

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.6473/Del./2015
(ASSESSMENT YEAR : 2011-12)**

DCIT	Vs.	Om Nanotech Pvt. Ltd.
Circle-19(1), Room No. 221,		60-UA,
2 nd Floor, C.R.Building,		Jawahar Nagar
I.P.Estate		New Delhi
New Delhi		(PAN : AACCB4275B)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Sh. Ajay Baheti, CA
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 23.01.2019
Date of Order : 19 .02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Dy. Commissioner of Income Tax (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 24.09.2015 passed by the Commissioner of Income-tax (Appeals)-7, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :

“1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the disallowance of exemption u/s 10AA in respect of trading in the nature of re-export of imported goods of Rs. 2,09,11,375/- (15,48,56,140-13,39,44,765) by ignoring the provision of the Act that the activity of trading is not covered under the provision of the section 10AA of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the disallowance of exemption u/s 10AA in respect of trading in the nature of re-export of imported goods of Rs. 2,09,11,375/- by ignoring the fact that for claiming u/s 10AA of the Income Tax Act, 1961 provision of the Act, it is to be first established that the profit and gains were derived from the industrial undertaking and it is just not sufficient that a commercial connection is established between earned and the industrial undertaking.

3. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : Assessee company being registered as SEZ

Unit claimed exemption u/s 10AA of the Act in respect of trading in the nature of re-export of imported goods. Assessee company has reflected profit at Rs. 15,66,88,613/- before making adjustment. The assessee company has claimed total income at Rs. 13,82,37,818/- after claiming exemption u/s 10AA amounting to Rs. 15,48,56,140/-. Assessee also claimed that the MAT provisions are not applicable it being an exempt SEZ unit u/s 115JB(vi). AO noticed from P & L Account that the assessee has reflected export sales and imports under the head 'export sales trading unit and import trading unit' at Rs. 65,11,78,096/- and Rs. 64,60,08,712/- respectively. Declining the contentions raised by the assessee, AO disallowed the exemption claimed by the assessee u/s 10AA in respect of trading in the nature of re-export of imported goods.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the disallowance of exemption u/s 10AA by the AO in respect of re-export of imported goods of Rs. 2,09,11,375/-.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is brought to our notice by the Ld. AR

for the assessee company that identical issue allowing the exemption u/s 10AA in respect of trading in the nature of re-export of imported goods has already been decided in favour of the assessee by the Co-ordinate bench of Tribunal in ITA no. 5716/Del/2014 for A.Y. 2010-11 decided on 24.09.2018.

6. AO has declined the exemption u/s 10AA on the sole ground that trading activities are not covered within the scope of activities u/s 10AA and only income from manufacturing activities are eligible for exemption u/s 10AA. Co-ordinate bench of Tribunal determined the issue in controversy in assessee's own case in AY 2010-11 in favour of the assessee by returning following findings :-

“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 1st day of April, 2006 in any Special Economic Zone.” 4 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 15th 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 5 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.”

7. Following the decision rendered by the co-ordinate bench of Tribunal on the identical set of facts which is applicable to the controversy at hand, we are of the considered view that when the assessee is undisputedly engaged in the business of manufacturing and trading of memory modules, flash drives, ICchips etc., it is entitled for claim of deduction u/s 10AA qua trading in the nature of re-export of imported goods as it is not in dispute that the entire exports of

trading units are from SEZ unit. So finding no illegality or perversity in the impugned order passed by Ld. CIT(A), the present appeal filed by the revenue is dismissed.

Order pronounced in open court on this 19th Feb., 2019.

**Sd/-
(B.R.R.KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated 19/02/ 2019
BR**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-XXVI, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	18.01.2019
Date on which the typed draft is placed before the dictating Member	18.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	19.02.2019
Date on which the fair order comes back to the Sr. PS/PS	19.02.2019
Date on which the final order is uploaded on the website of ITAT	19.02.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

