

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 287/SRT/2017 (AY 2013-14)

(Hearing in Virtual Court)

Assistant Commissioner of Income-tax, Circle-1(2), Room No.213, 2 nd Floor, AyakarBhavan, Majura Gate, Surat-395001	Vs	M/s Mukta Enterprise, 1104, C Wing Tirupati Complex, Opp-Mahalaxmi Temple, Bhaulabhai Desai Road, Mumbai-400 026 PAN : AATFM 4435C
Appellant / Revenue		Respondent / assessee

Assessee by	ShriDeven K. Kapadia, CA& Miss. Mitali Mehta, CA
Revenue by	Mrs. Anupama Singla, Sr-DR
Date of hearing	27.09.2021
Date of pronouncement	09.11.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-2Surat dated 08.09.2017 for assessment year (AY) 2013-14. The Revenue has raised the following grounds of appeal:-

“1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance made by the Assessing Officer of exemption claimed u/s 10AA by the assessee in respect of Turnover for trading and treated entire sum as taxable income by not giving any specific findings in his decision?

2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance made by the

Assessing Officer by invoking provisions of Section 80(IA)(10) r.w.s. 10AA(9) in giving deductions of interest on Capital and Remuneration to partners of the assessee firm after finding that the assessee had taken undue benefits of Section 10AA by not claiming interest on capital and Remuneration to partners which resulted increase in exempted profit of the assessee?

3. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in not appreciating the fact that by not providing interest and remuneration to the partners, the firm has claimed higher profits leading to higher claim of deduction u/s 10AA of the Act and thus, devolving the revenue from due amount of tax?"

2. At the outset of the hearing the ld AR for the assessee submits that both the grounds of appeal raised by the revenue are covered by the decisions of Tribunal or High Court, either in assessee's own case or in similar cases wherein similar deductions under section 10AA is allowed by the various bench of Tribunal and the same was upheld by the High Court. Against the ground No.1, the ld AR for the assessee submits that this ground of appeal is covered by the decision of Jurisdictional High Court in PCIT Vs Florence Exports (Tax Appeal No. 686 of 2018 dated 21.06.2018) and by the decision of Surat Tribunal in Vijaylaxmi Exports in ITA No.2342/AHD/2014 dated 24.07.2019, EnnEnn Corporation Ltd., in IT(SS)A No.43/AHD/2016 and ITA No.190/AHD/2016 dated 19.07.2019. The ld AR for the assessee further submits that ground No. 2 & 3 are covered by the decision of

Jurisdictional High Court in PCIT Vs Alidhara Taxspin Engineers (Tax Appeal No. 265 of 2017 dated 2nd May 2017).

3. On the other hand, the ld.Sr. Departmental Representative (Sr.DR) for the revenue strongly relied upon the order of Assessing Officer (AO). The ld.Sr.DR further submitted that assessee made corrigendum in the partnership deed on 14.03.2012 to increase the eligible income under section 10AA of the Act.
4. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. We find that that the almost similar set of facts, the Hon'ble jurisdictional High Court in PCIT vs. Florence Exports(supra) while considering the question of law – “whether on the facts and circumstances of the case and the law, Hon'ble ITAT has wrongly allowed deduction u/s 100 to the assessee. By importing the word “Trading” from SEZ Act, 2005 into Income Tax Act, 1961. The legislature has allowed deduction u/s 10AA to business doing activities of “manufacturing” and “providing services” from SEZ area. Trading of goods from SEZ is nowhere the intention of legislature. Whether on the facts of the act and law, Hon'ble ITAT has erred in importing the word “Trading” from SEZ Act, 2005 into Income Tax Act, 1961 and gone beyond the intended scope of Section 10AA of the I.T.Act.” The Hon'ble High Court while considering the aforesaid

question of law, referred the decisions of Jaipur Bench of Tribunal in DCIT Vs. Goenka Diamond & Jewellers Ltd. in ITA No.509/JP/2011 and in ACTI vs. Gitanjali Exports corporation Limited in ITA No.7662/Mum/2013, and held that decision of Jaipur and Mumbai Tribunal are directly on the same point. The said decisions are not challenged by the Revenue, therefore, while referring those decisions, the Tribunal allowed the relief in favour of Florence Exports (Assessee in that case), the Tribunal held that assessee is entitled to exemption / deduction under section 10AA, it cannot be said the Tribunal committed any error and dismissed the appeal of Revenue. We find that the Jaipur Tribunal in Goenka Diamond & Jewellers Ltd.(supra) while considering the similar grounds of appeal held that deduction under section 10AA of the Act is available in respect of trading in nature of re-export of imported goods. We find that similar view was taken on almost similar fact in Geetanjali Export Corporation Ltd.(supra). Considering the consistent view of the Tribunal on similar ground of appeal, we affirm the order of ld.CIT(A). In the result, Ground No.1 of appeal is dismissed.

5. Ground No.2 and 3 relates to allowing interest on capital and remuneration to partners in the deduction under section 10AA of the Act. We find that this ground of appeal is also covered by series of decision of various Tribunals and the leading decision of Hon'ble Gujarat High Court in case of Alidhara

Taxspin Engineers Ltd. (supra) wherein the Hon'ble High Court held the mere incorporation of interest on the partners capital and remuneration does not signify that the same are mandatory in nature. Therefore, respectfully following the decision of jurisdictional High Court, we do not find any infirmity in the order of Id.CIT(A), which we affirm. In the result, Ground No.2 and 3 of appeal are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in open court on 09 /11/2021 by placing result on notice Board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated:09/11/2021 / SGR*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy//

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Sr.Pvt.Secretary, ITAT, Surat