

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

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 2858/MUM/2019 (A.Y: 2014-15)

M/s. India Impex Unit No. 4, 1 st Floor Brady Glady Plaza 1/447, Senpati Bapat Marg Lower Parel, Mumbai – 400013 PAN: AAIFI5046A	v.	ACIT-19(1) Matru Mandir Building Bhatia Hospital Lane Javji Dadaji Marg Grant Road (W) Mumbai - 400007
(Appellant)		(Respondent)

Assessee by	:	Shri R.S. Khandelwal
Department by	:	Shri R.A. Dhyani
Date of Hearing	:	22.03.2022
Date of Pronouncement	:	27.04.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-59, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.03.2019 for the A.Y. 2014-15.

2. Brief facts of the case are, the assessee-firm is engaged in the business of manufacturing and export of portable, plastic solar lanterns

with units at Mumbai and Surat, filed its return of income admitting total income of Rs. 6,00,77,030/-. The case was selected for scrutiny and notice under section 143(2) dated 28.08.2015 was issued and served on the assessee-firm.

3. The assessee has raised following three grounds of appeal before us and we shall deal with issues ground wise.

"1. On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of disallowing the appellant's claim of Rs10,94,26,870 u/s 10AA on the grounds that appellant is not carrying on the activity of manufacturing without appreciating the fact that appellant is carrying on the activity of assembling and contract manufacturing at the factory. The word assembling is covered under definition of manufacturing as per SEZ rules, 2005.

Without prejudice to the above

2. On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of disallowing the appellant's claim of Rs10,94,26,870 u/s 10AA of the Income Tax Act, 1961 on following grounds:

a) On the grounds that appellant is not carrying on any manufacturing activity without appreciating the fact that letter from SEZ department have mentioned that they have taken 25.03.2013 as the date for commencement of production.

b) On the grounds that SEZ unit did not have sufficient infrastructure without appreciating the fact the nature of business of the appellant is assembling of goods which demanded limited usage of machinery

c) On the grounds that production activity were started only in the month of February 2014 and March 2014 without appreciating the fact that Form F were issued by the sales tax

department, showing various purchases and exports made in the month of June 2013

d) On the grounds that Mumbai unit showed a lower profit compared to that of Surat unit without appreciating the fact that during the year there was a 10% increase in profit percentage in the Mumbai Unit compared to last year and also the profit were lower on account higher labour, rent and custom duty charges in Mumbai

3. On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of AO of disallowing a sum of Rs.13,91,286/- being labour charges paid to workers ignoring the claims and submission of the appellant."

4. With regard to ground of appeal Nos 1 and 2 regarding action of the lower of authorities in making disallowance of deduction under section 10AA of ₹.10,94,26,870. During the assessment proceedings, the assessee was asked to give details of manufacturing activities carried out at Surat SEZ and justification for allowability of claim of deduction under section 10AA. Further, the Assessee was asked to submit details of plant and machinery employed for manufacturing at Surat SEZ, addition to fixed assets at Surat SEZ and details of manufacturing activity carried out.

5. After considering the submissions of the assessee, the Assessing Officer denied the claim of the assessee under section 10AA of the Act for the following reasons: -

a) The Fixed Assets at the SEZ unit was very low as compared to the Mumbai unit. In particular, the Assessing Officer noted that plant and machinery in SEZ unit was only ₹.3,700/- upto September, 2013, that too being merely a weighing scale, whereas, the same in Mumbai unit exceeded Rs.5 lakhs in the same period. Further, the value of moulds/ dies at SEZ unit was 'nil' compared to ₹.26.50 lakhs for the Mumbai unit and observed that the value of new plant and machinery deployed at the eligible unit is 11 percent, which implies that 89 percent plant and machinery was attributable to its Mumbai unit. Further, considering the juxtaposition with the huge inter-transfer of stock from Mumbai unit to SEZ unit, he concluded that the assessee would not be entitled to deduction under section 10AA of the Act.

b) The Assessing Officer regarding furniture/ electrical fittings at the SEZ unit stated that the wiring, cables, switches, fans were first put to use only in the last two months of the financial year. He noted from the addition to fixed assets details at SEZ unit that the entire spectrum of

civil work in respect of the building itself - from foundation to erecting, with plastering, flooring, tiles, painting, etc., was completed in the months of February/ March, 2014.

c) Notices under section 133(6) of the Act were issued to parties to verify purchase of goods for SEZ unit from Mumbai. In respect of notice issued to one M/s Nimkawala Enterprises, the Assessing Officer observed that goods were not dispatched by the said vendor to Surat, but were instead, taken delivery of by the assessee at Mumbai.

d) The Assessing Officer regarding transportation charges of goods/ materials observed that cash vouchers were of petty amounts, holding that such charges were for transportation within Mumbai area.

e) The Assessing Officer observed that there were evidence to show entire manufacturing work was completed at Mumbai including the final stage of drilling holes and soldering, since a drill and soldering machine costing Rs 7,000 and Rs 3,000 respectively, was not under

the possession of SEZ unit as per annual accounts of the assessee.

f) The Assessing Officer rejected the claim about the SEZ building being acquired in a ready to use state observing that the date of put to use certified in the audit report in most cases, was at the fag end of the previous year related to the assessment year under reference.

g) Further, the letter of the Development Commissioner, SEZ stating the date of commencement as 25.03.2013 did not establish that production/ assembly actually did start from such date.

h) The Assessing Officer regarding sale of goods placed reliance on the customs marks that is "goods assessed as per declaration without physical inspection" and as such, did not corroborate any of the claim made by the assessee and transport bills, raw materials bills received by the SEZ unit were stamped and endorsed by Customs authorities.

i) The profit shown in respect of SEZ, Surat unit was 59.63 per cent of sales, and for Mumbai unit was only 35.53 per cent.

6. Aggrieved, assessee preferred an appeal before CIT(A) and the CIT(A) upheld the action of the Assessing Officer for the following reasons: -

a) There is a difference between the purported preparedness of a production facility and actual production/ assembly/ manufacture happening therein. He observed that the Assessing Officer has never challenged the existence of the SEZ unit at Surat. Thus, while the building may have pre-existed, facts as brought out by the Assessing Officer palpably show that there was no actual production/ assembly that occurred at the SEZ unit, during the financial year. The documents submitted by the assessee are not particularly germane to the determination of commercial activities actually carried out during the year at the SEZ unit.

b) The assessee filed the additional documents and their request to admit the same, the Ld.CIT(A) rejected the request for a remand to the Assessing Officer since as per him there was no need or occasion to consider the genuineness or otherwise of the additional documents filed as they do not impinge upon the dispute at hand. He further stated that in the additional evidences filed by the assessee there is no evidence adduced to demonstrate unambiguously as to the nature and extent of the so-called, assembly activity taking place at the SEZ unit. The various documents filed by the assessee are extraneous to this central fact and have virtually no role in establishing the nature of the assembly activity claimed to have taken place at the SEZ unit during the financial year.

c) Ld CIT(A) agreed with the fundamental objection of the Assessing Officer as stated at para 11(v) of his order that there was no manufacturing/ assembly activity at SEZ unit. The copy of invoices showing export sale from its Surat SEZ unit, is extraneous. The Assessing Officer has not doubted that the physical act of exporting solar

lanterns did not take place. Hence, the evidence of transportation from Mumbai to Surat is adequate only to establish that the solar lanterns, in some form, reached the SEZ unit. It is, therefore, manifest that transport bills from Mumbai to Surat are of no assistance in establishing that its assembly also took place at SEZ unit

d) The assessee submitted that the plastic cones required for fitting of LED and this was also done on job work basis at Mumbai. From this, the CIT(A) stated that it is discernible that if not full, then maximum processes were executed at Mumbai itself. In this connection, he stated that there is a significant observation of the Assessing Officer that even the work of drilling holes and soldering could not have been done at SEZ, Surat, since the Surat unit did not even have a drill machine and soldering machine.

e) He observed that it is also admitted by the assessee that necessary job work was performed by its vendors at

Mumbai. Hence, it is clear that nothing or no significant assembly work was undertaken at the SEZ unit.

f) In the Statement of Facts (SoF), the assessee stated that the basic activity of moulding was not done in Surat but by vendors at Mumbai and the goods were then acted upon at the Surat factory through assembling. In its letter dated 10.12.2016 to the Assessing Officer, it was admitted that not all process/ production was carried out at Sachin, SEZ. These comments point to significant processes leading to the final product coming into existence, being carried out at its Mumbai unit.

g) Further, Ld CIT(A) observed that no details have been furnished as to what the so called, sub-assembled stock transfer to Surat unit was or how it was valued precisely at Rs. 2,33,05,847/-. Considering the abysmal lack of even a skeletal infrastructure at SEZ unit, it would be evident that these were finished goods which underwent, at best, some nominal processing by way of packing and no other view is possible.

h) He also observed that Form F is not conclusive evidence per se to prove beyond doubt whether fully finished goods were sent or nearly finished goods were sent or unfinished ones.

i) He further observed that at any rate, it is insufficiently explained as to why at all stock transfer from Mumbai to SEZ unit of such large value was at all required. The same could have been independently sourced from Mumbai from raw material suppliers and job work parties which has been the dominant theme canvassed by the assessee for inward goods/ services for Surat.

j) The transport bills have no description of items and hence, they do not demonstrate whether only 'sub-assembled' lanterns were carried to SEZ unit or whether fully-assembled lanterns were shipped from Mumbai.

k) There is nothing to show that a portable plastic solar lamp is fragile equipment. They are simple devices that use sunlight to turn on/ off and recharge a power supply with

PCB circuits. In their lifecycle, they undertake the journey from Mumbai to Surat, and then back to sea port/ airport at Mumbai and then are exported through the high seas to various cities across the globe. In this perspective, it was unclear how taking delivery at Mumbai unit was helpful.

I) The onus is squarely on the assessee to infallibly demonstrate that the 'assembling' process claimed at SEZ unit led to a new, distinctive product taking birth at SEZ unit, in compliance to the said definition engrafted in the Act - instead of stating in general terms that there was 'assembly' with no evidence or even the broad contours of the purported assembly process being revealed. Merely pointing to the definition of 'manufacture' which included 'assembly' and claiming that it was engaged in some unspecified assembly at the SEZ unit, is wordplay and woefully inadequate to meet the legislative requirement. It was incumbent upon the assessee to demarcate which of the process/production was carried out at its SEZ unit.

m) The assessee per their submissions narrated the process of making plastic solar lantern - starting from procurement of raw materials to packaging. However, has failed to specify in any manner which of these activities took place at Mumbai and which were carried at SEZ unit. In fact, the portable lamp comes into being after sub-assembly of LED cone assembly and it is manifest that the processes till this advanced stage, were never carried out at Surat.

n) In the various processes listed, the final few steps, commencing from in-house printing of logos, LUX checking, 'final' assembly, quality checks and packing, would not make the assessee unit compliant and eligible for tax exemption, even if it is presumed that the aforementioned activities took place at its SEZ unit because, after the stage termed as, sub-assembly in the flow chart, there is nothing much that remains to be done. They do not cause the creation of the lamp, which already pre-existed when it enters its SEZ unit, into a new or distinct object. Thus, adjudged even from the expanded

definition of 'manufacture', what came into its Surat SEZ unit from the Mumbai unit was a plastic portable lamp and what exited therefrom was also a plastic portable lamp.

o) As mentioned by the Assessing Officer, till September 30, 2013, sales attributable to Surat SEZ unit was shown at nearly Rs. 8.0 crores, achieved without much capital equipment or labour, except a pair of weighing scales worth Rs. 3,700/- and virtually no electricity consumption. This is an impossible scenario to contemplate.

p) The strenuous argument of the assessee regarding verification of purchases from the Domestic Tariff Area by the authorities, is not decisive or conclusive. There is no document which shows authentication/ endorsement from Customs/ Excise authorities as to the nature of goods brought into the SEZ area, except for Form-I declarations. It is well-understood that import and export transactions in an SEZ are on self-certification basis and there is no routine physical examination by Customs/ Excise authorities of the cargo coming in or going out. Thus, stating that to doubt

is to imply that the government authorities have erred in inspection, is misplaced.

q) The evidence irrefutably reveals that the two units of the appellant-firm were not independent units and there was overwhelming overlapping of work, use of resources and the manufacturing process, with almost all the so-called assembly work happening at its Mumbai unit. In this sense, it was a splitting up of the existing business at Mumbai, which is prohibited for claiming exemption under section 10AA of the Act. There is nothing to hold that that the Surat unit was an altogether a new unit in terms of assembling portable solar lamps on its own as a distinct and a separate entity. There is nothing to prove that the Surat SEZ unit could have existed on its own

r) From all accounts, it is evident that the solar lanterns travelled from Mumbai to Surat and turned around to head back for Mumbai for export only with the objective of obtaining the SEZ tag. The plant/ machinery installed at its Mumbai unit from which the sales at its SEZ unit were

derived, does constitute second-hand machines beyond the prohibited percentage as correctly observed by the Assessing Officer.

s) It is well-settled that there is no res judicata in tax proceedings or an estoppel against the law

7. The Authorised Representative of the assessee (hereinafter referred to as Ld AR) placed reliance upon submissions made before the CIT(A) and further, submitted that –

8. For availing the deduction under section 10AA, the assessee have carried on manufacturing activity at SEZ, Surat unit. The definition of “manufacture” provided in Explanation 1 of section 10AA is –

“manufacture” shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005” and

Section 2(r) of the said Act defined “manufacture as –

“manufacture” means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture viticulture and mining”

9. The assessee have assembled the raw materials and assemblies and manufactured the final product *having a distinctive name, character or use* from the various raw materials; thus, entitled to deduction under section 10AA of the Act.

10. Ld AR brought to our notice the process of making solar lantern and the activities involved are:-

- (i) Procurement of Raw Material
- (ii) Inward Inspecting & Testing of Raw Material that includes:
 - a. Solar Panels
 - b. Rechargeable Batteries
 - c. Circuits
 - d. LED Modules
 - e. Injection Molded Plastic Parts
 - f. Rubber Parts
 - g. Accessories including Chargers, Mobile Cords etc.
 - h. Screws, Wires, Adhesives etc.
 - i. Packaging Material
- (iii) Sub-Assemblies of Various Parts :
 - a. LED Cone Assembly
 - b. Solar Panel Testing & Assembly
 - c. Battery & Circuit Assembly on Back Plates / Base
- (iv) In-House Printing of Logos (Pad-Printing)
- (v) LUX Checking
- (vi) Final Assembly
- (vii) 100% QC of Final Products
- (viii) Packaging & palletization (if required)

11. He submitted that no major machinery was required since all the raw materials were procured from the vendors both in Mumbai and

imported from China and manufacturing process of assembly was done at Surat SEZ.

12. He submitted that the delivery of goods from Nimkawala Enterprises was taken at their Mumbai office due to the fragile nature of goods and the plastic cones required fitting of LED were given on a job-work basis by the Mumbai office and distributed to both Surat SEZ and Mumbai unit as per requirements.

13. The building was already a pre-existing structure with all the basic amenities present and therefore, required only upgradation and further, most civil/ electrical work was carried out during the earlier year; tax at source was deducted on payments for the civil/ electrical work and only because of the delay in submission of final bills by the contractors the expenses were reflected in the year under consideration. Refer ledger accounts of contractors carrying out the construction work at page nos 294 to 309, in particular the account of AUM PROJECTS (electrical and general contractor) at page nos 306 and 307 to show that the fittings work had started as early as August, 2012 and last payment is of 20.04.2013, and the account of Suashray Steel Work (for mezzanine) at

page no 308 from August, 2013, which is not affecting production, Aum Electric Engg at page no 309.

14. The following documents relating to SEZ were submitted:

- (a) Letter dated 20.12.2011 for allotment of ready building in SEZ.
- (b) Letter of Earmarking from DGDC dated 20.12.2011 for the said Plot No.267.
- (c) Letter from DGDC dated 20.12.2011 for payment for allotment of Plot No.267.
- (d) Letter from DGDC dated 20.12.2011 - Confirmation of Space in SEZ. v. Reply of Devt. Commissioner dated 29.12.2011 to application dated 21.11.2011.
- (e) Allotment of plot for which Rs.90.00 lacs paid vide letter dated 13.01.2012.
- (f) Letter of Allotment from DGDC dated 16.01.2012.
- (g) Deposit made to DGDC for electricity line of Rs.15,000/- dated 27.02.2012.
- (h) Deposit made to DGVCL towards Water line of Rs.7,500/- dated 23.03.2012.
- (i) Appointment of M/s. Modules as Civil Architect/Consultant for building repairs, etc vide letter dated 22.05.2012.
- (j) Bond dated 06.06.2012, based on the 3 months Customs duty of imports of raw materials.
- (k) Letter dated 06.06.2012 received from Devt. Commissioner for Eligibility Certificate.
- (l) Copy of Factory license dated 04.10.2012 from Directorate Industrial Safety & Health.
- (m) Certificate of Stability from Patel Services dated 20.11.2012.

15. He submitted that the major portion of capital work was done during the financial year 2012-13 and the factory building was ready for production in March, 2013. The water pump was purchased on 05.09.2012; loose tools and other equipment were purchased from December, 2012 to March, 2013. Further, the payments to P.S. Desai

(contractor) had been made from 29.05.2012, which would only have been done at the time of commencement of work, Aum Projects (electrical work) was made starting from 30.08.2012 and subsequent payments were made upon completion of the work and other payments were made by April, 2013 with only Rs.2,00,000/- paid on 08.01.2015 and an amount of Rs.2,20,372 being retained for 5 years. The letter dated 19.08.2014 from the Development Commissioner, SEZ, confirms the date of commencement as 25.03.2013.

16. The assessee filed export invoices evidencing sale from SEZ unit from June 2013 to March, 2014. The assessee submit that materials which are purchased for the SEZ area are subject to Customs inspection and clearance and with regards to inward purchases/ imports/branch transfers of various raw materials, they submitted transporter's bills for carrying goods to SEZ unit, evidencing same components from the same vendors are purchased for both Mumbai and SEZ unit since the same product is, manufactured at both units. The export shipments are examined and sent in customs-sealed containers from the SEZ directly to the Nhava Sheva Port or Mumbai airport.

17. During the year under reference inter-unit transfer of stock from its Mumbai unit to Surat SEZ unit is valued at Rs.2,33,05,847 on a cost plus mark-up basis

18. The assessment proceedings for assessment year 2015-16 were concluded and the Assessing Officer had accepted the claim of deduction under section 10AA of the Act.

19. The assessee is a manufacturer-exporter of solar lantern and during the year under consideration and earlier years (and later years) exported such Lanterns to: UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) a unit of the UNITED NATIONS that is engaged in delivering humanitarian aid to refugees & displaced populations around the world.

20. He displayed the physical sample of the full Solar Lantern and referred to a coloured photo of full lantern and another photo of the lamp being used in the field

21. Further he submitted that till the previous financial year (2012-13), the exports were effected from Mumbai Unit only. In the earlier year/s

looking at the prospects of large orders and ease of doing business, a new unit was set-up in SURAT SEZ (Sachin), also known as SURSez.

22. Application was made in the earlier year upon unit being ready to manufacture to commence manufacturing at SURSez and after due procedure and verification, certificate to commence manufacturing was granted on 11th March, 2013 by Development Commissioner of Customs at SEZ – refer page no 60 of the paper book

23. The assessee manufacture Solar Lanterns by assembling various small components/parts/sub-assembled parts which are either imported DIRECTLY at Sachin or purchased locally from suppliers located primarily in and around Mumbai.

24. Certain small parts required/ purchased in thousands of pieces inter alia having insignificant value and volume are purchased by Mumbai office and distributed to Mumbai Unit and SURAT SEZ unit.

25. While supplying goods by Mumbai office to SEZ factory, a very extensive procedure applicable to SEZ units is to be diligently followed.

26. SURAT SEZ unit primarily procures their requirements of Raw Material by way of Imports and local purchases by diligently following applicable procedures and extensive records are available for the same.

27. STRUCTURE (diff. landlords also for Mumbai Office and Mumbai Factory)

MUMBAI OFFICE + R&D UNIT (approx. 1000 sq. ft.)	SHAH & NAHAR INDUSTRIAL ESTATE (LOWER PAREL) GALA # 22
MUMBAI FACTORY (approx. 2000 sq. ft.)	SHAH & NAHAR INDUSTRIAL ESTATE (LOWER PAREL) GALA # 19, 20
SEZ FACTORY (4000 sq. ft. Ground for production + 1000 sq. ft. Mezzanine for office)	PLOT 267, ROAD 11, SURAT SPECIAL ECONOMIC ZONE (SURSEZ), SACHIN – SURAT

28. MANUFACTURING PROCESS – THE Ld AR SHOWED VIDEO CLIP TO DISPLAY THE WHOLE ASSEMBLY PROCESS OF THE LANTERN

29. From the clip it was evident that all the items required to be assembled are placed in a sequence on tables placed one after the other and the employees assemble them in a prescribed sequence to complete assembling of SOLAR LANTERN which is then tested for all technical parameters and thereafter packed for export with instruction manual, accessories and backup AC charger - referred to entire assembly flowchart and parts on page no 335 of the paper book.

30. He explained that simple hand-held tools are required for assembling, which were displayed:

1. For Assembly		For QC
Automatic Screwdriver	Cutter/Blade	DC Power Supply
Soldering Iron	Tweezer	Multimeters
Glue Gun	Various Hand-Made Jigs	Lux Meter

Here it was emphasised on the fact that these tools do not require any significant amount of electricity or rather to put it more aptly, it required insignificant amount of electricity.

31. These tools were purchased in local market in Mumbai by Mumbai Office and then sent to Sachin as inter-unit transfer under Form F. They were expensed under to the profit and loss account under the head Pur – Tools & Jigs as they were all of relatively very small value and hence, the Assessing Officer is not right in stating that the Surat unit did not possess such tools - refer to the entire tools list on page nos 291-292 of the paper book.

PURCHASE OF RAW MATERIAL

Direct Imports in SEZ (21 import consignments)	<ul style="list-style-type: none"> Solar Panel, Battery & AC Charger (most critical parts of solar lantern) 	Rs. 3.28 cr
Direct Local Purchase in SEZ	<ul style="list-style-type: none"> Electronics Circuit (from Railiks) All Plastic Parts Accessories 	Rs. 3.14 cr

	<ul style="list-style-type: none"> • Packaging 	
Purchase by Mumbai Office & Stock Trf. To SEZ Unit	<ul style="list-style-type: none"> • Plastic Base (SUNLITE logo had to be printed by vendor) • Small switches, sockets etc. (purchased from local market) 	Rs. 1.56 cr
Purchase in Mumbai Office, Given for Job-Work to 3rd Party Vendor & then Stock Trf to SEZ	<ul style="list-style-type: none"> • LED-fitted Cone 	Rs. 0.76 cr

32. The Ld AR referred to all the supporting documents of the sample invoices for all imports, local purchases and inter-unit transfers in the paper book and explained the SEZ procedure for in/ out of goods.

Refer Statement showing supplier wise of imports made during the year under reference together with sample invoices – refer page nos 353 to 363

33. The Ld AR referred to page no 337-338 in respect of inter-branch transfers for Rs 2.33 crores where the reason for such transfers are mentioned, to bring home the point that these transfers are not of finished goods/ nearly finished goods, as observed by the lower authorities.

34. The Ld AR also with the help of a set of documents took the Bench through the entire flow of purchases/ imports for a specific Export Order of export of SEZ unit – export invoice no EX07/13-14 dated 30-AUG-13

for 3000 units of lantern, to prove the point that all raw material had reached the Surat unit and hence, he submitted that inevitable the goods were assembled at Surat and the lanterns were manufactured at Surat unit. These bore the stamps of various regulatory and statutory authorities which shows that all the RAW MATERIALS have reached the Surat unit.

35. He emphasised on the point here that especially the most critical items are the Solar Panel and the Battery, both of which are directly imported AT THE SEZ UNIT with full documentation available with the assessee and confirmation of Physical Verification by Customs Officers at SEZ, stamped on the Bill of Entry (BoE); more than 80,000 pcs of each item is imported which correlates with the production/ export quantity and further there is no evidence that these materials have moved out of the SEZ for further processing, which would have been required if AO alleging that no manufacturing activity happened in SEZ and that lamps were made in Mumbai and transferred. as is to SEZ and then re-exported!

36. Ld AR brought to our notice the general facts and utilisation of workers/ salaries in the factory:

37. Further he submitted the number of Workers at Mumbai and SEZ almost the same approx. 30-35 and the Salary and Wages for Workers was also at par at approx. 25 lacs each – refer page nos 311 to 324 @ page no 316. Further, he brought to our notice statement showing month wise salary together with extract of salary register for the month of April and August and challans evidencing payment of employee's contribution to provident fund – refer page nos 388 to 393. He submitted that a statement was also given during the course of hearing giving the month wise quantity and sales, total number of workers and electricity expense of both the units, for comparison; also to show that what the Assessing Officer mentions is not correct that the Surat unit had only 4-5 staff, but also had these workers all through out.

38. ** in P&L Mumbai has additional salary because of R&D staff and more number of office staff

General Facts

39. Number of Solar Lanterns manufactured in SEZ: 81,996 pcs (fully exported) – sales value of INR 19.15 crore

40. Number of Solar Lanterns manufactured in Mumbai: 68,190 pcs sales value of INR 15.67 crore (61,112 for export and balance were other models / same model for domestic clients)

41. It is also pertinent to highlight that in the previous year (FY 12-13) also, 75,680 pcs (sales value of INR _14.70 crore were manufactured in the Mumbai unit, which was its max. capacity.... And hence, this is not a case of transferring the business to SEZ or splitting up of existing business

42. The comparison by the Assessing Officer of net profit percentage of Mumbai unit and Surat SEZ unit is unjustified. The Assessing Officer ought to have compared the Cost of Goods Sold (COGS) percentage to sales for both the units. The detailed profit and loss statement shows that the COGS of Mumbai unit is 62.42% and of the Surat unit is 64.72%, the difference is miniscule. Further, the variance in the net profit percentage between the Mumbai unit and SEZ unit is mainly attributable to three expenses namely, Octroi, Rent and specific indirect expenses charged only to the Mumbai unit

43. The Assessing Officer mentions that the mould cost for Mumbai unit is Rs 26.50 lacs compared to Rs nil for Surat SEZ unit, however, has not

appreciated the fact that the assessee at their Mumbai unit were engaged in research for existing products and development of new products for which such moulds have been made in the year under reference and utilised in subsequent year(s).

44. Refer Statement showing transaction details in relation to Form F together with sample Form F and enclosures – refer page nos 337 to 352

45. Photo copy of VAT order dated 31st March, 2018 for the year under reference – refer page nos 403 to 412

46. Sample vouchers together with supporting documents of transportation charges – refer page nos 394 to 402

47. Refer Statement showing transaction details in relation to Form 1 together with sample invoices – refer page nos 364 to 387

48. The Assessing Officer highlights the issue of purchases from Nimkawala Enterprises which is of insignificant amount, however, conveniently ignores the response filed by Railiks Enterprise pursuant to the notice issued under section 133(6) of the Act

49. Learned Departmental Representative, on the other hand, supported the orders of the authorities below and stated that principles of res judicata does not apply to income-tax proceedings as regards the action of the Assessing Officer for income-tax assessment year 2015-16.

Further, he placed reliance on the following decisions –

(a)	Arihant Tiles & Marbles (P.) Ltd	320 ITR 79 (SC)
(b)	Pressure Piling Co. (India) Pvt Ltd	126 ITR 333 (Bom)
(c)	Veena Textiles (P) Ltd	40 CTR 233 (Mad)
(d)	V.N. Enterprises Ltd	439 ITR 624 (Cal)
(e)	Sultan & Sons Rice Mill	272 ITR 181 (All)

50. Considered the rival submissions and the material placed on record, we noticed that from the various papers and documents filed with us, the raw materials and imported goods have actually moved to the SEZ unit and there are sufficient evidences filed by the assessee. The AR has taken us through the payment to staff and labour which proves that the manufacturing activity has been undertaken at the SEZ unit. The employees' expenses and payment of provident fund does prove the case that employees were there at the SEZ unit for the purpose of manufacturing at SEZ unit. Undoubtedly, finished goods have moved out from the SEZ units only for the purpose of exports. We observe that the assessee has imported the key materials and sourced the local material

thru their Mumbai unit and assembled the solar lantern, Ld AR demonstrated sample parts which goes into the lantern which consist of battery and other components which includes several tiny parts, which was assembled in the SEZ unit following a standard process. We observe that as per the definition of the manufacture, assemble or process which bring into existence, more of hands and less of machine work in the case of the assessee, new product namely solar lantern, which is distinct from the raw material used in the assembling of the lantern. Therefore, the process demonstrated by the Ld AR and process sheet shown by the assessee falls within the established definition of the Manufacture. The AO has raised doubt on the existence of the proper machinery compared to Mumbai units, we observe that the assembling process does not need much of the machinery except tools which is used to assemble the lantern. Ld AR demonstrated the purchase of tools in the expenses booked under the head consumables. Ld AR has elaborately addressed all the issues raised by AO and CIT(A).

51. Further we observe that Ld CIT(A) casually observed that import and export transactions are carried out on the basis of self-declaration, under mining the appointment of inspector for movement of various goods inside or outside the SEZ, without the knowledge and verification

of the custom documents, nothing can be removed or deposited. There is fixed system and formalities prescribed in the SEZ manual. Revenue authorities cannot undermine the Customs formalities.

52. Further we observe that the Mumbai unit has produced 68190 pcs during this year compared to 75680 pcs in the previous AY. It clearly shows that the Mumbai unit worked almost full capacity this year under consideration and presuming that the quantity exported by the SEZ unit must have produced in Mumbai unit is farfetched. As such, we are of considered view that the CIT(A) was not justified in denying the deduction under section 10AA. Further, the decisions relied upon by the Department Representative are actually distinguishable particularly on the aspect of assembly and process aspect. Accordingly, we direct the Assessing Officer to allow the deduction claimed under section 10AA of the Act of ₹.10,94,26,870, accordingly, this ground is allowed.

53. We observe from the submissions made by the Ld AR that in assessment order, Assessing Officer has mentioned without prejudice to the claim of deduction u/s 10AA of the Act which was disallowed by him, he observed that the assessee was asked to explain the extraordinary profits in respect of the SEZ unit compared to profit of the Mumbai unit in

respect of the provisions mentioned in sec.80IA(8) of the Act. In this regard, Ld AR has already explained before us that the cost of goods sold are same in both the units, which Assessing Officer has not considered. This is only a passing comments relating to this issue. If the Cost of goods sold for goods manufactured are same in both units, the difference in the profit declared by both the units may be because of fixed expenses and establishment expenses involved in both the units.

54. The ground of appeal no 3 is regarding action of the lower authorities in making disallowance of labour charges ₹.13,91,286. The relevant facts are, the Assessing Officer disallowed labour charges amounting to ₹.13,91,286 for the following reasons –

- a. Shri Hemant Shigwan deposed in a sworn statement recorded under section 131 of the Act that he had not carried out any job-work for the appellant. He identified himself as a car driver earning barely Rs.12,000/- a month
- b. The Assessing Officer reproduced the relevant extract of the statement on oath, wherein Shri Hemant Shigwan deposed that the Manager of the appellant-firm knew her wife as she was once an employee there. He stated that bills were prepared by the said Manager, who obtained his signature on them, deposited a cheque in his bank account and took blank, signed cheque from him.
- c. The events showed that the assessee obtained such bogus bills only for the purpose of claiming the expenses.

Accordingly, disallowed the job work expenses aggregating Rs 13,91,286. He also denied having anything to do with a bill dated 09.04.2013 purportedly raised by him and stated that neither he nor his wife had bill books or knew how to operate a computer

55. The CIT(A) upheld the action of the Assessing Officer for the following reasons –

- i. The assessee time and again underlined the assertion that the job work in connection with the solar lanterns is a technical one and required expertise since they had to conform to global standards. However, there is nothing to show as to what qualifications she had to do the aforesaid work.
- ii. Mr Hemant Shigwan has deposed under oath that he had no skill sets for executing this work and neither did they have the place or equipment to do so
- iii. The assessee have not filed any documents like job work letter or any correspondence or document to indicate that such job-work was indeed assigned.
- iv. The plea taken of that being an 'internal arrangement' between Ms. Harshida and her husband is contrary to all principles of law and accounts. Bills cannot be raised in the name of random persons and honoured in this fashion. This would undoubtedly be in gross contravention of the very audit procedure pleaded by the assessee.
- v. There is no explanation as to what was the so-called 'audit-format', why it was so impossible for a job worker and an ex-employee to raise bills in that format and as to what special inputs was given by the Manager.

vi. As regards cross-examination opportunity, the appellant was duly given a copy of the statement of Shri Hemant Shigwan on the basis of which the rebuttal was filed. Nothing turns on the fact that the appellant was not formally afforded an opportunity to cross-examine him. It is not as if an opportunity was not given by the Assessing Officer to rebut the presumptions raised

56. The AR submitted as under –

57. Ms. Harshada Shigwan resigned in July, 2012 and since then, she was entrusted the job work from her home. Further, she was permitted to raise a bill in her own name and sometimes, in the name of her husband.

58. The bills were prepared by their manager since she was unable to do so in the prescribed format required for audit.

59. The bills as per request of Ms Harshada Shigwan, sometimes were issued using the name of her husband and no objections were made as she was responsible for the same and assessee are not concerned with the 'internal arrangement' between Ms. Harshida Shigwan and her husband.

60. The Assessing Officer has not allowed the assessee an opportunity of cross examination of Mr Hemant Shigwan whose statement on oath has been relied upon. The Courts have time and again held that addition cannot be made if the Assessing Officer does not provide an opportunity of cross examination. Reliance is placed on the following decisions –

- (a) Andaman Timber Industries in Civil Appeal no 4228 of 2006 (SC)
- (b) Kishinchand Chhellaram 125 ITR 713 (SC)
- (c) H.R. Mehta 387 ITR 561 (Bom)

61. The assessee contend that the work has been actually done by Ms.Harshida and the Assessing Officer has not doubted the said aspect, however, merely because the bills were raised in the name of her husband disallowed the impugned expenses and thus, the impugned expenses ought to have been allowed.

62. Without prejudice, the assessee contend that the Assessing Officer did not issue any summons or notice under section 133(6) to confirm the work carried out by Ms Harshida and hence, the disallowance of expenses to the tune of Rs 7,72,756, being the bills in the name of Ms Harshida is bereft of any reasons and as such, ought to be allowed as against the disallowance of Rs 13,91,286 made by the Assessing Officer.

63. The Learned Departmental Representative relied on orders of the lower authorities.

64. Considered the rival submissions and the material placed on record. We do not find any merit in the action of the Assessing Officer inasmuch as the assessee has actually availed the labour services for which necessary labour charges have been paid. The Assessing Officer and the Ld.CIT(A) has not disputed the aforesaid fact, however, made the disallowance only for the reason that some bills were raised in the name of husband. Further, the Assessing Officer has not allowed the assessee opportunity of cross examination and as such there is gross violation of principles of natural justice. Accordingly, we direct the Assessing Officer to delete the aforesaid disallowance.

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

Order pronounced in the open court on 27.04.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER
Mumbai / Dated 27.04.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum