

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4119/Mum/2018
(Assessment Year : 2010-11)**

M/s. Ayush Automisers 111, Damji Shamji Industrial Complex, L.B.S. Marg Kurla (West) Mumbai – 400 070	Vs.	ACIT – 26(1) Aaykar Bhavan M.K.Road Mumbai – 400 020
PAN/GIR No. AAMFA9831F		
(Appellant)	..	(Respondent)

Assessee by	Shri Sameer Dalal
Revenue by	Shri S. Michael Jerald
Date of Hearing	03/10/2019
Date of Pronouncement	16/10/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4119/Mum/2018 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ACIT-26(1)/304/2015-16 dated 11/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 07/08/2015 by the Id. Asst. Commissioner of Income Tax(hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether assessee is entitled for deduction u/s.10AA of the Act in the sum of

Rs.19,46,436/- representing the export turnover not brought into India in convertible foreign exchange within a period of six months from the date of export.

3. We have heard rival submissions. It is not in dispute that assessee is engaged in the business of manufacturing and export of spray pumps used in perfume bottles and eligible for deduction u/s.10AA of the Act. The assessee had made export of goods to M/s. Alcome Perfumes and Cosmetics Pvt. Ltd. and the export proceeds in the sum of Rs.19,46,436/- was not received by the assessee till 29/12/2012 in convertible foreign exchange in India or even within such further period as allowed by RBI. Accordingly, the Id. AO and the Id. CIT(A) denied deduction u/s.10AA of the Act to that extent. We find from perusal of the provisions of Section 10AA of the Act, there is no requirement provided in the statute warranting the receipt of export proceeds to be brought in convertible foreign exchange into India within the prescribed time. In support of this contention, the Id. AR placed reliance on the Co-ordinate Bench decision of Jaipur Tribunal in the case of Vinit Kumar Bora vs. ACIT in ITA No.49/JP/2016 for A.Y.2011-12 dated 16/01/2018 wherein it was held as under:-

“6. We have considered the rival submissions as well as relevant material on record. The assessee has claimed that he is in the business activity of 3 segments namely manufacture of silver beads, trading of silver/gold and trading of tools. The details of turnover and profit of the alleged 3 segments are as under:-

	<i>Manufacturing of Silver beads</i>	<i>Trading of Silver/Gold</i>	<i>Trading of Tools</i>	<i>Total</i>
<i>Turnover</i>	<i>291.62</i>	<i>2399.61</i>	<i>71.68</i>	<i>2762.91</i>
<i>Gross profits</i>	<i>45.89</i>	<i>45.09</i>	<i>16.63</i>	<i>107.61</i>
<i>Net profits</i>	<i>45.06</i>	<i>38.26</i>	<i>16.43</i>	<i>99.75</i>

However, the AO as well as ld. CIT(A) has held that the assessee is not maintaining any separate books of accounts regarding these activities and therefore, the AO has considered the entire turnover from all 3 activities as total turnover of the SEZ unit of the assessee. Further the Assessing officer has reduced the export turnover by the amount of export proceeds which was not remitted by the assessee in convertible foreign exchange upto 30.09.2011. Admittedly the assessee has brought export turnover only in the month of November, 2011. However, U/s 10AA there is no specific requirement of remittance of the export turnover within 6 months from the end of the financial year. We find that there is no such condition u/s 10AA of the IT Act as it is mandatory condition provided u/s 10A and 10B of the Act. The ld. DR has submitted that as per section 10AA(7) the provisions of sub-sections 5 and 6 of section 10A are applicable for the purpose of section 10AA(1) of the Act. We find that these conditions of bringing the export proceeds is not provide under sub-section 5 or sub-section 6 of section 10A of the Act. Rather the specific condition is provided under sub-section 3 of section 10A of the IT Act and therefore, even by applying sub-sections 5 and 6 of section 10A it cannot be inferred that the sale proceeds of articles or goods exported outside of India are required to be remitted in convertible foreign exchange within 6 months from the end of financial year. It is pertinent to note that even u/s 10A(3) the time period may be extended if the competent authority may allow in this behalf. Therefore, the competent authority for allowing the time period to remit the sale proceeds is the RBI and vide Circular No. 91 dated 01.04. 2003 the RBI has exempted the condition of remitted time period within which the export proceeds are to be remitted in convertible foreign exchange. Para A of the said circular is relevant in this regard and reads as under:-

"A. Realisation of export proceeds In terms of para 11(c) of AP (DIR Series) Circular No. 28 dated March 30,2001, units situated in Special Economic Zones have been permitted to realize and repatriate to India the full value of goods or software within a period of twelve months from the date of export. It has now been decided to remove the stipulation of twelve months or extended period thereof for realization of export proceeds. Accordingly, there shall be no prescription of any time limit for realization of exports made by units in SEZs. However, the units in SEZs will continue to follow the GR/PP/SOFTEX export procedure outlined in Part B of Annexure to A.P. (DIR Series) Circular No. 12 dated September 9, 2000 as amended from time to time."

Accordingly when there is no such condition u/s 10AA and RBI has specifically removed the stipulation of time period for SEZ units then the said condition cannot be imported from other provisions of the Act. As regards

the requirement of submitting audit report as per Rule 16D and Form 56F when there is no condition provided under the provisions of the Act then the Performa provided under Rule cannot override the substantive provisions of the Act. According we hold that the sale proceeds remitted by the assessee after 30.09.2011 cannot be excluded from the export turnover for the purpose of computing the deduction u/s 10AA of the IT Act. ”

3.1. We also find that the Id. CIT(A) placed reliance on the Circular No.108 issued by RBI dated 11/06/2013 wherein it has been stipulated that the units located in SEZs shall realise and repatriate the full value of goods / software / services to India within a period of 12 months from the date of export or such other extended time as may be granted by the RBI. The Id. AR stated that this Circular is dated 11/06/2013 and cannot be made applicable for the year under appeal i.e. A.Y.2010-11. We are inclined to accept the said argument of the Id. AR. Moreover, the Id. AR also placed on record yet another Circular of Reserve Bank of India vide Circular No.91 dated 01/04/2003 in the specific context of realisation of export proceeds for units located in SEZ as under:-

Export of Goods and Services - Facilities to Units in Special Economic Zones (SEZs) A.P.(DIR Series) Circular No.91 (April 1, 2003)

Reserve Bank of India

Exchange Control Department

Central Office

Mumbai 400 001

A.P.(DIR Series) Circular No.91

To

All Authorised Dealers in Foreign Exchange

Madam / Sirs,

***Export of Goods and Services –
Facilities to Units in Special Economic Zones (SEZs)***

Attention of authorised dealers is invited to A.P. (DIR Series) Circular No.28 dated March 30, 2001 and subsequent circulars issued extending various facilities to units in Special Economic Zones. It has been decided to extend the following facilities to the units located in the Special Economic Zones (SEZs): -

A. Realisation of export proceeds

In terms of para 11(c) of AP (DIR Series) Circular No.28 dated March 30, 2001, units situated in Special Economic Zones have been permitted to realise and repatriate to India the full value of goods or software within a period of twelve months from the date of export. It has now been decided to remove the stipulation of twelve months or extended period thereof for realisation of export proceeds. Accordingly, there shall be no prescription of any time limit for realisation of exports made by units in SEZs. However, the units in SEZs will continue to follow the GR/PP/SOFTEX export procedure outlined in Part B of Annexure to A.P.(DIR Series) Circular No. 12 dated September 9,2000 as amended from time to time."

3.2. From the aforesaid Circular dated 01/04/2003 issued by RBI, it could be seen that RBI had not prescribed any time limit for realisation of exports made by units in SEZ.

3.3. Per contra, the Id. DR vehemently relied on the orders of the lower authorities.

3.4. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove and the RBI Circular dated 01/04/2003 supra, we direct the Id. AO to grant deduction u/s.10AA of the Act in respect of export turnover of Rs.19,46,436/-. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this

16/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated
KARUNA, sr.ps

16/10/2019

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai