

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.717/Bang/2018
Assessment Year: 2008-09

Sri V. Anantha Kumar B.R. Hills Road Chamarajanagar PAN NO : AFSPK9224K	Vs.	ACIT Circle-9(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Ramesh, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	25.03.2021
Date of Pronouncement	:	23.06.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 14.12.2017 passed by Ld. CIT(A)-2 Bangalore and it relates to the assessment year 2008-09. The ground urged by the assessee relate to partial disallowance of deduction claimed u/s 10B of the Income-tax Act,1961 ['the Act' for short].

2. The facts relating to the issue are stated in brief. The original assessment for the year under consideration was completed by the A.O. u/s 143(3) of the Act. Subsequently, the Ld. Principal CIT passed revision order u/s 263 of the Act. Consequent thereto, the present assessment order came to be passed by the A.O. on

28.3.2014. The assessee is the proprietor of the concern named "Biligiri Granites" and it is engaged in the business of quarrying granites and export of rough granite blocks. This concern was established in 1978. Subsequently, the assessee established another unit in the year relevant to the assessment year 2000-01 in the name of S.M. Natural Stones. The new unit was registered as 100% EOU. According to the assessee, the Commercial tax authorities objected to the name of S M Natural Stones, since the assessee is already having a business concern named "Biligiri Granites". Hence the assessee named the new unit also as "Biligiri granites". In the new concern, the assessee proposed to export monuments and finished granite stones. In the year relevant to assessment year 2003-04, the new unit was registered with Cochin SEZ. The assessee claimed deduction u/s 10B of the Act in respect of the new unit from that year onwards. In the original assessment proceedings for the year under consideration, the A.O. allowed the deduction claimed by the assessee u/s 10B of the Act. The Ld. CIT(A), in the revision order, observed that the assessee is not eligible for deduction u/s 10B of the Act for the following reasons:-

- a) The new unit is a case of splitting up/reconstruction of a business already in existence.
- b) The assessee has transferred old plant & machinery previously used for other business and the value of such machinery constitutes 84% of the total value of machinery as on 31.3.2004, which exceeds the threshold limit of 20%.
- c) The business of the assessee was established as DTA in 1983-84 and 10 years have elapsed much earlier.
- d) If at all, deduction u/s 10B of the Act is allowable to the assessee, it is allowable only in respect of profit relating to export of monuments, since the assessee has earned profits on export of granites, which is a trading item. The Ld. CIT(A)

noticed that the export turnover of the assessee included sales value of Rs1.47 crores relating to export of granite blocks and slabs. The CIT noticed that the deduction u/s 10B of the Act is available only in respect of manufactured items. Hence the Ld CIT(A) held that the profit realised on export of granite blocks is not eligible for deduction u/s 10B of the Act, as it is a trading item.

3. Consequent to the order passed by Ld. Principal CIT u/s 263 of the Act, the A.O. passed the impugned assessment order, wherein he also took the very same view as that of Ld. Principal CIT and accordingly rejected the claim of deduction u/s 10B of the Act.

4. In the appellate proceedings, Ld. CIT(A) took the view that the assessee has established a new unit in the year relevant to the assessment year 2000-01 as 100% in EOU and the same was registered with Cochin Special Economic Zone. The Ld. CIT(A) also noticed that the old plant & machinery transferred to the new unit, at the time when it was established, was less than 20% total value of machinery which is permitted u/s 10B of the Act. Accordingly, by placing reliance on the decision rendered by Kolkata Bench of Tribunal in the case of JCIT Vs. NALCO Chemicals (I) Ltd. 97 ITD 348 and the decision of Mumbai Tribunal in the case of SOEX India Pvt Ltd. Vs. ACIT (ITA No.402/Mum/2015) the Ld. CIT(A) held that the new unit of the assessee is eligible for deduction u/s 10B of the Act. Thus, the Ld. CIT(A) did not agree with the view of AO in respect of splitting/reconstruction, transfer of old plant & machinery beyond the threshold limit. He also held that the new unit was set up in the year relevant to AY 2000-01.

5. With regard to the view of the A.O. that the deduction u/s 10B of the Act is available in respect of profit relatable to manufacturing activity and not to the entire profit, the assessee contested the same by placing reliance before Ld. CIT(A) on the decision rendered by coordinate Bangalore bench of Tribunal in the assessee's own case for assessment years 2006-07, 2007-08 & 2009-10 (ITA No.1442/Bang/2015 & others dated 20.3.2017). In the above said years, the Tribunal had held that the assessee is eligible for deduction u/s 10B of the Act in respect of its entire profits. In this regard, the assessee had placed reliance before the Tribunal in those years, on the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. ARR-ESS Exim Pvt Ltd. (ITA No.551/2013 & 553/2013). In the above said case, the Hon'ble Delhi High Court has expressed the view that section 10B of the Act is a beneficial provision and the assessee should be given the benefit of exemption even on the goods which the assessee has not manufactured himself but has got produced through outsourcing i.e. it is held that the manufacture would include procurement through outsourcing. Since revenue could not contradict the above said decision with any other judicial precedent, the coordinate bench held that the assessee would be eligible for deduction u/s 10B of the Act in respect of whole of its profit.

6. The Ld. CIT(A), after considering the decision of the coordinate bench rendered for assessment year 2006-07 and also the decision of Hon'ble Delhi High Court in the case of ARR-ESS Exim Pvt Ltd. (supra) proceeded to discuss various other case laws with regard to the claim for deduction u/s 10B of the Act. The Ld. CIT(A) relied on the following decisions:

- a) CIT Vs. N.C. Budharaja & Copany (1993) 204 ITR 412.
- b) CIT Vs. Gwalior Ryan Silk Manufacturing Company Ltd. (1992) 196 ITR 149 (SC).
- c) Tonira Pharma Ltd. 39 SOT 58.
- d) Kwal Pro Exports Vs. ACIT 110 ITD 59

By placing the reliance on the above said case laws, the Ld. CIT(A) expressed the view that in order to be eligible for exemption u/s 10B of the Act, the activity carried on by the assessee should necessarily fall under the category of manufacturing. Accordingly, the Ld. CIT(A) directed the A.O. to exclude profit earned from export of finished products bought from market (Traded goods) from the computation of exemption u/s 10B of the Act.

7. Aggrieved, the assessee has filed this appeal before us. We notice that the revenue has not filed any appeal challenging the order passed by Ld CIT(A). Hence the issues decided by Ld CIT(A) in favour of the assessee has attained finality. The only surviving issue, which is being agitated by the assessee relates to the rejection of claim for deduction u/s 10A in respect of profits earned from export of granite slabs.

8. The Ld A.R submitted that the assessee has exported cut and polished granites apart from monuments. The export sales of cut and polished granites have been categorized as trading items (bought out items) by the tax authorities. He submitted that the activity of sawing marble blocks into slabs and tiles and polishing the same has been held to be manufacture or production by Hon'ble Supreme Court in the case of ITO vs. Arihant Tiles and Marbles P Ltd (2010)(320 ITR 79). Accordingly, the Ld A.R submitted that the assessee is entitled for deduction u/s 10B in respect of profits earned on sale of cut and polished granite stones also.

9. On the contrary, the Ld D.R submitted that the assessee has purchased the granite slabs from the market and the same has been exported. Since the trading items do not fall under the category of “manufacture or production”, the Ld CIT(A) has rightly rejected the claim on the profit earned on export of trading items.

10. We have heard rival contentions and perused the record. We notice that there is difference of opinion between the parties on the factual aspects of the claim. While the assessee claims that the granite slabs have been exported after undertaking the activities of sawing, cutting and polishing, the revenue has claimed that the finished granite slabs have been purchased from the market. The revenue’s stand is that the deduction u/s 10B is available only in respect of “manufacture or production” activities. The assessee’s case is that it has produced cut and polished granite slabs. It is also the case of the assessee that the co-ordinate bench of Tribunal has allowed the deduction on the profit realized on export of granite slabs in AY 2006-07 by following the decision rendered by Hon’ble Delhi High Court in the case of CIT Vs. ARR-ESS Exim Pvt Ltd. (ITA No.551/2013 & 553/2013).

11. In this regard, we notice that the Tribunal, in AY 2006-07, has followed the decision rendered by Hon’ble Delhi High Court in the case of CIT Vs. ARR-ESS Exim Pvt Ltd. (supra) by observing that no other contrary decision has been brought to its notice by the revenue. However, the Ld CIT(A), after noticing above said observations of the Tribunal, has discussed various other case laws to buttress the revenue’s view that the deduction u/s 10B is available in respect of manufacture or production activities. Hence the issue has to be examined independently without having resort to the decision rendered by the co-ordinate bench in AY 2006-07.

12. The assessee has furnished the Profit and Loss account at pages 63 of the paper book. A perusal of the same would show that the assessee has incurred expenses on extraction and quarrying, purchase of blocks and purchase of finished goods. We notice that the purchase of finished goods is to the tune of Rs.25,17,391/-. Thus, it appears that the assessee has been doing its own processing of raw blocks and has also purchased finished goods. The Hon'ble Supreme Court has held in the case of Arihant Tiles & Marbles P Ltd (supra) that sawing of marble blocks into slabs and tiles and polishing activities amount to manufacture or production. Hence the assessee should be eligible for deduction u/s 10B in respect of export of granite slabs, which it has subjected to production process. Since the provisions of sec.10B refers to the activity of "manufacture or production", we are of the view that the assessee shall not be eligible for deduction u/s 10B in respect of profits realised export of purchased finished goods (trading items).

13. We notice that the break-up details of the export turnover between export of granites processed by the assessee and export of purchased items are not available on record. Rather, none has examined this aspect. Hence, this aspect requires examination at the end of AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore this issue to the file of the AO for examining the same afresh. We make it clear that the assessee is eligible for deduction u/s 10B of the Act in respect of profits realized on export of granite slabs, which has been processed by it. It shall not be eligible for deduction in respect of profit realized on export of purchased items, i.e., items which has been exported as it is without undertaking any process of sawing blocks into slabs and tiles and polishing.

14. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 23rd June, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 23rd June, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.