



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.2465/Mum./2018
(Assessment Year : 2009-10)

Dania Oro Jewellery Pvt. Ltd.
Unit no.601 & 602, Block no.I
Seepz++, SEZ, Andheri (East)
Mumbai 400 096
PAN – AACCD3214E

..... Appellant

v/s

Income Tax Officer
Ward-9(3)(1), Mumbai

..... Respondent

Assessee by : Shri Aamod Prabhudesai
Revenue by : Shri Ajay Pratap Singh

Date of Hearing – 25.02.2019

Date of Order – 30.04.2019

ORDER

The aforesaid appeal has been filed by the assessee challenging the order dated 29th January 2018, passed by the learned Commissioner (Appeals)-11, Mumbai, for A.Y. 2009-10.

2. The dispute in the present appeal is confined to the disallowance of deduction claimed u/s 10AA of the Income-tax Act, 1961 (for short "*the Act*") in respect of insurance claim of ₹ 19,95,900. Of-course, the assessee has made an alternative claim through an additional ground raised subsequently, which will be dealt with at a later stage.

3. Insofar as the main grounds are concerned, brief facts are, the assessee is engaged in the business of manufacture and export of studded jewellery. For this purpose, the assessee has set-up an industrial undertaking in a Special Economic Zone (SEZ) and is eligible for claiming deduction under section 10AA of the Act. For the assessment year under dispute, the assessee filed its return of income on 27th September 2008, declaring total income of ₹ 9,64,138, after claiming deduction under section 10AA of the Act. In the course of assessment proceedings, the Assessing Officer while verifying assessee's claim of deduction under section 10AA of the Act, noticed that while computing deduction under section 10AA of the Act, the assessee has included certain misc. income, such as, interest income and insurance claim received towards damage of assets in fire. Being of the view that such misc. income cannot be included for the purpose of claiming exemption under section 10AA of the Act, the Assessing Officer excluded them from the profits of the business. Further, the Assessing Officer observed that since the insurance claim was related to the fixed assets it cannot be treated as profit of business and accordingly brought it to tax as income from other sources. The assessee challenged the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals).

4. Insofar as allowability of deduction under section 10AA of the Act in respect of insurance claim is concerned, learned Commissioner (Appeals) upheld the decision of the Assessing Officer.

5. The learned Authorised Representative submitted, the insurance claim received by the assessee was for repairing assets damaged in the fire and the assessee has not purchased any new assets. Therefore, it cannot be said that it is not related to the business activities of the assessee. He submitted, the insurance claim received by the assessee, therefore, has to be treated as part of business income. He submitted, the observation of learned Commissioner (Appeals) that the insurance claim received by the assessee should be reduced from written down value of the block of asset is erroneous, since, the assets against which insurance claim was received was neither sold nor discarded or demolished or destroyed during the previous year. He submitted, the fixed assets in respect of which the insurance claim was received were repaired and used in the business. Drawing our attention to section 10AA(7) of the Act, he submitted, insurance claim received by the assessee since is integrally connected to the business activity of the assessee, it should be considered as profit of business. In support of his contention, the learned Authorised Representative relied upon the following decisions:-

- i) *CIT v/s Hewlett Packard Global Soft Ltd., [2018] 403 ITR 453 (Kar.) (FB); and*
- ii) *CIT v/s Chambal Fertilizers and Chemicals Ltd., [2018] 95 taxmann.com 314.*

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

7. I have considered rival submissions and perused material on record. As could be seen, the assessee has received the amount of ₹ 19,95,900, towards insurance claim for damage of fixed assets in a fire accident. On this amount, the assessee has claimed deduction under section 10AA of the Act by treating it as a part of business profit. The claim of the assessee is, the insurance claim received was towards repair of the assets and not towards purchase of new assets. On going through the provisions of section 10AA of the Act introduced in to the statute by virtue of Special Economic Zones Act, 2005, the amount received towards insurance claim cannot be considered to be a profit derived from export of articles produced or services rendered. That being the case, assessee's claim of deduction under section 10AA of the Act in respect of such income cannot be allowed. The decisions relied upon by the learned Authorised Representative are rendered in different factual context, hence, not applicable to the facts of the present appeal. Insofar as assessee's claim that the insurance claim

cannot be reduced from the block of assets, I am of the view that the claim of the assessee in this regard has not been substantiated through proper supporting evidence, therefore, I am unable to accept the contention of the learned Authorised Representative. That being the case, the grounds raised are dismissed.

8. Having held so, it is necessary to deal with the additional grounds raised by the assessee. In the additional grounds, the assessee has raised an alternative claim that if the insurance claim is treated as income from other course, then expenditure relating to such income have to be allowed under section 57 of the Act.

9. In my view, the claim raised in the additional ground needs factual verification by the Assessing Officer. Therefore, while admitting the additional ground raised by the assessee, I restore the issue to the file of the Assessing Officer for considering assessee's claim after verifying the relevant facts on record. These grounds are allowed for statistical purposes.

10. In the result, appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 30.04.2019

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.04.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai