आयकर अपीलीय अधिकरण "एच" न्याय□पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

मा□नीय श्री पवन सिंह, न्यायिक सदस्य **एवं**
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI PAWAN SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आ□करअपील सं./ I.T.A. No.4027/Mum/2017
(**निर्धारण वर्ष** / Assessment Year:2012-13)

ACIT-18(2) 302, 3rd Floor Earnest House, NCPA Marg Mumbai-400 021.	**बनाम**/ Vs.	**M/s. Kamini Enterprises** (earlier Kamini Jewels) 70/70A, 1st Floor, Lakshmi Premises Sheikh Memon Street Zaveri Bazar, Mumbai-400 002.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAKFK-4416-G		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Shri Reepal G. Tralshawala- Ld. AR
Revenue by	:	Shri B. Srinivas - Ld.CIT-DR

सुनवाई की तारीख/ **Date of Hearing**	:	19/09/2019
घोषणा की तारीख / **Date of Pronouncement**	:	21/11/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-29, Mumbai [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-29/IT-76/ITO-18(2)(1)/2015-16* dated 20/03/2017 on following grounds of appeal: -

1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the disallowance made by the AO on account of exemption claimed by the assessee u/s 10AA of the Income Tax Act, 1961 of Rs.22,72,10,669/- ignoring the fact that the AO, during the course of assessment proceedings, established that the assessee did not carry out any manufacturing activity in the SEZ premises.
2. The Ld. CIT(A) failed to appreciate that the assessee firm, during the course of assessment proceedings, could not prove it had carried out any manufacturing activity at its premises at SEZ, Surat in the F.Y. 2011-12 relevant to the assessment year under consideration and the onus to prove the same lied on the assessee.
3. On the facts and in the circumstances of the case and in law, The Ld, CIT(A) has erred in law in deleting the disallowance made by the A.O., by placing reliance on the case laws which are not relevant to the instant case, as the facts of the instant case are entirely different form the cases relied upon.
4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in arriving at the decision that the A.O. has made addition on the basis of presumption and suspicion only; ignoring the fact that in the assessment order, the AO has firmly established the fact that no manufacturing activity was being carried out by the assessee at the SEZ premises.
5. For the above-mentioned reason and any other reasons that may be urged at the time of hearing, it is requested that the order of the CIT(A) be quashed and that of the A.O. be restored.

As evident from grounds of appeal, the revenue is aggrieved by grant of deduction to the assessee u/s 10AA by learned first appellate authority which was denied by Ld. AO in the assessment proceedings in view of the fact that the assessee failed to discharge the onus of proving that it carried out any manufacturing activity at its SEZ unit situated at Surat. .

2.1 Facts on record would reveal that the assessee being resident firm stated to be engaged in trading of gold ornaments and manufacturing of gold medallions was assessed for year under consideration u/s 143(3) on 16/03/2015 wherein the income of the assessee was determined at Rs.2272.10 Lacs as against returned income of Rs.18.34 Lacs e-filed by the assessee in 26/09/2012. The assessee claimed deduction u/s 10AA on conversion of gold bars into coins / medallions which was denied to the assessee and the same form subject matter of present appeal before

us. The claim of deduction arises out of manufacturing activities stated to be carried out by the assessee in its Special Economic Zone (SEZ) unit situated at Surat. The said activity was stated to be conversion of gold into coins / medallions. As evident from impugned order, the assessee had claimed aggregate deduction of Rs.2272.10 Lacs u/s 10AA out of which deduction of Rs.1216.35 Lacs was claimed from manufacturing activity whereas the balance Rs.1055.74 Lacs was claimed against trading activity.

2.2 During assessment proceedings, the perusal of import and export details revealed that all the import and export took place in March, 2012. The assessee was able to manufacture the goods on same day the raw material arrived in the SEZ unit and also packed the goods on the same day. Not only that all paper work was done and stock went outside the SEZ on the same day, which was evident from the following table as extracted in the quantum assessment order: -

Date of Import of Gold	**Gold Weight**	**Date of Export Medallion**	**Date of Stock Outward from SEZ (Reply dated 10.11.2014)**	**Output Weight (Gms)**	**Input Output Ratio (Worked out)**
09/03/2012	35 Kg	10/03/2012	09/03/2012	34981.561	0.999473
09/03/2012	50 Kg	10/02/2012	09/03/2012	49973.659	0.999473
12/03/2012	85 Kg	13/03/2012	12/03/2012	84955.220	0.999473
14/03/2012	85 Kg	15/03/2012	14/03/2012	84955.220	0.999473
15/03/2012	80 Kg	16/03/2012	15/03/2012	79957.854	0.999473
19/03/2012	80 Kg	20/03/2012	19/03/2012	79957.854	0.999473
24/03/2012	80 Kg	25/03/2012	24/03/2012	79957.854	0.999473

2.3 It was further observed that import parcels were received at around 2.30 P.M. and all the activities were stated to be completed within a span of 4 hours 30 minutes. Further, the export proceeds were never realized by the assessee even after lapse of 3 years and the rate of profit in

export / SEZ business was shown to be substantially higher than the profit in domestic transactions. Another observation was the fact that all importers as well as exporters pertain to almost same area in same country i.e. Dubai whereas the payments were routed through New York and Bahamas and not credited to the accounts of the exporters from whom assessee made imports. The bank account numbers were found to be the same in the case of suppliers namely Solitaire General Trading FZE and Sky Diamond Jewellery FZE. All these factors led Ld. AO to show-cause the assessee to file requisite details of the transactions including copies of import / export orders, procedure regarding finalization of price, electricity consumption, bills of labor charges etc. However, the assessee, as per observation in the quantum assessment order, filed only part details.

2.4 After considering assessee's submissions & evidences, it was observed by Ld. AO that critical documents / information to substantiate the genuineness of the transactions was not filed by the assessee. The details of discrepancies in documents / information have been tabulated in para-7.1 to 7.13 of the quantum order. Another observation made in para-8 was the fact that job worker, who supposedly carried out the work for the assessee, were acting as outsourcing agency and input-output ratio of all the manufacturing cycle was exactly the same, which would be very unlikely. Therefore, it was held that the assessee had not done any manufacturing and therefore, not eligible to claim deduction u/s 10AA.

2.5 Proceeding further, without prejudice, a conclusion was also drawn that any manufacturing, if at all done, was done outside SEZ since manufacturing process was lengthy process and one lot of raw material would require re-processing again and again and if the size of the medallion was slightly less or design was slightly flawed, then the entire process would have to be repeated. It was observed that the process would involve multiple steps like melting, rolling process to reduce width and to achieve desired thickness, circular cutting, stamping, recycling of scrap etc. After each melting, the gold would be required to be cooled down to become hard for rolling and cutting etc. which would be a time taking process. To work on 80 Kg of Gold, it would take 11 cycles to have a wastage of around 3 grams. The process would require manual work at each stage and each cycle, as per experience of other similar type of cases, would take minimum of 3-4 hours approximately when the entire lot of raw material would be fed into the machines at one go. Therefore, one lot consisting of different cycles would take minimum of 33 to 44 hours of non-stop working which would double to 44 to 88 hours if one lot of 40 Kg was to be used. However, as against this, the entire manufacturing work was shown to have been completed in a span of 4.30 Hours which would lead to a conclusion that no manufacturing was done by the assessee at its SEZ unit.

2.6 Regarding nature of machineries required to carry out such operations, it was observed that as a normal practice, the said manufacturing process would require different kind of machineries in the shape of induction machine, rolling machine, cutting machine, weighing

scale, polishing machine, stamping press, design die, packing machines etc. All these machines were sensitive as well as costly machines, each costing minimum of Rs.10-15 Lacs. However, as against the same, the assessee had machinery of Rs.7.86 Lacs only as on 01/04/2011 at its SEZ Unit which would be insufficient to undertake such kind of manufacturing volume.

2.7 The perusal of electricity records revealed that the bill amount for different months including month of manufacturing, was for the same figures of Rs.2130 which was on the basis of minimum charges. Since the manufacturing was stated to be done in the month of March, the bill for that month should have been significantly higher than bill for other months when no manufacturing activity was carried out by the assessee.

2.8 Upon perusal of details obtained from SEZ, it came to light that there was no entry or exit of labor in SEZ area on behalf of the assessee unit. No gate pass was ever issued which would show movement of labor during the stated period of production.

2.9 It was further noted that stamping die would be required to stamp / create the design on the medallions. Such unique die would be created for each design separately. Creation of die would involve creation of draft first which would be approved by the customer situated abroad. Thereafter, the die would be created by specific tools. All this activity would take minimum of 7-10 days. The assessee failed to show the designs and also could not furnish any evidence of import of stamping die. No such charges were debited by the assessee in its books of accounts.

2.10 Finally, an inference was drawn that the stated transactions were colorable device for evading taxes and accordingly, the benefit of deduction of Sec. 10AA not available to the assessee. The final conclusion drawn by Ld. AO was as follows: -

> **Colourable Device**
>
> 17.4 From the records it is also inferred that the assessee has used the tax benefits allowable to SEZ units as a colourable device for evading taxes. The documents filed are not fully reliable. Assessee has apparently diverted the expenses to taxable units/companies in the group as the expenses in the SEZ are extremely minimal. For example the Salary amount for the entire year is Rs.1,90,000 (roundly) only.
> 17.5 The assessee has shown large G.P. from the business of medallion business which is abnormal. As an indirect reference, as per news item above, *"The government had in April banned gold medallion manufacturing within SEZs and made 3-5% value addition mandatory on all gold exports in July",* it is inferred that the value addition from Gold to Medallion activity is less than 3%. From the other cases / assessees also it is seen that the value addition in approx 2%.
> *17.6* Purchase Orders / Import Orders:
> Initially the assessee was not filing Purchase Orders. After repeated requests from this office, the assessee has, filed only three purchase orders (for making imports).
> 17.7 Viren Jewellery LLC dated 03.03.2012. – The price includes the shipping costs upto the SEZ unit.
> 17.8 Solitaire General Trading FZE – 08.03.12 – it is for diamonds – there is no pricing reference –the purchase order issued by assessee states "to be shipped by us", (whereas in actual shipment will be done by Solitaire General because it is import),
> 17.9 Sky Diamond Jewellery FZE – 12.03.12 – it is for diamonds – there is no pricing reference – the purchase order issued by assessee states "to be shipped by us", (whereas in actual shipment will be done by Solitaire General because it is import).
> 17.10 Above analysis clearly indicate that the above documents are not reliable.
> 18 Payment- Most of the payments to be done for imports and to be received for exports are outstanding.
> 19 In view of the above, the assessee has not been able to discharge its onus of proving the genuineness of the transaction. The assessee has not discharged its onus to prove that manufacture has been done by him in the SEZ unit. From the above, the manufacture (if any) has been done by the Job work provider and has been done outside the SEZ unit.
> 19.1 In view of the above, it is held that the assessee is not entitled to the deduction u/s 10AA of the Act.

3. Aggrieved, the assessee agitated the denial of aforesaid deduction with success before Ld. first appellate authority vide impugned order

dated 20/03/2017. The assessee drew attention to the fact that Ld. AO while doubting manufacturing activity, denied deduction on trading activities also without examining the same. The assessee also explained its entire process of manufacturing and sought to rebut the adverse observations made by Ld. AO in the quantum assessment order, which has already been extracted in the impugned order.

4. The Ld. first appellate authority, after considering the same, allowed assessee's claim by observing as under: -

> 3.2. The submissions of the learned counsel have been carefully considered. The assessing officer made the disallowance on the following presumptions:
> 1. All the imports have taken place in March and the entire activity, from receipt of the goods to manufacturing, to delivery at the export house have occurred in a span of 4 hours and 30 minutes.
> 2. All the import orders and export orders have not been produced before the AO.
> 3. The arrangement is like a catering service where the cooking team goes to the place of the customer and uses gas, utensils, raw material etc. as provided by the customer and prepares food. In this case, it is the caterer who prepared the food and not the customer. Therefore, in the assessee's case it is the labour contractor who has manufactured the articles and not the assessee.
> 4. The assessee does not have the sufficient machinery to do the manufacturing.
> 5. The electricity bills do not show the consumption in March.
> 6. There is no evidence of entry of labour in SEZ.
> 7. It is quite possible to take out the gold bars from the SEZ without getting detected. Similarly it is also possible to bring in medallions from outside SEZ without getting detected.
> 8 . Most of the receipts for exports are yet to be received.
> 3.2.1. The assessing officer made out a case based on all these presumptions held the appellant as ineligible for deduction under section 10AA. It is also to be mentioned that all along the assessing officer has doubted the manufacturing activity and he had not made any comment nor discussed the activity. However, without giving any reason he had disallowed the profit derived from the trading activity as well.
> 3.2.2. The appellant has received orders in March, 2012 and therefore his imports are also In March, 2012. The learned counsel for the appellant, had, during the course of appellate proceedings submitted all the import bills and the export bills. These were produced even before the assessing officer. He had given a flowchart of the entire manufacturing process and also the date of Import and the date of export, It could be seen from the chart and the bills submitted that the gold Is Imported on day one, It Is converted Into medallions and sent to customs SEZ, Sachin, Surat on the next day. They are exported on day three. So it is not factually correct to say that the entire process is completed in 4 and a half hours. Moreover, the assessing officer has not given any reason for disbelieving the documents submitted by the appellant which include the airway bills and customs clearances.

3.2.3. The assessing officer on one hand states that the manufacturing has been done by the labour contractor and not the appellant and therefore the appellant is not eligible for deduction under section 10AA. On the other hand, he says that no labourer ever entered the SEZ and therefore, there is no manufacturing; These two are contradictory stands. However, the fact remains that the appellant had imported gold and had exported gold medallions which have passed through the SEZ. The labour contractor had issued bills for labour charges which have not been proved to be false by the assessing officer, Regarding the observation about the manufacturing loss of 245.69 gms, the learned counsel has clarified that this is stock-in-hand and not loss. The 15.09 gms gold has been taken by the labour contractor and the cost of this gold has been reduced from his final bill.

3.2.4. Also, the assessing officer made a sweeping statement that it is quite possible to take out and bring in gold bars from SEZ without getting detected which is casting a wild aspersion on the security procedure of SEZ. This, again, is not substantiated by any material or evidence. The appellant also furnished the details of the machinery owned by him and the value of the machinery after depreciation was shown at Rs.7,86,712/-. Again, the assessing officer merely presumed that the machinery in possession of the assessee is not sufficient for carrying on the manufacturing activity.

3.2.5. The analogy of a catering contract is also not relevant to the present case. This is a case where the appellant has imported the gold and got the medallions manufactured in his premises in SEZ and has done the exports. He has engaged the labourers to do the manufacturing with his machinery under his supervision. Therefore, it cannot be said that the labourer is the manufacturer; it is the appellant who is the manufacturer. As regards the electricity bills, the learned counsel has submitted that there was a fault in the mater and as the unit was closed for most part of the year, the electricity department had issued the routine bills without checking. In fact, the reading for the consumption has been reflected in the bill for the month of May, 2012 when actually there was no consumption. A letter has also been addressed by the appellant to the electricity department regarding the faulty meter.

3.2.6. The appellant was asked about the status of the receipts for the exports. The appellant submitted that part of the receipts from Supama International DMCC have been received and the party has requested for time to make the balance payment. The appellant has initiated legal proceedings against Silver Star General Trading FZE and White Star International FZE. Copies of the correspondence and the legal notices have been submitted. Also, the appellant has written to the Reserve Bank of India requesting time for realisation of export proceeds.

3.2.7. Therefore, from the facts and circumstances of the case, it could be seen that the appellant has in fact carried out import of gold and export of gold medallions.

3.2.8. In the case of ACIT vs. Gia exports, ITA nos. 8080 to 8082/M/2011, AYs 2006-07 to 2008-09, the Hon'ble ITAT Mumbai, vide order dtd. 19/06/2013, on similar facts, held as under:

> *"It is noticed that to verify the claim of the* assesses *and explanation, the* assesses was *asked to submit the complete details of imports and exports made through its unit and approval from Custom and Central Excise Department. Documents relating to shipment import and export clearance Invoices of import and export .and foreign remittances in the bank accounts. The CIT(A) found that all these documents were submitted before the AO during the assessment proceedings. The CIT(A) has further observed that he has examined all these documents and no discrepancy was noticed in these papers.,Even the AO has not mentioned any discrepancy in the Import and Export Clearance papers*

submitted during the course of assessment, It is an undisputed fact that in the SEZ unit o Import or Export can be made without the approval of the 'Custom and Central Excise department. All the payments and receipts were made through banking channels and no discrepancy was pointed out by the A.O. From these facts, It is clear that the assessee *has a unit in SEZ, Surat, Raw material was imported and the final product was exported with due approval of the Custom and Central Excise department, All the papers relating to the shipment and foreign remittances were in order.* The *assessee has submitted that there was no Import and Export activity taken place in survey year. Accordingly, the CIT(A) found that there was no* case *of the AO to deny the deduction to the assessee. We further noticed that even there is no finding in the order of the AO that survey party has conveyed to the AO or in detailed report that there was no export or import of items manufactured by the* assessee at *the premises. The survey party in fact noted that irregularities or discrepancies at the time of survey and not of the past. The AO has assumed that in the past as the unit was not functioning, neither there was any employee nor there was any sufficient power consumption to manufacture such a huge quantity. However, the AO has not taken into consideration the fact that the assessee is manufacturing only heavy kadas, which are purchased by the various parties in abroad. The items manufactured by the assessee, were not jewellery items but kadas only. In our view, in manufacturing kadas, power consumption is less and employees are also required less, Moreover, the import of gold made by the assessee was subject to Custom clearance and Excise Department, which were cleared after due verification. Approval was there, thereafter material was sold to abroad and again subject to custom and excise clearance which were obtained. Copies of all these details were filed before the AO as well as before the CIT(A).*

15. Learned DR has contended that learned CIT(A) has accepted the additional evidence, however, nowhere we found that learned CIT(A) has accepted any additional evidence. Learned CIT(A), which is superior authority to the AO has categorically mentioned in his order that all the details filed before him were filed before the AO also. This fact could not be denied by the learned DR even, *Therefore, we see no reason to deny the claim of the assessee for exemption under Section 10A.*

3.2.9. Similar issues have come up in the appellant's own case for the earlier assessment year i.e. AY 2011-12, wherein the learned CIT(A) has allowed the assessee's appeal which has been confirmed by the Hon'ble ITAT Mumbai. Reliance is also placed on the decisions of Hon'ble Jaipur bench of ITAT in the case of M/s. Goenka Diamond and Jewellers Ltd. vs. DCIT, and the decision of Hon'ble ITAT Mumbai in the case of M/s. Gitanjali Exports Corporation Ltd. vs. Mumbal in ITA nos 6947 and 6948/6949 and 6950/6758 and 6787/MUM/2011.

3.2.10. In view of the facts and circumstances of the case as discussed above the judicial pronouncements on identical Issues cited supra, the deduction under section 10AA claimed by the appellant from the manufacturing activity to the tune of Rs.12,16,35,706/- is allowed. Further, the appellant had claimed deduction under section 10AA to the tune of Rs. 10,55,74,963/- from the trading activity. The assessing officer has without assigning any reason disallowed the entire deduction claimed of Rs.22,72,10,669/- instead of restricting the disallowance to the claim made under the manufacturing activity which is Rs.12,16,35,706/-, There is no adverse finding or observation made by the AO on account of the trading activity of the appellant.

Therefore, the AO is directed to allow the claim of the entire deduction which is Rs.22,72,10,669/-, These grounds of appeal ore allowed.

4. In the result, the appeal is allowed.

Aggrieved by aforesaid adjudication, the revenue is under further appeal before us.

5. We have carefully heard the rival submissions, perused relevant material on record including documents placed in the paper-book and the order of Tribunal in assessee's own case for AY 2011-12 ITA No. 113/Mum/2015 order dated 09/12/2016 and also other judicial pronouncements as cited before us.

6. Upon due consideration of factual matrix as enumerated in preceding paragraphs, we find that the manufacturing activity stated to be carried out by the assessee in its SEZ unit was under doubt and serious allegations were levelled by Ld. AO doubting the manufacturing activity. The Ld.AO brought on record specific discrepancies in assessee's submissions / documentary evidences as filed by the assessee during assessment proceedings. Some pertinent observations / adverse inferences were drawn on the basis of submissions / evidences filed by the assessee. These observations / inferences have already been summarized by us in the preceding paragraphs. It is also evident from various observations of Ld.AO that the assessee failed to adduce sufficient documentary evidences to substantiate his claim fully and only part details were filed by the assessee during assessment proceedings. We are of the considered opinion that complete onus to demonstrate fulfilment of primary conditions of Sec. 10AA was on the assessee and it was obligatory on the part of the assessee to

substantiate the fact that his claim squarely fall within four corners of Sec.10AA. However, upon perusal of findings of Ld. AO with respect to time taken in manufacturing process, explanation for abnormal profits, discrepancies in bank accounts, non-realization of export proceeds even beyond 3 years, evidence of labor operations, machineries used by the assessee to carry out manufacturing operations, electricity consumption, stamping die etc., we find that the assessee remained unsuccessful to controvert the same and failed to discharge the primary onus casted upon him, in this regard.

7. The learned first appellate authority, while observing that Ld. AO doubted the genuineness of the manufacturing activity but made no comment or made no discussion about trading activity, granted relief to the assessee and the same, under the circumstances, could not be stated to be correct approach in the matter. We are of the considered opinion that Ld. CIT(A) had plenary powers in disposing off an appeal and the powers of first appellate authority were coterminous and coextensive with that of Ld. AO and nothing prevented Ld. CIT(A) to conduct further inquiry in this direction. No such exercise is shown to have been carried by learned first appellate authority and therefore, we are not convinced with the approach of Ld. CIT(A) in granting relief merely because Ld. AO failed to carry out the desired investigations. This would assume all the more importance in view of the fact that the assessee could not file sufficient documentary evidences before Ld.AO during assessment proceedings. The Hon'ble Delhi High Court in the

case of **CIT V/s Jansampark Advertising & Marketing Pvt. Ltd. [2015 56 Taxmann.com 286],** aptly observed as under: -

> 42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

8. Proceeding further, upon perusal of assessment order as well as order of Ld. CIT(A) for AY 2011-12, as placed on record, we find that the facts were different in that year. The findings given as well as facts brought on record by Ld. AO in the current year is not *pari-materia* with the findings given in earlier year and the level of investigation also differs. In AY 2011-12, the main focus of Ld. AO was on electricity consumption and labor charges as against the facts of the present year wherein Ld. AO has brought on record specific facts of time taken in manufacturing process, fact of abnormal profits, discrepancies in bank accounts, non-realization of export proceeds even beyond 3 years, evidence of labor operations, machineries used by the assessee to carry out manufacturing operations, electricity consumption, stamping die etc. which remained to be controverted by the assessee. More so, the principle of *res-judicate* is not applicable to Income Tax proceedings and each year is independent unit of assessment. The assessee is expected

to substantiate its claim in each of the year. The rule of consistency would be applicable only in cases where the factual matrix is demonstrated to be substantially the same. However, as already observed, we find the factual matrix to be different in this year and therefore, we find the decision of Tribunal for AY 2011-12, ITA No.113/Mum/2015 dated 09/12/2016 inapplicable to the facts of this year.

9. Keeping in view the entirety of facts and circumstances, we deem it fit to set-aside the order of Ld. first appellate authority on this issue and restore the issue of deduction u/s 10AA to the file of Ld. AO for re-adjudication de-novo with a direction to the assessee to substantiate his claim of deduction u/s 10AA.

10. Resultantly, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 21st November, 2019

Sd/-	Sd/-
(Pawan Singh)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/11/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop/		Sr.PS/PS
2	Draft dictated on			Sr.PS/PS
3	Draft Placed before author			Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			