आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.3341/Chny/2019**
निर्धारण वर्ष/Assessment Year: 2014-15

M/s. Classic Linens International Pvt. Ltd., Unit 13 & 14, SDF, II Phase MEPZ, Tambaram, Chennai 600 045.	Vs.	The Assistant Commissioner of Income Tax, OSD, Company Range-I, Nungambakkam High Road, Chennai 600 034.
[PAN: AABCC3510F]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri S. Raghunathan & Shri S. Sankar Narayanan, Advocates
प्रत्यर्थी की ओर से/Respondent by	:	Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	09.11.2021
घोषणा की तारीख /Date of Pronouncement	:	23.11.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 4, Chennai, dated 30.09.2019 relevant to the assessment year 2014-15. The effective ground raised in the appeal of the assessee relates to confirmation of disallowance of deduction of ₹.52,61,428/- claimed under section 10AA of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2014-15 on 29.11.2014 admitting total income of ₹.98,77,210/-. The case was selected for scrutiny and notice under section 143(2) of the Act was served on the assessee. In response to the notice, the assessee filed the details as called for. After considering the submissions of the assessee and materials available on record, the assessment under section 143(3) of the Act was completed by assessing total taxable income of the assessee at ₹.1,51,38,640/- after making disallowance of claim of deduction under section 10AA of the Act at ₹.52,61,428/-. On appeal, the ld. CIT(A) confirmed the disallowance made by the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee has submitted that similar issue was subject matter in appeal before the Tribunal for the assessment year 2011-12 and by following the decision of the Tribunal for the assessment year 2011-12, the ld. CIT(A) has allowed the appeal for the assessment years 2012-13 and 2013-14. However, by following the appellate order for the assessment year 2011-12, the ld. CIT(A) decided the issue erroneously against the assessee for the assessment year 2014-15 and prayed that the order of the Tribunal for the assessment year 2011-12 may be followed for the assessment year under consideration. On the other hand, the ld. DR supported the appellate order.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. The assessee company was incorporated in February 2000 in Tambaram, MEPZ, Chennai, which was later converted into SEZ and commenced the production in December, 2000. The company had claimed deduction of 100% for the assessment years 2001-02 to 2005-06 (five years) under section 10A of the Act as well as 50% from 2006-07 to 2010-11 (5 years). The Special Economic Zones Act, 2005 inserted section 10AA of the Act effective from 01.04.2006 and as per proviso to section 10AA of the Act, 50% deduction was claimed by the assessee from assessment year 2006-07 till 2010-11 (5 years) and 50% from assessment years 2011-2012 for five years. Explanation to section 10A of the Act states that for the removal of doubts, it is hereby declared that an undertaking, being the unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions referred to in section 10A for ten consecutive years, such unit shall not be eligible for deduction from income under this section. In view of the above provisions it was the submissions of the assessee that the period of ten consecutive assessment years needs to be seen only as before commencement of the Special Economic Zone Act, 2005. As on the commencement of assessment year 2006-07, which is the effective date of operation of section 10AA, the unit has just claimed deduction under section 10A only for five assessment years

and therefore, the assessee has submitted that the assessee company is entitled for deduction under section 10AA of the Act. The ld. Counsel for the assessee has prayed that the order of the Tribunal in assessee's own case for the assessment year 2011-12 may be followed for the assessment year under consideration as while deciding the appellate order for the assessment years 2012-13 and 2013-14 the ld. CIT(A) followed the Tribunal's order for the assessment year 2011-12 and decided the appeals in favour of the assessee. We have perused the order of the Tribunal in assessee's own case for the assessment year 2011-12 in I.T.A. No. 2406/Chny/2017 dated 11.12.2019, wherein, the Tribunal has observed and held as under:

> *"7. We have carefully considered rival contentions and perused material placed on record including orders of the authorities relied upon. We have observed that assessee is in business of manufacturing and export of pillows and cushions. It is observed that initial date of registration of the business undertaking of the assessee for manufacturing of pillows and cushion in Tambaram MPEZ was 30.08.2000 and date of commencement of manufacturing of aforesaid products was 09.12.2000. The assessee claimed deduction u/s 10A effective from ay: 2001-02 from profits derived from export of pillows and cushions manufactured from its unit located in Tambaram MEPZ. Later, there was conversion of assessee's unit located in Tambaram MEPZ into an SEZ unit effective from 01.01.2003. The assessee had claimed and was allowed deduction u/s 10A of the 1961 Act by Revenue for period commencing from ay: 2001-02 to 2010-11 viz. ten consecutive assessment years, while in the impugned ay: 2011-12 which is under consideration before us is the eleventh year of claim of deduction by the assessee in which assessee had claimed deduction u/s. 10AA of the 1961 Act in the return of income filed with the Revenue. This claim of deduction u/s 10AA of the 1961 Act for impugned ay: 2011-12 was concurrently denied/disallowed by both the authorities below viz. AO and learned CIT(A) and now we are seized of the matter and are now called upon to adjudicate this issue as to whether assessee will be entitled for deduction u/s. 10AA of the 1961 Act for ay: 2011-12 , keeping in view of the fact that assessee is now an SEZ unit effective from 01.01.2003 and has claimed and was already allowed deduction u/s 10A of the 1961 Act by Revenue for ten consecutive assessment years beginning from ay: 2001-02 to ay: 2010-11. It is an undisputed fact between rival parties that assessee's unit was set up and commenced manufacturing of pillows and cushions in Tambaram MEPZ in previous year relevant to ay: 2001-02 and assessee was entitled for deduction u/s.10A of 1961 Act commencing from ay: 2001-02 onwards. It is only on 01.01.2003, the Tambaram MEPZ unit of the assessee*

was converted as SEZ unit but assessee continued to claim benefit of deduction u/s 10A of the 1961 Act for a total period of consecutive ten assessment years commencing from ay: 2001-02 to 2010-11, which deduction was in-fact undisputedly also allowed by Revenue. It is claimed by assessee before us that for the first five years, deduction to the tune of 100% of profits derived from export of pillows and cushions were claimed and allowed by Revenue u/s 10A of the 1961 Act, while for next five years, deduction @50% of profits derived from export of pillows and cushions were claimed by assessee and was allowed by Revenue u/s 10A of the 1961 Act. The assessee has also claimed that it created Reserves as are contemplated u/s 10A(1A)(ii) of the 1961 Act for the 8th-10th year of its claim of deduction u/s 10A of the 1961 Act. Thus, in nutshell the assessee submitted that owing to conversion of its EPZ unit to SEZ unit effective 01.01.2003, it did not claim deduction of 100% of profits derived from export of pillows and cushions for ten consecutive assessment year as is contemplated u/s 10A(1) of the 1961 Act but the assessee relied upon and complied with provisions of Section 10A(1A) of the 1961 Act to claim deduction from the profits on export of pillows and cushions of 100% of profits derived from export of pillows and cushions for first five years and thereafter claimed deduction @50% of profits derived from export of pillows and cushions . This deduction as claimed by assessee u/s 10A of the 1961 Act were allowed by Revenue until ay: 2010-11. It is only in this eleventh year viz. impugned ay: 2011-12 with which we are presently seized with, the assessee invoked provisions of Section 10AA of the 1961 Act for the first time to claim benefit of deduction to the tune of 50% of the profits derived from export of pillows and cushions, which claim of the assessee was repelled by Revenue authorities both by AO as well learned CIT(A) and said deduction claimed by assessee u/s 10AA stood disallowed for impugned ay: 2011-12. However, it is matter of record that learned CIT(A) was pleased to allow benefit of deduction u/s 10AA to the assessee for immediately succeeding ay's: 2012-13 and 2013-14 while adjudicating first appeal of the assessee. This is purely a legal issue which requires interpretation of law applied to as facts are undisputed and admitted and there is no dispute so far as facts are concerned between rival parties. The question of law which is to be adjudicated is as to whether the assessee on facts and circumstances of the case is entitled to deduction u/s 10AA of the 1961 Act for impugned ay: 2011-12 which is eleventh year of commencement of production. Before we proceed further it is important to reproduce relevant provisions of Sec. 10A and 10AA of the 1961 Act as were in force from time to time during the relevant period(s).

7.2 Section 10A of the 1961 Act as was existing in the statute immediately before its substitution by Finance Act, 2000 w.e.f. 01.04.2001 , which reads as under immediately prior to ay: 2001-02:

> *"[Special provision in respect of newly established industrial undertakings in free trade zones.1*
>
> *10A. (1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee.*
>
> *(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—*
>
> *[(i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year—*
>
> *(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or*

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park or, as the case may be, software technology park;]

[(ia) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1995, its exports of such articles or things are not less than seventy-five per cent of the total sales thereof during the previous year;]

(ii) it is not formed by the splitting up, or the recon-struction, of a business already in existence:

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the pur-poses of clause (ii) of that sub-section.

[(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any [ten] consecutive assessment years, beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduc-tion;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) 8 [or sub-section (3)] of section 74 and no deficiency referred to in sub-section (3) of section 80J, in so far as such loss or deficiency relates to the business of the industrial undertaking, shall be carried forward or set off where such loss, or, as the case may be, deficiency relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I [or section 80-IA] [or section 80-IB] or section 80J in relation to the profits and gains of the industrial under-taking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be

computed as if the assessee had claimed and been actually allowed the deduc-tion in respect of depreciation for each of the relevant assess-ment years.

(5) Where an industrial undertaking in any free trade zone has begun to manufacture or produce articles or things in any previous year relevant to the assessment year commencing on or after the 1st day of April, 1977, but before the 1st day of April, 1981, the assessee may, at his option, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139, whether fixed originally or on extension, for furnishing the return of income for the assessment year commencing on the 1st day of April, 1981, furnish to the 11 [Assessing Officer] a declaration in writing that the provisions of sub-section (1) may be made applicable to him for each of the relevant assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1981, and if he does so, then the provi-sions of sub-section (1) shall apply to him for each of such relevant assessment years and the provisions of sub-section (4) shall also apply in computing the total income of the assessee for the assessment year immediately succeeding the last of the relevant assessment years and any subsequent assessment year.

(6) The provisions of sub-section (8) and sub-section (9) of section 80-I shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-I.

(7) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, [before the due date for furnishing the return of income under sub-section (1) of section 139] [***], furnishes to the [Assessing] Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

[(8) References in sub-section (5) to any other provision of this Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987 shall, notwithstanding such amendment or omission, be construed, for the purposes of that sub-section, as if such amendment or omission had not been made.]

Explanation.—For the purposes of this section,—

(i) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;

[(ii) "relevant assessment years" means the ten consecutive assessment years referred to in sub-section (3);]

[(iii) "manufacture" includes any—

(a) process, or

(b) assembling, or

(c) recording of programmes on any disc, tape, perforated media or other information storage device;]

[(iv) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce;

(v) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce;

(vi) "produce", in relation to articles or things referred to in clause (i) of sub-section (2), includes production of computer programmes.]"

7.3 Section 10A of the 1961 Act as was substituted by Finance Act, 2000 w.e.f. 01.04.2001 and which stood applicable to assessee for the first year of its commencement of production for ay: 2001-02, reads as under:-

'10A. Special provision in respect of newly established undertakings in free trade zones, etc.

10A (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the undertaking was first set up in such free trade zone or export processing zone:

Provided also that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software :

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils all the following conditions, namely:—

(i) ***it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year****—*

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;

(c) commencing on or after the 1st day of April, 2001 in any special economic zone;

(ii) it is not formed by the splitting up, or the recon-struction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circum-stances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation. —The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-sec-tion shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, alongwith the return of income, the report of an account-ant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year, —

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in rela-tion to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of

section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduc-tion;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74 in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

Explanation 1—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the under-taking was set up, the company shall be presumed to have trans-ferred its ownership or the beneficial interest in the undertak-ing.

Explanation 2—For the purposes of this section,—

(i) "computer software" means,—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board, which is transmitted or exported from India to any place outside India by any means;

(ii) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder or any other corresponding law for the time being in force;

(iii) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technolo-gy Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(iv) "export turnover" means the consideration in respect of export of articles or things or computer software received in, or brought into India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(v) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by noti-fication in the Official Gazette, specify for the purposes of this section;

(vi) "relevant assessment year" means any assessment year falling within a period of ten consecutive assessment years referred to in this section;

(vii) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Indus-try;

(viii)"special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.'

7.4 Thus as could be seen that Finance Act, 2000 itself substituted Section 10A of the 1961 Act w.e.f. 01.04.2001 wherein it was , inter-alia, provided that in case units which are initially located in export processing zones or in free trade zones are subsequently located into an SEZ owing to conversion of such free trade zone or export processing zone into an special economic zone(SEZ) , then period of ten consecutive assessment years shall be reckoned from assessment year relevant to the previous year in which undertaking was first set up in such free trade zone or export processing zone. Similarly clause (c) was introduced in Section 10A(2) by Finance Act,2000 effective from 01.04.2000 providing that benefit of deduction u/s 10A shall be applicable to undertaking which has begun or begins to manufacture or produce articles or things or computer software during previous year relevant to assessment year commencing on or after 1st day of April 2001 in special economic zone(SEZ). So , in the year 2000 itself, when SEZ Act, 2005 was not even in statute, provision's were introduced in the 1961 Act in Section 10A itself for granting benefit of deduction u/s 10A to the units which are located in special economic zones(SEZ) and at that time it was through a notification in official gazette, Central Government was notifying SEZ's. Section 2(k) read with Section 2(za) of the Special Economic Zone Act, 2005 recognizes such existing SEZ which were in existence on or before the commencement of SEZ Act, 2005. It was on 01.01.2003, the assessee unit was converted into an SEZ unit. In the meantime Finance Act, 2002, further amended provisions of Section 10A of the 1961 Act and provisions of Section 10A of the 1961 Act as were applicable for ay : 2003-04 are reproduced hereunder:

"[Special provision in respect of newly established undertakings in free trade zone, etc.

10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years :

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the [undertaking began to manufacture or produce such articles or things or computer software] in such free trade zone or export processing zone :

1[***]

The following third proviso shall be inserted to sub-section (1) of section 10A by the Finance Act, 2002, w.e.f. 1-4-2003 :

Provided also that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software :

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

The following sub-section (1A) shall be inserted after sub-section (1) of section 10A by the Finance Act, 2002, w.e.f. 1-4-2003 :

(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two assessment years.

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(i) ***it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year****—*

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;

(c) commencing on or after the 1st day of April, 2001 in any special economic zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

2[(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form 3, alongwith the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not

be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

The following sub-section (9A) shall be inserted after sub-section (9) of section 10A by the Finance Act, 2002, w.e.f. 1-4-2003 :

(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(a) in the case of a firm the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section.

Explanation 1.—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking :

4[Provided that nothing contained in this Explanation shall apply to any change in the shareholding of the company as a result of—

(a) its becoming a company in which the public are substantially interested; or

(b) disinvestment of its equity shares by any venture capital company or venture capital fund.]

Explanation 2.—For the purposes of this section,—

(i) "computer software" means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature, as may be notified 5 by the Board,

which is transmitted or exported from India to any place outside India by any means;

(ii) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder or any other corresponding law for the time being in force;

(iii) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(iv) "export turnover" means the consideration in respect of export 6[by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

(v) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, 7 specify for the purposes of this section;

(vi) "relevant assessment year" means any assessment year falling within a period of ten consecutive assessment years referred to in this section;

(vii) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(viii) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.]

7a [Explanation 3.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

7.5 Now, two events happened, first the assessee unit which was located in export processing zone got converted into an SEZ unit effective from 01.01.2003 and secondly, provision was introduced by Finance Act, 2002 w.e.f. 01.04.2003 by way of Section 10A(1A) of the 1961 Act with a non obstante clause that notwithstanding anything contained in Section 10A(1) of the 1961 Act , the deduction u/s 10A is to be allowed for a total period of seven years to a unit located in SEZ which begins to manufacture or produce article or things or computer software during the previous year relevant to assessment year beginning from 01.04.2003 and thereafter. At the same time, deduction u/s 10A(1) was restricted to units other than to whom Section 10A(1A) applies to 90% of the profits derived from export of articles or goods or computer software for ay: 2003-04. The assessee unit got itself converted into an SEZ unit during previous year relevant to ay: 2003-04 but can it be said that it begins to manufacture or produce goods or articles in SEZ in previous year relevant to ay: 2003-04. The answer is emphatic 'no', the assessee unit begins to manufacture or produce pillows or cushions in previous year relevant to ay: 2001-02 in MEPZ and once the unit begins to manufacture or produce articles in previous year relevant to ay: 2001-02 , then it cannot be said that it again begins to manufacture or produce articles in SEZ when it got converted itself from EPZ unit to SEZ unit. It is merely a conversion of EPZ unit into an SEZ unit but the fact remains that unit was already in operation since previous year relevant to ay: 2001-02 onwards and it could not be said the unit of the assessee begins to manufacture or produce articles or things or computer software in the previous year relevant to assessment year 2003-04 in SEZ as it is a clear case of mere conversion of EPZ into an SEZ and not setting up of new unit in SEZ. The terminology used in Section 10A(1A) is only 'begins to manufacture….' while the word 'begun' which is also simultaneously used along with 'begins to manufacture….' in Section 10A(2) is missing in Section 10A(1A) of the 1961 Act The second proviso to Section 10A(1)

of the 1961 Act shall continue to govern cases of conversion of EPZ into SEZ and benefit of deduction u/s 10A shall be available for ten consecutive assessment year starting from the year in which the unit begins to manufacture cushions and pillows in MEPZ viz. ay: 2001-02. If that interpretation as is canvassed by assessee is adopted that it begins to manufacture or produce articles or things in SEZ during previous year relevant to assessment year commencing on 01.04.2003 on being converted into SEZ unit from EPZ unit effective from 01.01.2003 and will be governed by newly inserted Section 10A(1A) of the 1961 Act, then in that case , it will also be hit by sub-section 2 , clause (ii) and/or (iii) that business should not be formed by splitting or reconstruction of a business already in existence , or that it is not formed by the transfer to a new business of machinery of plant previously used for any purpose and then in that situation , the assessee will not at all be entitled for deduction if Section 10A(1A) is invoked. When there is a specific provisions wherein language used is simple , plain , clear and unambiguous that in case of conversion of undertaking from EPZ to SEZ unit, the deduction shall be allowed for a period of ten consecutive assessment years starting from the ay when the undertaking begins to manufacture or produce article or thing or computer software in EPZ which in the instant case the assessee began to manufacture or produce pillows and cushions during previous year relevant to ay: 2001-02 , then in the case there is no need to refer to provisions of Section 10(1A) as it will be applicable only to newly set up undertaking which begins to manufacture or produce articles or things or computer software during previous year relevant to assessment year beginning from 1st April , 2003 and onwards. It is only in those cases, when the undertaking begins to manufacture or produce article or things or computer software in SEZ during previous year relevant to ay: 2003-04 or thereafter , provisions of Section 10A(1A) of the 1961 Act will come into play. The non-obstante clause in Section 10A(1A) is also placed in statute because there were SEZ units which were granted deduction u/s 10A(1)of the 1961 Act which had begun or begins to manufacture or produce article or things or computer software during the previous year relevant to the ay commencing on or after the 1st day of April 2001 in any SEZ for which reference is drawn to Section 10A(2)(i)(c) of the 1961 Act as well cases covered by conversion of EPZ units into SEZ units vide second proviso to Section 10A(1) of the 1961 Act and hence new sub-section 10A(1A) was introduced which only deal with newly established SEZ in previous year relevant to ay: 2003-04 and onwards. It can be seen that vide Finance Act, 2002 , Section 10A(1A) of the 1961 Act was introduced which curtailed the period of deduction to newly set up undertaking in SEZ to seven years as against period of deduction upto 10 consecutive years enjoyed by existing SEZ set-up prior to previous year relevant to ay: 2002-03. Not only period of deduction was reduced to 7 years by newly inserted Section 10A(1A) by Finance Act, 2002 as against period of ten consecutive assessment years allowed by Section 10A(1) of the 1961 but also deduction was reduced to 50% of profits derived frome exports for sixth and seventh assessment years. Under normal circumstances , once such type of fiscal incentive is provided by State on fulfillment of condition such as setting up of manufacturing unit in EPZ/FTZ/SEZ for a particular period of time to achieve State Policy for encouraging exports, bringing in foreign investments, enhancing employment etc. and the tax-payer has altered its position by complying with State Policy by setting up accordingly manufacturing unit in SEZ/FTZ/EPZ on the faith that it will continue to enjoy fiscal incentives for a certain number of years as provided in the statute at the time of setting up of its unit, then normally the State Largesse are not withdrawn in such type of case midway as it creates a vested right in favour of the tax-payer who has altered its position based on State Commitment as in this case by setting up undertaking in EPZ/FTZ/SEZ etc. , which also strengthen the view that Section 10A(1) will continue to apply to EPZ/FTZ units which are converted into SEZ units and Section 10A(1A) is only applicable to newly set up SEZ units . As we will see later this restriction of deduction u/s

10A to newly set up SEZ vide sub-section 10A(1A) was later relaxed with certain conditions vide Finance Act,2003 effective from 01.4.2003. As could be seen that the Finance Act, 2000 itself recognizes SEZ units and brought the benefit of aforesaid deduction u/s 10A to SEZ units, which begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to ay commencing on or after the 1st day of April , 2001 in any SEZ(Refer Sec. 10A(2)(i)(c) of the 1961 Act). Thus, the assessee was entitled for deduction u/s 10A for a period of a ten consecutive assessment years commencing from ay: 2001-02 onwards and provisions of Section 10A(1) will continue to apply to it even after being converted into an SEZ unit effective from 01.01.2003 keeping in view second proviso to Section 10A(1) of the 1961 Act. The Finance Act, 2002 restricted deduction u/s 10A(1) of the 1961 Act till ay: 2009-10 as it provided that no such deduction u/s 10A(1) shall be allowed for ay: 2010-11 and subsequent ay's , but rigors of the said limitation were later relaxed and deduction u/s 10A(1) was finally not allowed from assessment year commencing from 1st April 2012 and subsequent ay's. It is now no more res-integra that exemption/deduction provisions are to be strictly construed and reference is made to Constitutional Bench decision of Hon'ble Supreme Court in the case of Commissioner of Customs v. Dilip Kumar in Civil Appeal no. 3327 of 2007, judgment dated 30.07.2018. The Courts cannot go further and enlarge the scope of benefit of largesse granted by State through these deductions/exemption and these exemption/deduction provisions are to be strictly construed and onus is on the tax-payer to establish that it falls within four corners of rigors of exemption/deduction provisions as are existing in statute. Further, with introduction of Section 10A(1A) of the 1961 Act, the deduction to SEZ unit was restricted to a period of 7 years, if it begins to manufacture or produce articles or things or computer software in SEZ during the previous year starting on or after 1st day of April 2003.

Then again by Finance Act, 2003, the amendments were brought in Section 10A of the 1961 Act wherein Section 10A(1A) to Section 10A(1C) were substituted for the existing Section 10A(1A) thereby allowing deduction u/s 10A to newly set up SEZ to a total period of 10 years , w.e.f. 01.04.2004 . The Section 10A as introduced by Finance Act, 2003 read as under:

> *" [Special provision in respect of newly established undertakings in free trade zone, etc.*
>
> *10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:*
>
> *Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the afore-said ten consecutive assessment years :*
>
> ***Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the [undertaking began to manufacture or produce such articles or things or computer software] in such free trade zone or export processing zone :***
>
> *[Provided also that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertak-ing from the export of such articles or things or computer soft-ware :]*

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

[(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two assessment years.]

The following sub-sections (1A) to (1C) shall be substituted for the existing sub-section (1A) by the Finance Act, 2003, w.e.f. 1-4-2004 :

(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be,—

(i) hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the under-taking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two consecutive assessment years, and thereafter;

(ii) for the next three consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Allowance Reserve Account") to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (1B).

(1B) The deduction under clause (ii) of sub-section (1A) shall be allowed only if the following conditions are fulfilled, namely:—

(a) the amount credited to the Special Economic Zone Re-investment Allowance Reserve Account is to be utilised—

(i) for the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and

(ii) until the acquisition of new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

(b) the particulars, as may be prescribed in this behalf, have been furnished by the assessee in respect of new machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(1C) Where any amount credited to the Special Economic Zone Re-investment Allowance Reserve Account under clause (ii) of sub-section (1A),—

(a) has been utilised for any purpose other than those referred to in sub-section (1B), the amount so utilised; or

(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (1B), the amount not so utilised,

shall be deemed to be the profits,—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year imme-diately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (1B),
and shall be charged to tax accordingly.

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(i) it has begun or begins to manufacture or produce arti-cles or things or computer software during the previous year relevant to the assessment year—

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;

(c) commencing on or after the 1st day of April, 2001 in any special economic zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circum-stances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the pur-poses of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in con-vertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the ex-pression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

6[(4) For the purposes of [sub-sections (1) and (1A)], the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in re-spect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under [this section] shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form 7, alongwith the return of income, the report of an account-ant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years 7a[ending before the 1st day of April, 2001], in rela-tion to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accord-ingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduc-tion;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years 7a [ending before the 1st day of April, 2001];

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

The following sub-section (7A) shall be inserted after sub-section (7) of section 10A by the Finance Act, 2003, w.e.f. 1-4-2004 :

(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

(8) Notwithstanding anything contained in the foregoing provi-sions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

[(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

[(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(a) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section.]]

8a[Explanation 1.—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the under-taking was set up, the company shall be presumed to have trans-ferred its ownership or the beneficial interest in the undertak-ing :

9[Provided that nothing contained in this Explanation shall apply to any change in the shareholding of the company as a result of—

(a) its becoming a company in which the public are substan-tially interested; or

(b) disinvestment of its equity shares by any venture capital company or venture capital fund.]]

Explanation 2.—For the purposes of this section,—

(i) "computer software" means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or serv-ice of similar nature, as may be notified 10 by the Board,

which is transmitted or exported from India to any place outside India by any means;

(ii) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder or any other corresponding law for the time being in force;

(iii) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technolo-gy Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(iv) "export turnover" means the consideration in respect of export 11[by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign ex-change in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(v) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;

(vi) "relevant assessment year" means any assessment year falling within a period of ten consecutive assessment years referred to in this section;

(vii) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Indus-try;

(viii) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.]

[Explanation 3.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of soft-ware) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

The following Explanation 4 shall be inserted after Explanation 3 by the Finance Act, 2003, w.e.f. 1-4-2004:

Explanation 4.- For the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.

7.6 Thus, as could be seen that Finance Act, 2003 , inert-alia, amended Section 10A by substituting Section 10A(1A) of the 1961 Act by a newly inserted Section 10A(1A) to 10A(1C) with effect from 01.04.2004 , wherein it provided for deduction available to SEZ unit for a period of 10 years as against period of 7 years provided by Finance Act, 2002 provided that for 8th to 10th year, deduction u/s 10A shall be allowed to SEZ unit provided it creates an reserve called "Special Economic Zone Re-investment Allowance Reserve Account" and the said reserves can only be utilized for specified purposes within stipulated period, as stipulated u/s 10A (IB) of the 1961 Act and consequences are provided in statute for non-utilization of said reserves within specified period or utilization for purposes other than specified u/s 10A(IB) , which consequences are provided u/s 10A(1C) of the 1961 Act.

7.7 It will be profitable at this stage to refer to Notes on Clauses and Memorandum to Finance Bill, 2003. The notes on clause in Finance Bill, 2003 proposing to amend Section 10A of the 1961 Act stipulated as under:

"Clause 7 seeks to amend section 10A of the Income-tax Act relating to special provision in respect of newly established undertakings in free trade zone, etc.

Under the existing provision contained in sub-section (1) of the said section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years is allowed from the total income of the assessee. However, no deduction is allowable to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

Sub section (1A) of the said section provides that an undertaking set up in a special economic zone on or after the 1st day of April, 2003 is eligible for a deduction of hundred per cent of export profits for five years and fifty per cent for further two assessment years.

Under sub-section (9), no deduction under sub-section (1) is allowed to the assessee where the ownership or the beneficial interest in the undertaking is transferred by any means. However, this condition is not applicable where as a result of the reorganisation of the business, a firm or sole proprietary concern is succeeded by a company.

It is proposed to insert the reference of sub-section (1A) in sub-section (4) of the said section. The proposed amendment is consequential in nature.

It is also proposed to amend sub-section (5) so as to insert the reference of "this section" instead of "sub-section (1)". The proposed amendment is consequential in nature.

These amendments will take effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

It is also proposed to omit sub-sections (9) and (9A) and Explanation 1 occurring below sub-section (9A). It is also proposed to insert a new sub-section (7A) to provide that where a company is

transferred to another company under a scheme of amalgamation or demerger, the deduction shall be allowable in the hands of the amalgamated or the resulting company. However, no deduction shall be admissible under this section to the amalgamating company or the demerged company for the previous year in which the amalgamation or demerger takes place.

It is also proposed to insert Explanation 4 at the end so as to provide that for the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years."

7.8 Thus as can be seen above that Notes on Clauses and Memorandum to Finance Bill, 2003 clearly stipulated that Section 10A(1A) is applicable to newly set up units in SEZ on or after 1st day of April 2003 and it cannot be stretched to the units which are converted from EPZ units to SEZ units. The intention of law makers is manifestly clear that they intent to apply Section 10A(1A) to newly set up units in SEZ during previous year relevant to ay: 2003-04 onwards as terminology used in 'begins to manufacture…' and the word 'begun' is conspicuously missing in Section 10A(1A) and by no stretch of imagination provisions of Section 10A(1A) can be made applicable to existing EPZ/FTZ units which got themselves converted into an SEZ unit which shall continue to be governed by provisions of Section 10A(1) of the 1961 Act. For the units which are converted from EPZ/FTZ units to SEZ units, second proviso to Section 10A(1) shall continue to apply. For a newly established SEZ , now deductions are 100% of profits derived from exports for first five years and 50% for next 2 years, while for the next three years, deduction u/s 10A(1A) will be 50% subject to creation of specified reserves which can only be used for specified purposes within stipulated time limits as provided in Section 10A itself. . The legislature in its own wisdom while granting benefit of deduction u/s 10A(1A) to newly set up SEZ's units have put additional conditions for creation of reserves in 8th to 10 year and their utilization in a prescribed manner, while for the units which are set up prior to previous year relevant to ay: 2003-04, or are merely converted from EPZ to SEZ, this condition shall not apply and they will continue to get benefit of deduction u/s 10A(1) of the 1961 Act of 100% of profits derived from exports for a period of ten consecutive assessment years (except for ay: 2003-04 when deduction was restricted to 90%). The deduction u/s 10A(1) was restricted by Finance Act, 2002 with sunset clause till ay: 2009-10 , but later this limitation of sunset clause was subsequently finally extended to ay: 2011-12 by later Finance Act's and finally it is provided that no deduction u/s 10A(1) shall be provided effective from ay: 2012-13 onwards.

7.9 Then, w.e.f. 10.02.2006 vide Special Economic Zones Act, 2005, Section 10AA was inserted as well sub-section 7B was simultaneously inserted in Section 10A of the 1961 Act. The newly inserted Section 10AA read as under :

"Special provisions in respect of newly established Units in Special Economic Zones.

10AA. (1) ***Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, a deduction of—***

(i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or

things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;

(ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).

(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised—

(i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and

(ii) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

(b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (ii) of sub-section (1),—

(a) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised; or

(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilised,

shall be deemed to be the profits,—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (2),

and shall be charged to tax accordingly :

Provided that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section (1).

Explanation.—For the removal of doubts, it is hereby declared that an undertaking, being the Unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section :

Provided further that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone :

Provided also that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause (ii) of sub-section (1) with effect from the 1st day of April, 2006.

(4) This section applies to any undertaking being the Unit, which has begun or begins to manufacture or produce articles or things or services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006, in any Special Economic Zone.

(5) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place.

(6) Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the assessee.

(8) The provisions of sub-sections (5) and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (1) as if—

(a) for the figures, letters and word "1st April, 2001", the figures, letters and word "1st April, 2006" had been substituted;

(b) for the word "undertaking", the words "undertaking, being the Unit" had been substituted.

(9) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation 1.—For the purposes of this section,—

(i) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

(ii) "export in relation to the Special Economic Zones" means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;

(iii) "manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005 66b;

(iv) "relevant assessment year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section;

(v) "Special Economic Zone" and "Unit" shall have the same meanings as assigned to them under clauses (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.

Explanation 2.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]"

7.10 Sub-section 7B was also simultaneously added to Section 10A by the Special Economic Zones Act, 2005 w.e.f. 10.02.2006 , which reads as under:

Section 10A

"[(7B) The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.]:"

7.11 Before we proceed further, It is important to understand the concept rationale of Special Economic Zones and reasons for bringing a separate Statute namely Special Economic Zone Act, 2005, dealing with SEZ in India. We have referred to GOI web-site sezindia.nic.in to understand the concept of SEZ , wherein relevant extract is from the said GOI website is reproduced as under":

"India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India, the Special Economic Zones (SEZs) Policy was announced in April 2000.

This policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and the State level, with the minimum possible regulations. SEZs in India functioned from 1.11.2000 to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes.

To instill confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime thereby generating greater economic activity and employment through the establishment of SEZs, a comprehensive draft SEZ Bill prepared after extensive discussions with the stakeholders. A number of meetings were held in various parts of the country both by the Minister for Commerce and Industry as well as senior officials for this purpose. The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 which received Presidential assent on the 23rd of June, 2005. The draft SEZ Rules were widely discussed and put on the website of the Department of Commerce offering suggestions/comments. Around 800 suggestions were received on the draft rules. After extensive consultations, the SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February, 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

generation of additional economic activity
promotion of exports of goods and services
promotion of investment from domestic and foreign sources
creation of employment opportunities
development of infrastructure facilities
It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

The SEZ Act 2005 envisages key role for the State Governments in Export Promotion and creation of related infrastructure. A Single Window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of Approval (BoA). The applications duly recommended by the respective State Governments/UT Administration are considered by this BoA periodically. All decisions of the Board of approvals are with consensus.

The SEZ Rules provide for different minimum land requirement for different class of SEZs. Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

The SEZ Rules provide for:
" Simplified procedures for development, operation, and maintenance of the Special Economic Zones and for setting up units and conducting business in SEZs;
Single window clearance for setting up of an SEZ;
Single window clearance for setting up a unit in a Special Economic Zone;
Single Window clearance on matters relating to Central as well as State Governments;
Simplified compliance procedures and documentation with an emphasis on self certification"

7.12 As could be seen from above that aforesaid SEZ Act, 2005 was brought into statute to promote exports, bring in large foreign investments in India and to make SEZ as an engine for economic growth supported by quality infrastructure and complemented by an attractive fiscal package both by Central and state Governments. The objective was to instill confidence in investors and signal Government Commitment to a stable SEZ policy with a view to achieve greater economic activity and employment through establishment of SEZ's. Preamble to SEZ Act, 2005 provides that it is an Act to provide for establishment , development and management of the SEZ for the promotion of exports and for matters connected therewith or incidental thereto. The SEZ Act, 2005 vide Section 2(za) read with Section 2(k) while defining SEZ also included existing SEZ's which were in existence on or before commencement of the 2005 Act . The SEZ Act, 2005 vide Section 2(zc) read with Section 2(l) while defining Unit in SEZ also included Units in SEZ which was set up on or before commencement of this Act. Thus this Act of 2005 brought within its fold not only newly set up SEZ's or units in SEZ which are set up post commencement of this Act of 2005 but also bring within its fold existing SEZ's or Units in SEZ which were in existence at the time when this new Act of 2005 came into force. Section 51 of the Act of 2005 stipulates that the provisions of the 2005 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Section 44 of the 2005 Act stipulates that all the provisions of this Act(except Section 3 and 4) shall , as far as may be apply, to every

existing Special Economic Zones. Section 27 of the 2005 Act stipulates that the provisions of the 1961 Act , as in force for the time being, shall apply to , or in relation to, the Developer or entrepreneur for carrying on the authorized operations in a Special Economic Zone or Units subject to the modification specified in the Second Schedule. Section 10AA was incorporated in Second Schedule to the 2005 Act and through it got included in the 1961 Act effective from 10.02.2006 and simultaneously sub-section 7B was inserted in Section 10A of the 1961 Act through insertion in Second Schedule to the 2005 Act.

7.13 The Section 10AA(1) of the 1961 Act , inter-alia, stipulates that subject to provisions of Section 10AA, its applicability is limited to units in SEZ which begins to manufacture or produce articles or things or computer software in SEZ during the previous year relevant to assessment year commencing on or after 1st April, 2006. Similarly Section 7B simultaneously excludes allowability of deduction under Section 10A of the 1961 Act to undertakings being units referred to in Section 2(zc) of the 2005 Act which has begun or begins to manufacture or produce article or thing during the previous year relevant to assessment year commencing on or after 1st April 2006 in any SEZ. Careful perusal of sub-section 7B of the 1961 Act which was inserted in Section 10A of the 1961 Act by SEZ Act, 2005 w.e.f. 10.02.2006, clearly reveals that it excludes applicability of entire Section 10A to any undertaking , being a Unit referred to in clause (zc) of Section 2 of the SEZ Act, 2005 which has begun to manufacture or produce articles or things or computer software in SEZ or begins to manufacture or produce articles or things or computer software commencing on or after the 1st day of April 2006. Thus, the objective of using the word 'begun' is to exclude applicability of Section 10A to all the units in SEZ effective from insertion of Section 10AA of the 1961 Act and henceforth provisions of Section 10AA shall be applicable to units in SEZ, even if these units are existing units in SEZ on or before commencement of SEZ Act, 2005. We have already seen that SEZ Act, 2005 is a beneficial legislation with objective to promote exports, encourage large foreign investments, generate higher employment, develop quality infrastructure development etc and to provide fiscal incentive and stable policy regime to encourage setting up of SEZ and units in SEZ. As could be seen, Section 10AA of the 1961 Act which was inserted effective from 10.02.2006 , has three proviso which are placed after sub-section (3) to Section 10AA of the 1961 Act. The first proviso states that while computing the total income of the unit in SEZ for any assessment year, its profits and gains had not been included by application of provisions of sub-section 7B of Section 10A , the undertaking being unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of Sub-section (1) of Section 10AA of the 1961 Act. We have already seen that provisions of Section 10AA(1) of the 1961 Act is subject to provisions of other sub-sections of Section 10AA of the 1961 Act. The Section 10AA(1) provides for deduction for a total period of 15 years, first 5 years deduction is provided @100% of profits derived from exports, while for rest ten years deduction is provided @50% of profits derived from exports subject to fulfilment of conditions as are stipulated u/s 10AA of the 1961 Act. As we have observed that by insertion of sub-section 7B to Section 10A , the entire units in SEZ which were existing on or before commencement of SEZ Act

were taken out from applicability of Section 10A and new regime of Section 10AA was made applicable even to existing units in SEZ. The first proviso clearly stipulates that the existing SEZ units which begun to produce or manufacture articles or things in old regime will be entitled for deduction u/s 10A of the 1961 Act only for unexpired period of consecutive ten years and thereafter they will be entitled for a further deduction for a period of five years under newly enacted provisions of Section 10AA(1)(ii) of the 1961 Act. It is also pertinent to mention that provisions of Section 10A of the 1961 Act refers to grant of deduction for a period of ten consecutive assessment years and Section 10AA for a newly set up SEZ units did not uses the terminology 'ten consecutive assessment years', which further strengthen the belief that Section 10AA shall be applicable to all SEZ whether these were established under old regime or under newly enacted SEZ Act, 2005. The Second proviso which is placed after sub-section 10AA(3) also provides that in case of units initially located in EPZ or FTZ but subsequently located in SEZ by reasons of conversion of such FTZ or EPZ into SEZ , the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the unit begins to manufacture or produce or process such articles or things or service in such FTZ or EPZ, which is in fact the case of the assessee, the assessee thus will be entitled for deduction for unexpired period of ten consecutive assessment years beginning from ay: 2006-07 u/s 10A of the 1961 Act which ended on ay: 2010-11 and thereafter further deduction of 50% of profits derived from exports for further period of five years under the provisions of Section 10AA of the 1961 Act beginning with impugned assessment year 2011-12. The third proviso contains embargo that in case of conversion of EPZ or FTZ units into an SEZ unit which has already completed period of ten consecutive assessment years referred to above before the commencement of SEZ Act, 2005 and simultaneous insertion of sub-section 7B to Section 10A of the 1961 Act, wef 10.02.2006 shall not be entitled for additional period of deduction for five years as is allowed to SEZ units by provisions of Section 10AA(1)(ii) of the 1961 Act. These three provisos inserted after Section 10AA(3) of the 1961 Act read with sub-section 7B to Section 10A of the 1961 Act inserted by SEZ Act, 2005 effective from 10.02.2006 are in-fact saving clauses which have made applicable provisions of newly inserted Section 10AA to existing SEZ units under old regime which have not exhausted deduction for ten consecutive assessment years on the date of introduction of Section 10AA , as was available to them u/s 10A of the 1961 Act on commencement of SEZ Act, 2005 and thus these SEZ units shall be entitled for deduction for further period of 5 years beyond period of ten consecutive assessment years owing to newly inserted Section 10AA of the 1961 Act keeping in view provisions of Section 10AA(1)(ii) of the 1961 Act. Thus, vide our detailed discussions above, we hold that the assessee is entitled for deduction u/s 10AA(1)(ii) of the 1961 Act for the impugned assessment year, subject to fulfilment of other conditions for grant of deduction u/s 10AA of the 1961 Act. We order accordingly."

4.1 The ld. DR could not controvert the above decision of the Tribunal in assessee's own case for the assessment year 2011-12. Respectfully

following the above decision of the Tribunal for the assessment year 2011-12, we set aside the appellate order and direct the Assessing Officer to allow the claim of deduction for the assessment year 2014-15 as well.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 23rd November, 2021 in Chennai.

Sd/-	Sd/-
[जी. मंजुनाथा, लेखा सदस्य]	[धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य]
(G. MANJUNATHA)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 23.11.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.