

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI
BEFORE SHRI S.RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1687/MUM/2017
(Assessment Year: 2012-13)**

Lily Jewellery Pvt. Ltd.,
Unit No. 503, Block No. II,
Seepz-Sez, Seepz++,
Andheri (East),
Mumbai – 400 096

The Income Tax
Vs. Officer – 10(2)(2)
Room No. 350, 3rd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai

PAN No. AAACL9600J

(Revenue)

(Assessee)

Assessee by : Shri Aamod Prabhudesai &
: Ms. Shubhangi Prabhudesai, A.Rs
Revenue by : Shri Sushil Kumar Mishra, D.R

Date of Hearing : 09/02/2021
Date of pronouncement : 15/02/2021

ORDER

PER RAVISH SOOD, J.M :

The present appeal filed by the assessee is directed against the order passed by the A.O under Sec. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (for short 'Act'), dated 17.01.2017. The assessee has assailed the impugned order on the following grounds of appeal before us:

- "1. On the facts and circumstances of the case and in law, the Ld. Assessing Officer (AO) and the Hon. Members of Dispute Resolution Panel (DRP) respectively, erred in passing the impugned assessment order U/s. 143(3) r.w.s. 92CA and 144C(13) of the Income Tax Act, 1961 (the Act), which is illegal and bad in law.
2. On the facts and circumstances of the case and in law, the Ld. AO and DRP respectively, ought to have held that-
 - 2.1 Since the appellant enjoys the deduction U/s. 10A of the Act and shifting of profits is not possible, transfer pricing adjustment of Rs.1,07,01,654/- on account of notional interest for delay in realization of debts from AEs is not required to be made by relying on the decision of the Hon. Income Tax Appellate Tribunal, Mumbai Bench "E" ITA No. 7513/M/2010 in case of Tata Consultancy Services Ltd.

- 2.2 Without prejudice to the above and in the alternate, if at all adjustment on account of notional interest for delay in realization of debts from AEs is required to be made, then-
- (a) Yearly average LIBOR plus 200 basis points (2.583%) should be applied instead of base rate of State Bank of India i.e. 10.81%. Accordingly, adjustment should be restricted to Rs.25,57,111/- instead of Rs. 1,07,01,654/-; and
 - (b) Adjustment of aforesaid interest should not be considered as an independent international transaction but should be imputed in computing operating margin. Accordingly, the revised margin ought to have been determined at 9.83% and since the same is higher than the average margin of the comparables (2.62%), no adjustment should be made.
- 2.3 The operating margin on cost of the appellant is to be considered at 0.40% instead of 5.35% as computed in Transfer Pricing Study.
- 2.4 Employees contribution to Provident Fund and ESIC of Rs. 8,65,227/- are not chargeable to tax U/s. 2(24)(x) r.w.s. 36(1)(va) of the Act.
- 2.5 Proportionate interest of Rs.2,39,126/- attributable to interest-free advances given to the directors is not disallowable U/s. 36(l)(iii) of the Act.
- 2.6 Interest income of Rs.12,715/- is to be included in computing the eligible profits of the business for determining deduction U/s.10A of the Act and the deduction U/s. 10A of the Act ought to have been determined accordingly.
- 2.7 As and when the unrealized export turnover of Rs.2,00,75,675/- is realized, then, the same should be considered as forming part of export turnover and the deduction U/s. 10A of the Act should be amended accordingly.
3. The above grounds of appeal are distinct and separate and without prejudice to each other.
4. It is humbly prayed that the reliefs as prayed for hereinabove and/or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.
5. The appellant craves leave to amend or alter any ground, or add a new ground which may be necessary.”

Further, the assessee has also raised the following effective additional ground of appeal :

“On the facts and circumstances of the case and in law, the Ld. A.O and Hon’ble DRP ought to have held that since weighted average delay in realization of sales made to AEs of 176 days is lower as compared to weighted average delay of 480 days from Non-AEs and no interest is charged to Non-AEs, adjustment on account of notional interest for delay in realization of sales made to AEs of Rs.1,07,01,654/- is not warranted and accordingly same should be deleted in its entirety.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of studded gold and silver jewellery had e-filed its return of income for A.Y 2012-13 on 21.11.2012, declaring its total income at Rs.1,48,990/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. Observing that the assessee had during the year in question entered into international transactions with its AE's for an amount exceeding Rs.15 crores, the A.O made a reference under Sec. 92CA(1) of the Act to the Transfer Pricing Officer (for short 'TPO') for determining the Arm's Length Price (for short 'ALP') of the said transactions. TPO vide his order passed under Sec. 92CA(3), dated 29.01.2016 made an upward transfer pricing adjustment of Rs.1,07,01,654/-.

4. After receiving the order passed by the TPO under Sec. 92CA(3), dated 29.01.2016, the A.O passed a draft assessment order under Sec. 143(3) r.w.s 144(1), dated 29.03.2016, wherein he inter alia proposed the following additions to the returned income of the assessee:

Sr. No.	Particulars	Amount
1.	TP Adjustment	Rs.1,07,01,654/-
2.	Disallowance under Sec. 36(1)(va) r.w.s 2(24)(x)	Rs. 8,65,227/-
3.	Disallowance under Sec. 36(1)(iii)	Rs. 2,39,126/-
4.	Exclusion of interest income of Rs.12,715/- while computing the eligible profit of the assessee's business for determining its entitlement for deduction under Sec. 10A of the Act	-
5.	Reduction of the unrealised export turnover of Rs.2,00,75,675/- from the assessee's export turnover while computing its entitlement for deduction under Sec. 10A.	-

On the basis of his aforesaid deliberations the A.O proposed to assess the income of the assessee company at Rs.1,14,85,030/-.

5. Aggrieved, the assessee filed objections before the Dispute Resolution Panel-1, Mumbai (for short 'DRP'). The DRP vide its order passed under Sec.

144C(5), dated 23.12.2016 inter alia upheld the additions/disallowances in question that were proposed by the A.O vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1), dated 29.03.2016.

6. After receiving the DRP's order under Sec. 144C(5), dated 23.12.2016, the A.O passed a final assessment order under Sec.143(3) r.w.s 144C(13), dated 17.01.2017 and assessed the total income of the assessee company at Rs.1,14,41,891/-.

7. Aggrieved, the assessee has assailed the assessment framed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 17.01.2017 in appeal before us.

8. The Id. Authorized Representative (for short 'A.R') for the assessee sought for the admission of the additional ground of appeal that was raised before us. It was submitted by the Id. A.R that as the adjudication of the aforesaid additional ground was based on the facts available on record and no new facts were required to be verified, the same, thus, did merit admission.

9. Per contra, the Id. Departmental Representative (for short 'D.R') objected to the admission of the aforesaid additional ground of appeal.

10. We have heard the authorized representatives for both the parties on the issue as to whether or not the additional ground of appeal raised by the assessee merits admission. As is discernible from the aforesaid additional ground of appeal, the assessee by raising the same has sought adjudication of an issue which is based on the facts already available on record and would not require reference to any new facts. Accordingly, we are of the considered view that in all fairness the additional ground of appeal raised by the assessee merits to be admitted.

11. Adverting to the facts pertaining to the aforesaid additional ground of appeal, it was averred by the Id. A.R that in the normal course of its business certain delay was involved in realisation of the export sale proceeds by the assessee from both its AEs and non-AEs. It was submitted by the Id. A.R that

the TPO in the course of the transfer pricing proceedings had called upon the assessee to explain as to why an adjustment for the interest foregone by it on the delayed realisation of the export sale proceeds from its AEs may not be made in its hands. In reply, it was submitted by the assessee vide its letter dated 28th December, 2015 that the terms of export sales did not provide for charging of any interest and it had by adopting a uniform policy not charged any interest on the delayed realisation of trade debts from both the AEs and non-AEs. It was submitted by the Id. A.R that it was brought to the notice of the TPO that the weighted average delay in realisation of debts from AEs was 145 days while for that in case of non-AEs was 425 days. As such, the assessee had tried to impress upon the TPO that now when it had in the normal course of its business not charged any interest on the realisation of sale proceeds involving a weighted average delay of 425 days from its non-AEs no adverse inference as regards non-charging of interest on realisation of sale proceeds that involved a weighted average delay of 145 days from its AEs could feasibly be drawn. However, the TPO considering the fact that the assessee had raised working capital loan of Rs. 30.35 crores on which it had paid an interest of Rs. 2.08 crores during the year in question, characterised the delayed realisation of sale proceeds by the assessee from its AEs as a loan transaction. Considering the prime lending rate or base rate declared by the State Bank of India as on 30th of June alongwith a mark up of 1.5%, the TPO imputed the rate of interest on 10.81% for working out the arm's length price of the interest on the aforesaid impugned loan transaction i.e delayed realisation of the export sale proceeds by the assessee from its AEs. Further, the TPO considering the weighted average credit period of 170 days allowed by the assessee to its non-AEs in the invoices raised during the year and 205 days for the opening outstanding balances as the arm's length credit period, therein holding a conviction that the assessee ought to have charged interest of Rs.18,60,324/- for receivables of F.Y. 2011-12 and Rs. 88,41,330/- for receivables of F.Y. 2010-11 worked out a transfer pricing adjustment aggregating to Rs.1,07,01,654/- in the hands of the assessee. Rebutting the

aforesaid observations of the TPO, it was submitted by the Id. A.R that as delays were involved in realisation of sale proceeds in case of both AEs and non-AEs and the assessee by adopting a uniform policy was not charging any interest as regards such delay in realisation in either case, therefore, no adjustment could have been made by imputing any interest w.r.t the delay involved in realisation of the sale proceeds from the AEs. It was submitted by the Id. A.R that as the weighted average delay in realisation in debts from the AEs of 145 days was substantially lower than that involved in respect of non-AEs of 425 days thus no adjustment w.r.t the delayed realisation of the export sale proceeds was called for in the hands of the assessee. In order to buttress his aforesaid claim the Id. A.R had drawn support from the order passed by the Tribunal in the case of its sister concern in Dania Oro Jewellery Pvt. Ltd. Vs. DCIT-9(3)(1), ITA No. 665/Mum/2016, dated 24.07.2020 (copy placed on record). Taking us through the aforesaid order, it was submitted by the Id. A.R that the Tribunal by relying on the judgment of the Hon'ble High Court of Bombay in the case of CIT-9 Vs. Indo American Jewellery Ltd., dated 08.01.2013, had observed, that the average delay in realisation of the sale proceeds by the assessee from its AE was 132 days as in comparison to the average delay of 130 days in the case of non-AEs, and the assessee by adopting a uniform policy had not charged any interest either from the AEs or the non-AEs. It was submitted by the Id. A.R that the Tribunal in the backdrop of its aforesaid observations had justifiably vacated the addition of notional interest on the outstanding amount of export proceeds that were belatedly realised by the assessee from its AEs. The tribunal while concluding as hereinabove had observed as under:

7. We have considered the rival submissions of the parties and gone through the record carefully. We have seen that in appeal for AY 2008-09 on almost similar delay in realising the amount from the AEs the TPO made similar additions and on objections before DRP, the adjustment on account notional interest was deleted. On further appeal by revenue before the Tribunal the appeal of the revenue was dismissed vide order dated 29.07.2016. The relevant part of the order is extracted below;

"6. We have heard the rival contentions, perused the findings of the authorities below as well as material available on record. The Id. Counsel for the assessee has placed reliance on the judgment of the Hon'ble Bombay High Court in the case of CIT-9 vs. Indo American Jewellery Ltd. The said head note is extracted below:

"Section 92C of the Income-tax Act, 1961- Transfer Pricing Computation of arm's length price [Comparables and adjustments] - In transfer pricing proceedings, TPO while determining ALP of international transactions, noticed that outstanding balance from Associated Enterprises was amounting to Rs.8.76 crores - said amount was outstanding for more than year and, thus, taking rate of interest at 10 per cent, Transfer Pricing Officer determined interest receivable at Rs.87.66 lakhs and added same to international transaction cost - Tribunal noted that there was complete uniformity in act of assessee in not charging interest from both Associated Enterprises and non-Associated Enterprises debtors for delay in realization of export proceeds - Tribunal thus deleted addition of notional interest on outstanding amount of export proceeds realized belatedly whether on facts, no substantial question of law arose from Tribunal's order - Held, yes [Para5] [In favour of assessee]

6.1 The above decision squarely applies to the present case. This is the only decision of a High Court applicable to the case at hand which has been cited before us. In the case of Dr. T.P. Kapadia vs. CIT[1973] 87 ITR 511 (Mys.) it has been held that a decision of a High Court would have binding force in the State in which it has jurisdiction.

6.2 Even in the case of the assessee for the assessment year 2008-09 (Dania Oro Jewellery Pvt. Ltd. vs. ITO) relied on by the Id. DR, we find that in some of the cases the terms of credit has been extended beyond 700 days and in some of the cases, it has gone beyond 1200 days whereas in the case of Non-AE, the maximum delay is of 203 days. In view of the above, the order of the Tribunal in the case of the assessee for the A.Y. 2008-09 is not applicable to the issue at hand for the A.Y. 2009-10.

6.3 Let us now examine the facts in the present case. In a case like this the proper method is to take a simple average. If we take a simple average then there has been a delay of 132 days in the case of AE and 130 days in the case of Non-AEs in realization of the export proceeds. Thus there is uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realization of export proceeds.

7. Respectfully following the judgment of Hon'ble Bombay High Court in the case of Indo American Jewellery Ltd. the appeal filed by the Revenue is dismissed."

8. Further we have noted that in AY 2010-11, similar adjustment was suggested by TPO due to delay in realization of debts. The assessee filed objection before DRP, wherein the assessee was allowed partial relief. However on further appeal to the Tribunal, the entire adjustment/ addition on account notional interests for delay in realization of sales was deleted vide order dated 03.01.2018 in ITA No. 7635/Mum/2014. In appeal for AY 2010-11, the Tribunal followed the order for AY 2009-10.

9. From the details furnished by Id. AR for the assessee about the delay in realizing the money of sales from AEs and non AEs, we have observed that on the working of delay of credit period for AE and non AEs as 138 days and for non AEs are 146 days; the Id. has not disputed the factual matrix. Considering the decision of Tribunal in assessee's own case for AY 2009-10 and 2010-11, we find merit in the submissions of the assessee that no notional interest adjustment was warranted against the assessee. In the result the ground No. 2.1 of the appeal is allowed."

We have perused the aforesaid order of the tribunal and find that the facts involved in the appeal of the assessee for the year in question are in parity with those as were there before the Tribunal in the case of its abovementioned 'sister concern', viz. **Dania Oro jewellery Pvt. Ltd. Vs. DCIT-9(3)(1), ITA No. 665/Mum/2016, dated 24.07.2020.** As the weighted average delay in realisation of the sale proceeds by the assessee from its AEs is less than that involved in realisation of the sale proceeds from the non-AEs, and the assessee adopting a uniform policy had not charged interest in either case, thus, finding ourselves in agreement with the view taken by the Tribunal in the aforesaid case, we respectfully follow the same. Accordingly, we herein and direct the A.O/TPO to vacate the transfer pricing adjustment of Rs. 1,07,01,654/- made towards interest on delayed export proceeds receivable by the assessee from its AEs. The **additional ground of appeal** is allowed in terms of our aforesaid observations.

12. As regards the ground of appeal No. 2.1 & 2.3, it was submitted by the Id. A.R that as instructed the same were not being pressed. Accordingly, the **Grounds of appeal Nos. 2.1 & 2.3** are dismissed as not pressed.

13. Insofar the alternative claim of the assessee wherein it had assailed the transfer pricing adjustment of Rs.1,07,01,654/- on the ground that for computing the impugned adjustment LIBOR+ 200 basis points (2.583%) should have been applied instead of the base rate of State Bank of India i.e 10.81% the same we find is rendered as infructuous, for the reason, that the transfer pricing adjustment as regards the delayed realization of sale proceeds by the assessee from its AE had been vacated by us while disposing off its additional ground of appeal No. 2.1. Accordingly, the **Ground of appeal No. 2.2** is dismissed as having been rendered as merely academic in nature.

14. We shall now advert to the grievance of the assessee that the A.O had erred in making an addition/disallowance under Sec. 2(24)(x) r.w.s 36(1)(va) of Rs.8,65,227/-. As is discernible from the records, the A.O, observing that the assessee had delayed the payments made in respect of the employees contributions to PF of Rs.6,87,565/- and ESIC of Rs.1,77,662/- by failing to deposit the same within the due dates (including the grace period), had therein disallowed the same under Sec. 36(1)(va) of the Act and treated the same as the deemed income of the assessee. On objection filed by the assessee, the DRP-1, Mumbai, upheld the aforesaid disallowance made by the A.O under Sec. 2(24)(x) r.w.s Sec. 36(1)(va) of the Act.

15. Before us, the Id. A.R submitted that the A.O/DRP had erred in making/ confirming the disallowance of Rs.8,65,227/- under Sec. 2(24)(x) r.w.s 36(1)(va) of the Act w.r.t the delay involved on the part of the assessee in depositing the amount of the employees contribution to the Provident Fund and the Employees State Insurance Scheme. In support of his aforesaid contention the Id. A.R had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Ghatge Patil Transports Limited (2015) 53 taxman.com 141 (Bom) and Geekay Security Services (P) Ltd. Vs. DCIT (2019) 101 taxman.com 192 (Bom). It was submitted by the Id. A.R that as the assessee had deposited the employees contribution to PF & ESI before the

'due date' of filing of its return of income for the year in question, thus, no disallowance under Sec.2(24)(x) r.w.s 36(1)(va) was called for in its hands.

16. Per contra, the Id. D.R relied on the orders of the lower authorities.

17. Admittedly, as observed by the DRP, the assessee had assailed the disallowance of the employees contribution to PF and ESIC aggregating to Rs.8,65,227/- on the ground that as the said respective amounts were deposited before the 'due date' of filing of its return of income for the assessment year under consideration thus no disallowance was therein liable to be made. On a perusal of the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT (Central), Pune Vs. Ghatge Patil Transport Limited (2015) 368 ITR 749 (Bom)**, both the employers and the employees contributions to the various employees welfare funds are covered under Sec. 43B of the Act. In our considered view, as the employees contribution towards PF and Employees State Insurance therein aggregating to Rs. 8,65,227/- was deposited by the assessee prior to the 'due date' of filing of its return of income hence, the same was not liable to be disallowed under Sec. 2(24)(x) r.w.s 36(1)(va) of the Act. Our aforesaid view is further supported by a subsequent order of **Hon'ble High Court of Bombay** in the case of **Geekay Security Services (P) Ltd. Vs. DCIT (2019) 101 taxman.com 192 (Bom)**. We, thus, in terms of our aforesaid observations vacate the disallowance of Rs.8,65,227/- made by the A.O under Sec. 2(24)(x) r.w.s 36(1)(va) of the Act. The **Ground of appeal No. 2.4** is allowed in terms of our aforesaid observations.

18. We shall now deal with the grievance of the assessee that the A.O/DRP had erred in making/sustaining the disallowance under Sec. 36(1)(iii) of the interest expenditure of Rs.2,39,126/- attributable to the interest free advances that were given by the assessee company to its directors. As is discernible from the orders of the lower authorities the assessee had advanced interest free loans to its two directors, as under:

Sr. No.	Particulars	Amount
1.	Shri Sanjay Ghosh	Rs.34,17,064/- (from 01.04.2011 to 31.03.2012)
2.	Shri Pramod Goenka	Rs. 3,48,299/- (from 01.04.2011 to 30.04.2011)

On a perusal of the records, it was observed by the A.O that while for the loan to Shri Pramod Goenka was given during the financial year 2009-10, the loan to Shri Sanjay Ghosh was advanced way back in the financial year 2005-06. On being queried as to why the correlating interest expenditure w.r.t the aforesaid loans may not be disallowed under Sec. 36(1)(iii), it was the claim of the assessee that as it had sufficient interest free funds available with at the relevant point of time of advancing the respective loans thus, no disallowance under the aforesaid statutory provision was called for in its hands. In order to fortify its aforesaid claim it was pointed out by the assessee that its interest free funds as on March 31, 2011 was Rs. 23.14 crores and the same on March 31, 2012 stood at Rs. 27 crores. Apart from that, it was the claim of the assessee that the entire interest bearing funds as on the aforesaid two balance sheet dates aggregating to an amount of Rs.30 crores approximately were invested in the business assets whose value exceeded Rs. 50 crores on the corresponding dates. However, the A.O did not find favour with the aforesaid claim of the assessee and vide his draft assessment order under Sec.143(3) r.w.s 144C(1), dated 29.03.2016 proposed to disallow under Sec. 36(1)(iii) the interest expenditure of Rs.2,39,126/- correlating to the aforesaid loans advanced to the directors. On objection filed by the assessee before the DRP, it was observed by the panel that as the assessee had failed to demonstrate that the loans in question were advanced out of the interest free funds thus, no infirmity did emerge from the aforesaid disallowance made by the A.O. Accordingly, the A.O giving effect to the aforesaid directions of the DRP, therein vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 17.01.2017 made a disallowance under Sec. 36(1)(iii) of Rs. 2,39,126/-.

19. We have deliberated at length on the issue under consideration and are unable to subscribe to the observations of the lower authorities that the failure

on the part of the assessee to establish that the loans in question were advanced out of the interest free funds justified the disallowance of the correlating interest expenditure under Sec. 36(1)(iii) of the Act. In the case of **CIT (LTU) Vs. Reliance Industries Ltd. (2019) 307 CTR 0121 (SC)**, we find, that the **Hon'ble Supreme Court** had observed that when interest free funds available with the assessee are sufficient to meet its investments then, it can be presumed that investments are made from the said interest free funds and no disallowance to the said extent would be called for u/s 36(1)(iii) of the Act. Question of law that was inter alia raised before the Hon'ble Apex Court for its kind consideration read as under :

“1. Whether the High Court is correct in holding that interest amount being interest referable to funds given to subsidiaries is allowable as deduction under Section 36(1)(iii) of the Income Tax Act, 1961 (for short 'the Act') when the interest would not have been payable to banks, if funds were not provided to subsidiaries”

Answering the aforesaid question of law, the Hon'ble Apex Court while approving the view taken by the Hon'ble High Court of Bombay had observed, as under:

“7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.

8. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question.”

In the backdrop of the aforesaid settled position of law, we concur with the claim of the Id. A.R that in case the interest free funds available with the assessee were sufficient to justify the loans advanced to the directors, it could safely be presumed that the same were made by the assessee from the interest free funds available with it. At the same time, we find that the claim of the assessee that it had sufficient self owned funds to justify the loans advanced to the aforesaid directors need to be verified on the part of the assessing officer, and if the said claim is found to be in order then no

disallowance under Sec. 36(1)(iii) would be called for in its hands. Accordingly, in terms of our aforesaid observations we herein restore the issue to the file of the A.O for the limited purpose of giving effect to our aforesaid observations. The **Ground of appeal No. 2.5** is allowed for statistical purposes.

20. We shall now take up the claim of the assessee that the A.O/DRP had erred in not including the interest income of Rs.12,715/- while computing the assessee's entitlement for deduction under Sec. 10A of the Act. On a perusal of the orders of the lower authorities, we find that the miscellaneous income of the assessee, viz. (i) interest income on fixed deposit placed with banks: Rs.3,984/-; and (ii) interest income on electricity security deposit: Rs. 8,731/-, therein aggregating to an amount of Rs.12,715/- was excluded by the A.O while quantifying the assessee's entitlement for deduction under Sec. 10A of the Act. Before the lower authorities, it was the claim of the assessee that as the aforesaid interest income was earned on fixed deposits pledged with the banks for obtaining working capital loan and on the security deposit paid for an electricity connection at its manufacturing unit thus, the said respective interest incomes were entitled for being included in its eligible profits for quantifying its entitlement for deduction under Sec. 10A of the Act. However, the aforesaid claim of the assessee did not find favour with the A.O, and he vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1), dated 29.03.2016 excluded the aforesaid amount of interest income for computing the assessee's entitlement for deduction under Sec. 10A of the Act. On objection filed before the DRP, the panel being of the view that the interest income from deposits made with bank and the electricity department could at best be regarded as "attributable to" and not "derived from" its undertaking, therein concurred with the A.O that the aforesaid interest income were liable to be excluded from computing the assessee's deduction under Sec. 10A of the Act. After receiving the order passed by the DRP the A.O vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 17.01.2017 worked out the

assessee's claim for deduction under Sec. 10A of the Act i.e after inter alia excluding the aforesaid interest income.

21. We have heard the authorized representatives for both the parties in context of the aforesaid issue and have perused the orders of the lower authorities as well as the material available on record. It is the claim of the Id. A.R that the aforesaid issue was squarely covered by the order passed by the Tribunal in its own case for A.Y. 2011-12, in **Lily Jewellery Pvt. Ltd. Vs. DCIT-10(2)(1), Mumbai, dated 19.03.2019, ITA No. 1533/Mum/2018** (copy placed on record). It was submitted by the Id. A.R that the Tribunal relying on its earlier order that was passed in the assessee's own case for A.Y. 2009-10 in ITA No. 4206/Mum/2014, dated 13.04.2018, had after drawing support from the judgment of the **Hon'ble High Court of Karnataka** in the case of **M/s Hewellet Packard Global Soft Ltd, ITA No.812, 2007, dated 30.10.2017**, had held, that the interest income earned on the deposits that placed in the banks was entitled for being considered for computing the assessee's claim for deduction under Sec. 10A of the Act. Also, it was submitted by the Id. A.R that the Tribunal while disposing off the appeal in the assessee's own case for A.Y. 2009-10 in ITA No. 4206/Mum/2014, dated 13.04.2018 had after relying on the order passed by a coordinate bench in the case of **M/s Dania Oro Jewellery Pvt. Ltd. Vs. ITO, ITA No. 7635/Mum/2014, dated 30.01.2018**, had held that the interest income earned on the Electricity Security Deposit was eligible for the benefit of Sec. 10A of the Act. On a perusal of the aforesaid orders of the Tribunal, we find the aforesaid contention of the Id. A.R to be in order. We find that the Tribunal while disposing off the appeal in the assessee's own case for A.Y. 2011-12 in ITA No. 1533/Mum/2018 has held that the interest income on fixed deposit pledged with bank for obtaining working capital loan, as well as the interest earned on security deposit paid for electricity connection for its manufacturing unit were both eligible for the assessee's claim for deduction under Sec. 10A of the Act. For the sake of

clarity the observation of the Tribunal in its aforesaid order is reproduced as under:

“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.”

Accordingly, concurring with the aforesaid view taken by the Tribunal, we respectfully follow the same and therein direct the A.O to consider interest income of Rs.12,715/- as a part of the eligible profits of the assessee's business for computing its deduction under Sec. 10A of the Act.

22. We shall now deal with the grievance of the assessee that the A.O/DRP had erred in not considering its claim that the unrealised export turnover of Rs.2,00,75,675/- as and when realised should be considered as forming part of its export turnover for the purpose of computing its deduction under Sec. 10A of the Act.

23. The genesis of the aforesaid controversy lies in a narrow compass. As is discernible from the orders of the lower authorities, we find that out of the assessee's total export sales of Rs. 46,19,02,366/- for the year in question a sum of Rs. 2,00,75,675/- was unrealised. On being queried as to why the aforesaid unrealised export turnover may not be excluded while computing the deduction under Sec. 10A of the Act, the assessee concurred with the aforesaid objection of the A.O. Accordingly, the A.O vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1) dated 29.03.2016 as per the

provision of Sec. 10A)(3) of the Act proposed to exclude the unrealised export sale proceeds of Rs. 2,00,75,675/- from the export turnover of the assessee for the purpose of computing its deduction under Sec. 10A of the Act. Objection was filed by the assessee with the DRP, wherein it was claimed that though the AO had rightly excluded the aforesaid unrealised export sale proceeds for computing the claim of deduction under Sec. 10A, however, he had erred in not stating in the proposed assessment order that the said amount would be considered as export turnover as and when received in India. Observing that as per Sec. 10A(3) of the Act the sale proceeds of the eligible items of export had to be received in or brought into India in convertible foreign exchange within a period of six months from the end of the previous year or such further period as the competent authority may allow in this behalf, the DRP was of the view that as the aforesaid statutory requirement had not been adhered to by the assessee to the extent its export turnover of Rs.2,00,75,675/- was concerned thus, the A.O had rightly reduced the said amount while computing the assessee's claim for deduction under Sec. 10A of the Act. The DRP while concluding as hereinabove had observed that neither the export proceeds were received by the assessee within the stipulated time period nor any extension of the period for receipt of the said amount was obtained by the assessee from the competent authority. Before the DRP it was the claim of the assessee that though the A.O had rightly excluded the aforesaid unrealised export sale proceeds while computing its claim of deduction under Sec. 10A, however, he had erred in not stating in his draft assessment order that the said amount would be considered as export turnover as and when the same was received in India. However, the DRP being of the view that no such statement could be demanded by the assessee from the A.O as the latter was only required to see as to whether the amount in question could be considered for deduction in the year before him thus, not finding favour with the aforesaid objection of the assessee dismissed the same.

24. After receiving the order passed by the DRP under Sec. 144C(5) of the Act, the A.O vide his order passed under Sec. 143(3) r.w.s 144C(13) dated 17.01.2017 worked out the assessee's claim for deduction under Sec. 10A after excluding the unrealised export sale proceeds of Rs.2,00,675/-.

25. Before us, the Id. A.R submitted that the aforesaid issue was squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2010-11 in ITA No. 5756/Mum/2014, dated 13.04.2018 (copy placed on record). Taking us through the aforesaid order of the Tribunal, it was submitted by the Id. A.R that the Tribunal by relying on its earlier orders passed in the case of Neru Jewellers Pvt. Ltd. Vs. DCIT (OSD)-(1) (ITA No. 1468/Mum/2014 dated 27.04.2016) AND ACIT Vs. Tara Jewells Exports Pvt. Ltd., ITA No. 662/Mum/2012, dated 29.01.2014, had after taking note of the fact that Reserve Bank of India had not stipulated any period for realisation of sale proceeds for SEZ units had therein found favour with the aforesaid claim of the assessee and had directed the A.O to consider the unrealised export sale proceeds as a part of the export turnover for the purpose of computing the deduction under Sec. 10A as and when the same was received by the assessee as per the guidelines of the Reserve Bank of India.

26. We have given a thoughtful consideration to the aforesaid contention of the authorized representatives for both the parties in the backdrop of the orders of the lower authorities and the material available on record, and have also considered the judicial pronouncements relied upon by them. We have also perused the order of the Tribunal in the assessee's own case for A.Y. 2010-11 in ITA No. 5756/Mum/2014, dated 13.04.2018, wherein it was observed by the Tribunal as under:

“29. The last Ground in this appeal is with regard to the exclusion of unrealised export sale proceeds of Rs.5,18,97,639/- from the figure of export turnover in order to calculate deduction admissible u/s 10A of the Act. On this aspect, at the time of hearing, the learned representative for the assessee has relied upon the decision of the Mumbai Bench of the Tribunal in the case of M/s. Niru Jewels Pvt. Ltd. vs DCIT(OSD-1), ITA No. 1468/Mum/2014 dated 27.04.2016 wherein

by relying on an earlier decision of the Tribunal in the case of ACIT vs Tara Jewels Exports Pvt. Ltd., ITA No. 662/Mum/2012 dated 29.01.2014, it was noticed that the Reserve Bank of India has not stipulated any time period for realisation of sale proceeds for SEZ units. The limited prayer of the assessee is that necessary directions be given to the Assessing Officer that as and when assessee would realise any sum out of the unrealised export sales of Rs.5,18,97,639/-, the same should be considered as part of the export turnover for the purpose of calculating deduction u/s 10A of the Act.

30. In our view, the plea raised by the assessee before us is fair and proper and the same is also not disputed by the Id. DR. Accordingly, we direct the Assessing Officer to consider any sum realised out of the unrealised export sales of Rs.5,18,97,639/- as part of the export turnover as and when the same is received as per the extant guidelines of Reserve Bank of India for the purpose of calculating deduction u/s 10A of the Act. Thus, on this aspect, assessee succeeds for statistical purpose.”

Finding ourselves to be in agreement with the aforesaid view taken by the tribunal in the assessee’s own case for A.Y 2010-11 in ITA No. 5756/Mum /2014, dated 13.04.2018, we respectfully follow the same. Accordingly, we herein set aside the aforesaid matter to the file of the A.O, with a direction to consider any sum realised out of the unrealised export sales of Rs. 2,00,75,675/- as part of the assessee’s export turnover for the purpose of computing its deduction under Sec.10A of the Act, as and when the same is received as per the extant guidelines of the Reserve Bank of India. The **Ground of appeal No. 2.7** is allowed in terms of our aforesaid observations.

27. The **Grounds of appeal Nos.1, 3, 4 and 5** being general in nature are dismissed as not pressed.

28. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 15.02.2021

Sd/-
S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 15.02.2021
PS: Rohit

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "K" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai