

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

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

ITA NO. 1533/MUM/2018 : **A.Y : 2011-12**

Lily Jewellery Private Limited, Vs. DCIT - 10(2)(1),
Unit No. 503, Block No. II, Mumbai. (Respondent)
SEEPZ++, SEZ, MIDC, Andheri (E),
Mumbai 400 096.
PAN : AAACL9600J (Appellant)

Appellant by : **Shri Aamod Prabhudesai**
Respondent by : **Shri Nishant Samaiya**

Date of Hearing : **19/03/2019**

Date of Pronouncement : **19/03/2019**

ORDER

PER G.S. PANNU, VICE PRESIDENT :

The captioned appeal by the assessee is directed against the order of CIT(A)-57, Mumbai dated 07.12.2017, pertaining to the Assessment Year 2011-12, which in turn has arisen from the order dated 30.04.2015 passed by the Assessing Officer, Mumbai under section 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (in short 'the Act').

2. It was a common ground between the parties that the short point involved in this appeal arises from the action of the Assessing Officer in

excluding the interest income earned of ₹2,32,939/- while determining the profits eligible for the purpose of computation of deduction under Section 10A of the Act.

3. From para 4.2 of the order of CIT(A), it emerges that the interest income of ₹2,24,839/- represents interest earned on fixed deposit placed in the State Bank of India for availing of working capital facilities and, the balance of ₹8,100/- is earned from security deposit placed for obtaining electricity connection. The Assessing Officer as well as the CIT(A) have excluded the said incomes from the “profits of the business” for computing eligible deduction under Section 10A of the Act on the ground that it does not have first degree nexus with the business of manufacture of studded jewellery. Pertinently, assessee is, *inter-alia*, engaged in the business of manufacture and export of studded jewellery in its manufacturing unit located at Special Economic Zone and is otherwise eligible for claim of deduction under Section 10A of the Act.

4. The Learned Representative for the assessee pointed out that identical dispute was considered by the Tribunal in assessee’s own case for Assessment Year 2009-10 vide order in ITA No. 4206/Mum/2014 dated 13.04.2018. In the said decision, the relevant discussion reads as under :-

“15. Now, we take-up the cross-appeal preferred by the assessee for Assessment Year 2009-10, wherein the following Grounds have been raised:-

“1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) ought to have directed the Learned Assessing Officer (Ld.AO)-

- (a) *not to exclude the interest income earned of Rs.4,48,942/- in determining the profits of the business;*

Without prejudice to the above and in the alternate

- (a.i) *to exclude the net interest income of Rs. 2,20,273/- in determining the profits of the business.*
- (b) *not to exclude the sundry credit balances written back of Rs.4,73,614/- in determining the profits of the business.*
- (c) *to increase the profits of the business by interest income of Rs.4,48,942/- as in the assessment order, the said income has been reduced twice.*
2. *It is humbly prayed that the relief as prayed for here-in-above should be granted."*

16. *The grievance of the assessee in its appeal revolves around the computation of deduction eligible u/s 10A of the Act. The first grievance of the assessee is with regard to the action of income-tax authorities in excluding the interest income of Rs.4,48,942/- for determination of profits of the business in order to calculate the deduction u/s 10A of the Act. In this context, the relevant facts are that assessee had borrowed funds from State Bank of India which included working capital facilities as also term loans. For availing credit facilities, assessee was required to place FDRs with the bank which earned interest of Rs.4,30,111/-. Secondly, assessee had placed security deposit with the electricity company for availing electric connection on which assessee earned interest of Rs.18,831/-. Both these elements of interest income amounting to Rs.4,48,942/- have been held ineligible for the benefits of Sec. 10A of the Act and the reasoning given by the Assessing Officer as well as the CIT(A) is that such income is not derived from Sec. 10A eligible undertaking's business.*

17. *Before us, the learned representative for the assessee emphasised that both the interest incomes are inextricably connected to the business of the undertaking and, therefore, the same are eligible for the benefits of Sec. 10A of the Act. It has also been pointed out that the profits of the*

business of the undertaking would include even the incidental incomes which are derived from carrying out the business of the undertaking and the instant interest incomes arose on account of activities carried out for the purpose of business. Firstly, it was pointed out that the fixed deposits placed with the bank were necessary to raise the borrowings, which in turn have been utilised for assessee's business eligible for deduction u/s 10A of the Act. Even the security deposit placed with the electricity company was in terms of the stipulation for availing electricity connection at the manufacturing unit of the assessee.

18. On the other hand, the Id. DR has primarily reiterated the stand of the lower authorities by pointing out that the interest income was not directly derived from the exports.

19. On this aspect, reliance has been placed before us on the judgment of the Hon'ble Karnataka High Court in the case of M/s. Hewlett Packard Global Soft Ltd., ITA No. 812/2007 dated 30.10.2017 wherein interest income earned on funds placed with the bank was held to be eligible for benefits of Sec. 10A of the Act on the ground that such income was incidental to the business eligible for the benefits of Sec. 10A of the Act. In the case before us, it is factually evident that the interest income on FDRs with bank is with respect to the borrowings which have in turn been utilised for the eligible business and, therefore, such interest income would be eligible for the benefits of Sec. 10A of the Act. So far as the interest earned on electricity security deposit is concerned, in a similar situation, our co-ordinate Bench in the case of M/s. Dania Oro Jewellery Pvt. Ltd. vs ITO, ITA No. 7635/Mum/2014 dated 03.01.2018 held such interest income to be eligible for the benefits of Sec. 10A of the Act. Following the aforesaid decisions which are directly on the point, we approve the stand of the assessee for including the interest income of Rs.4,48,942/- in order to determine the profits of business for the calculation of deduction u/s 10A of the Act.

5. The Tribunal in Assessment Year 2009-10 by following the judgment of the Hon'ble Karnataka High Court in the case of M/s. Hewlett Packard Global Soft Ltd., ITA No. 812/2007 dated 30.10.2017 held that the interest income

earned on funds placed in the bank was entitled to benefits of Sec. 10A of the Act. The Tribunal further noticed that the interest income earned had a nexus with the borrowing raised from the bank which was, in turn, utilised for carrying on the eligible business. Similarly, on the issue of interest earned on the security deposit placed for obtaining electricity connection is concerned, the same was also held eligible for the benefits of Sec. 10A of the Act following the decision of the Tribunal in the case of *M/s. Dania Oro Jewellery Pvt. Ltd. (supra)*. The facts noted by the CIT(A) in para 4.2 of the impugned order bring out the similarity of fact-situation vis-a-vis Assessment Year 2009-10 and, therefore, following the precedent by way of Tribunal order for Assessment Year 2009-10 dated 13.04.2018 (supra), the claim of assessee for inclusion of interest income of ₹2,32,939/- for the purposes of Sec. 10A of the Act is accepted. Thus, in view of the decision of our coordinate Bench in its order dated 13.04.2018 (supra), we set-aside the impugned order of CIT(A) and the Assessing Officer is directed to compute deduction under Section 10A of the Act by considering the aforesaid interest income.

6. In the result, appeal of the assessee is allowed, as above.

Order dictated and pronounced in the open court before both the parties on 19th March, 2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Mumbai, Date : 19th March, 2019

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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, "A" Bench, Mumbai
- 6) Guard file

By Order

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