading done by the assessee is a service and therefore deduction under section 10 AA is allowable. We further noted that on similar facts in the case of Goenka Diamonds and Jewellery. Ltd (supra), the Jaipur Bench of the Tribunal has discussed the issue in detail. The provision of section 51 of SEZ Act were also considered. The decision of the honourable Supreme Court in case of Tax Recovery Officer Versus Custodian appointed under the Special Court, reported in the case of 211 CTR 369 (SC) and the decision of honourable Delhi High Court in case of CIT versus Vasisth Chay Vypar Ltd reported in 238 CTR 142 (Delhi), were also taken into consideration and thereafter it was concluded that in view of the instruction No. 1 of 2006, dated 24thMarch 2006, as modified by instruction No 4 of 2006 dated 24th of May 2006 issued by the Ministry of Commerce and Industry, Government of India and the definition of service given in the SEZ Act, 2005, which overrides the word service occurring in section 10 AA by virtue of section 51 of the SEZ Act. The assessee engaged in the trading of re-export of imported goods and for the same the assessee was entitled deduction under section 10 AA of the Act. Facts are similar before us, as the*

assessee is engaged in trading of re-export of imported goods and, therefore, the assessee is entitled for deduction under section 10 AA of the Act. All the arguments advanced by the Learned DR before us have also been taken care by the Tribunal while discussing the appeal in case of Goenka Diamonds and Jewellery Ltd (supra). It is further noted that the main plank of arguments of DR is that rules provided under the SEZ Act, cannot protect the character of the section of the Income Tax Act. We find that in the SEZ under section 51, it has been clearly provided that the provision of SEZ Act would override the provision of any other Act, meaning thereby the provision provided under the SEZ Act has override effect on the provision of section 10 AA of the Income Tax Act. Under the rules, it is not provided, but under section 51 of the Special Economic Zone Act, it is provided, therefore, in our view, the contention raised by the Learned DR is not tenable. Moreover, the issue is squarely covered by the decision of the coordinate bench in case of Goenka Diamonds and Jewellery Ltd (supra). Therefore, respectfully following the decision of Tribunal in the case of Goenka Diamonds and Jewellery Ltd in view of the reasoning given by the Learned CIT(appeals), we confirm this order."

5. The facts of the present appeal are identical, and the identical grounds of appeal are raised by the Revenue. Thus, following the decision of coordinate bench, with the same reasons, we uphold the order of Commissioner of Income Tax Appeal, who has allowed the claim of assessee for deduction under section 10 AA the Act. Hence the appeal filed by Revenue is dismissed.
6. In the result, appeal filed by the revenue is dismissed.

Announced in the open court on 25th this day of July 2016.

Sd/-	Sd/-
(B.R.BASKARAN)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 25/07/2016

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

By ORDER,

(Asstt.Registrar)
ITAT, Mumbai