



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.329/Mum./2014  
(Assessment Year : 2008-09)

ITA no.5995/Mum./2014  
(Assessment Year : 2010-11)

Lotus Ornaments Pvt. Ltd.  
Unit no.78, SDF-III  
SEEPZ Andheri (E)  
Mumbai 400 096  
PAN - AAACL9830C

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-8(2), Mumbai

..... Respondent

Assessee by : Shri Deepak Tralshwala  
Revenue by : Shri Manoj Kumar

Date of Hearing - 29.08.2019

Date of Order - 22.11.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeals by the assessee are against two separate orders passed by the learned Commissioner Of Income Tax (Appeals)-17, Mumbai, for the assessment years 2008-09 and 2010-11.

**ITA no.329/Mum./2014**  
**A.Y. – 2008–09**

2. The first ground raised by the assessee relates to the claim of deduction under section 10AA of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee company is engaged in manufacturing and export of diamond studded jewellery. For the assessment year under consideration, the assessee filed its return of income originally on 30<sup>th</sup> September 2008, declaring total income of ₹ 43,01,420. Subsequently, the assessee filed revised return of income on 12<sup>th</sup> April 2009, declaring total income of ₹ 50,37,160. In the course of assessment proceedings, the Assessing Officer noticed that as per audit report in Form no.56F, the assessee has claimed deduction of ₹ 1,75,90,920 under section 10AA of the Act. On further verification of details available on record, the Assessing Officer found that the assessee had earned income of ₹ 37,32,293, from job work done in respect of other SEZ units. The Assessing Officer observed, certain direct and indirect expenses have been debited against the job work received. The Assessing Officer was of the view that a part of indirect expenses should also have to be allocated on proportionate basis to the export turnover, as according to him, no indirect expenses

were claimed against export turnover. Accordingly, he allocated ₹ 2 lakh out of indirect expenses to export income thereby disallowing and adding back the very same amount to the income of the assessee. However, in the computation of income, the Assessing Officer allowed deduction under section 10AA of the Act at ₹ 1,75,90,920, as certified by the Auditor in Form no.56F. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority.

4. In the course of appeal proceedings, it was submitted by the assessee that income received from other SEZ units should also be treated as export and would qualify for deduction under section 10AA of the Act. After considering the submissions of the assessee, learned Commissioner (Appeals) found that the Assessing Officer has computed deduction under section 10AA of the Act on the basis of audit report filed by the assessee in Form no.56F, except a minor adjustment of ₹ 2 lakh out of the indirect expenses. Further, with regard to assessee's contention that the Assessing Officer has not considered the alternative computation furnished by the assessee in Form no.54F, learned Commissioner (Appeals) observed, the issue raised by the assessee does not emanate from the assessment order. Further, he observed, there is no necessity for the assessee to furnish

two alternative working of deduction under section 10AA of the Act. Accordingly, he refused to entertain the claim of the assessee.

5. The learned Authorised Representative reiterating the submissions made before learned Commissioner (Appeals) submitted, neither the Assessing Officer nor learned Commissioner (Appeals) has considered the alternative computation of deduction under section 10AA of the Act. In this context, he drew our attention to the two workings of 10AA deduction as mentioned in Para-4 of the statement of facts appended to the memorandum of appeal in Form no.36. The learned Authorised Representative submitted, both the Assessing Officer and learned Commissioner (Appeals) have failed to consider the without prejudice working of section 10AA deduction including the sales to other SEZ units (IUT sales).

6. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer and learned Commissioner (Appeals) submitted, the assessee is not entitled to claim deduction under section 10AA of the Act in respect of sales made to other SEZ units. In support of such contention, the learned Departmental Representative relied upon the decision of the Tribunal, Mumbai Bench, in DCIT v/s Sarto Electro Equipment Pvt. Ltd., ITA no.3127/Mum./2014, dated 13<sup>th</sup> July 2016.

7. We have considered rival submissions and perused the material on record. Undisputedly, the assessee filed auditor's report in Form no.56F, claiming deduction under section 10AA of the Act for an amount of ₹ 1,75,90,920. While completing the assessment under section 143(3) of the Act, the Assessing Officer, in fact, has allowed deduction under section 10AA of the Act for the very same amount of ₹ 1,75,90,920. Of course, he has added back indirect expenses of ₹ 2 lakh by allocating it to the export turnover. Before us, it is the contention of the learned Authorised Representative that without prejudice / alternative working of 10AA deduction furnished by the assessee before the Assessing Officer and learned Commissioner (Appeals) claiming deduction at ₹ 2,23,99,783, has not been considered. On a perusal of both the working of 10AA deduction, as mentioned in Para-4 of the statement of facts, it is seen in para-(a), the assessee has worked out deduction under section 10AA of the Act only on direct export sales made by it. Whereas, in para-(b) containing the without prejudice working of 10AA deduction, the assessee has computed the deduction by including the sales made to other SEZ units. In other words, even sales which were not in the course of direct export by the assessee were included in the export turnover, thereby, enhancing the claim of deduction under section

10AA of the Act to ₹ 2,23,99,783. Assessee's contention is, the computation of 10AA deduction including the sales to other SEZ units has not been considered by the Revenue authorities. We are unable to accept the aforesaid contention of the assessee. Admittedly, the sales made to other SEZ units are not export sales of the assessee. As per the definition of "*export turnover*" under Explanation-1 to section 10AA of the Act would mean the consideration in respect of export made by the undertaking. Thus, to come within the ambit of export under section 10AA of the Act, the assessee must directly export the goods out of India. Whereas, in the facts of the present case, the IUT sales are not directly exported by the assessee out of India, but were sold to other SEZ Units. Therefore, such sales cannot be included in export turnover as per the definition provided under section 10AA of the Act. The aforesaid view has been expressed by the Tribunal in case of Sarto Electro Equipment Pvt. Ltd. (supra). In view of the aforesaid, the alternative / without prejudice working of deduction under section 10AA of the Act by including the sales to other SEZ units cannot be accepted. Resultantly, this ground is dismissed.

8. In ground no.2, the assessee has challenged levy of interest under section 234B, 234C and 234D of the Act.

9. Levy of interest being mandatory and consequential, does not require any interference. Hence, this ground is dismissed.

10. Grounds no.3 and 4, being general do not require adjudication.

11. In the result, assessee's appeal is dismissed.

**ITA no.5995/Mum./2014**  
**A.Y. - 2010-11**

12. Ground no.1, is identical to ground no.1, of ITA no.329/Mum./2014. In the impugned assessment year also, the assessee has furnished two sets of working of deduction under section 10AA. One by excluding sales made to other SEZ units (IUT sales) and another working including IUT sales. In the course of assessment proceedings, the Assessing Officer on a perusal of two sets of working of deduction under section 10AA of the Act, noticed that without including the IUT sales of ₹ 3,08,42,651, deduction under section 10AA of the Act has been shown at ₹ 5,74,56,852. Whereas, by including the IUT sales deduction under section 10AA has been show at ₹ 5,98,71,170. Holding that the IUT sales cannot be included in the export turnover, the Assessing Officer allowed deduction under section 10AA of the Act for an amount of ₹ 5,74,56,852. Of course, while doing so he has observed that the assessee made a request to restrict the deduction to

₹ 5,74,56,852. In other words, IUT sales of ₹ 3,08,42,652, was not considered for computing deduction. The Assessing Officer made further adjustment of ₹ 4,34,027, by excluding some other income from export turnover and ultimately allowed deduction under section 10AA of the Act for an amount of ₹ 5,70,40,355. Being aggrieved with the aforesaid decision of the Assessing Officer, the assessee preferred appeal before learned Commissioner (Appeals). However, learned Commissioner (Appeals) upheld the decision of the Assessing Officer.

13. The submissions of the learned Authorised Representative on the issue are identical to the submissions made by him on similar issue in the appeal for the assessment year 2008–09.

14. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) as well as the argument on similar issue made earlier.

15. We have considered rival submissions and perused the material on record. Facts qua the claim of deduction under section 10AA of the Act in the impugned assessment year are identical to the assessment year 2008–09. In the impugned assessment year also, the assessee furnished two workings of the deduction under section 10AA of the Act, one including the IUT sales and another excluding IUT sales. The Assessing Officer while rejecting the working including IUT sales has

accepted the working excluding IUT sales. However, there is some confusion with regard to final figure of deduction claimed under section 10AA of the Act under both the working. Though, in the assessment order, the Assessing Officer has observed that after excluding IUT sales, deduction under section 10AA has been shown at ₹ 5,74,56,852 and including IUT sales deduction under section 10AA of the Act has been computed at ₹ 5,98,75,170, however, in the statement of facts attached to the memorandum of appeal in form no.36, the assessee has produced both the working in Para-4. As per the said working, deduction under section 10AA excluding IUT sales has been shown at ₹ 5,98,75,170, whereas, by including IUT sales deduction under section 10AA has been shown at ₹ 5,74,56,852. This anomaly between the figures mentioned in the assessment order and in the statement of facts requires reconciliation. However, we make it clear that under no circumstances, the assessee can be allowed deduction under section 10AA of the Act in respect of sales made to other SEZ units (IUT sales). Keeping our aforesaid observations in view, the Assessing Officer is directed to verify the actual figure of exports made by the assessee directly and allow deduction under section 10AA. This ground is allowed for statistical purpose.

16. Grounds no.2, 4 and 5, are not pressed, hence, dismissed.

17. In ground no.3, the assessee has challenged the decision of the Departmental Authorities in excluding the interest received on fixed deposit amounting to ₹ 1,10,700, from the export turnover for computing deduction under section 10AA of the Act.

18. As could be seen, the Assessing Officer being of the view that interest on fixed deposit is not related to income derived from the export of article or thing, held that it cannot be included for the purpose of computing deduction under section 10AA of the Act.

19. The learned Commissioner (Appeals) also confirmed the aforesaid view of the Assessing Officer.

20. We have considered rival submissions and perused the material on record. It is noticed that on the fixed deposit kept towards margin money, the assessee has earned interest of ₹ 1,10,700. No evidence has been furnished by the assessee to demonstrate that the aforesaid interest income has any direct nexus with the export of article or thing so as to include it in export turnover. That being the case, we are unable to accept assessee's claim. Ground is dismissed.

21. Ground no.6, is against initiation of penalty proceedings under section 271(1)(c) of the Act.

22. This ground being pre-mature at this stage, does not require adjudication.

23. Grounds no.7 and 8, being general grounds do not require adjudication.

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

25. To sum up, assessee's appeal for A.Y. 2008-09 is dismissed and appeal for A.Y. 2010-11 is partly allowed for statistical purposes.

Order pronounced in the open Court on 22.11.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 22.11.2019**

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

Assistant Registrar  
ITAT, Mumbai